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› ON THE IMPLEMENTATION OF THE DECISIONS OF THE CONSTITUTIONAL COURT: THE CASE OF LITHUANIA

INTRODUCTORY REMARKS

1. The jurisdiction of the Constitutional Court of Lithuania, as established in the Constitution (Art. 105), includes: (a) repressive abstract review of constitutionality of statutes, Government resolutions, and decrees of the President of the Republic, as well as review of correspondence of Government resolutions and decrees of the President of the Republic to statutes; (b) presentation of conclusions on: whether there were violations of election laws during elections of the President of the Republic or elections of members of the Seimas; whether the state of health of the President of the Republic permits him to continue to hold office; whether international treaties of the Republic of Lithuania are not in conflict with the Constitution; whether concrete actions of members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution. The Constitutional Court's jurisdiction does not include such competences as resolution of conflicts between the branches of government or between the central authorities and municipalities etc.

2. As constitutional review presupposes judicial interpretation of the text of the "original" constitutional document (and, further, re-interpretation of the official doctrine formulated in the Court's jurisprudence), the Court also enjoys the exclusive power to officially interpret the Constitution. Thus, besides acting as a negative legislator, the Court also establishes certain guidelines for legislation. Consequently, the issue of implementation of decisions of the Constitutional Court is a part of a wider problem of the effects of its jurisprudence and its overall influence on the national legal system, not merely execution of decisions.

3. The term "decisions", when used in relation to the acts of the Constitutional Court of the Republic of Lithuania, is resumptive. It includes: (a) rulings (*nutarimai*) adopted in the exercise of the abstract review of constitutionality of statutes etc.; (b) conclusions (*išvados*); (c) procedural decisions and other decisions by which cases are not decided on the merits, i.e. decisions in the narrow sense of the word (*sprendimai*). This variety of terms appears only in the Law on the Constitutional Court, whereas the Constitution mentions only the decisions and the conclusions. Here, I shall deal only with the rulings and the conclusions, i.e. the so-called "final acts" of the Court.

RULINGS: ABSTRACT REVIEW OF STATUTES ETC.

1. The Constitutional Court considers and adopts a ruling whether the laws and other acts adopted by the Seimas (Parliament), are not in conflict with the Constitution, as well as whether the acts of the President of the Republic and the acts of the Government (Cabinet) are not in conflict with the Constitution and the laws. Pursuant to the official interpretation of the Constitution, the Constitutional Court also investigates whether sub-statutory acts adopted by the Seimas are not in conflict with not only the Constitution, but, also, whether they are not in conflict with the laws. Besides that, the Constitutional Court has self-assumed the power to investigate and adopt a ruling whether laws and sub-statutory acts adopted by the Seimas, the President of the Republic and the Government are not in conflict with the (so-called) constitutional laws (which, despite their title, are of a lower legal force than that of the Constitution but of a higher legal force than that of ordinary laws [1]) and whether the constitutional laws are not in conflict with the Constitution. Thus, the Constitutional Court, by its rulings, ensures the hierarchy of the legal system from the Constitution downwards to the level of the acts of the central government. As to the review constitutionality and legality of sub-statutory acts adopted by ministries, agencies, regional and municipal authorities, it falls within the competence of administrative courts.

In Art. 107 of the Constitution it is consolidated that "a law (or part thereof) of the Republic of Lithuania or other act (or part thereof) of the Seimas, act of the President of the Republic, act (or part thereof) of the Government may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution" and that "the decisions of the Constitutional Court on issues prescribed to its competence by the Constitution shall be final and not subject to appeal".

The rulings of the Constitutional Court have *erga omnes* and ex *nunc effect*. In Art. 72 of the Law on the Constitutional Court, it is established that all State institutions as well as their officials must revoke the sub-statutory acts or provisions thereof which they have adopted and which are based on an act which has been recognised as unconstitutional, and that decisions based on legal acts which have been recognised as being in conflict with the Constitution or laws must not be executed if they had not been executed prior to the appropriate Constitutional Court ruling went into effect. Ex tunc effect of the rulings is excluded.

The legal act (or part thereof) that was recognised as unconstitutional is not automatically eliminated from the system of legal acts (although it no longer serves any rational goal). As a *text, it no longer represents valid law* and, remaining a "legal corpse", continues to blemish the legal system until it is formally excluded from the system of legal acts by adoption of a relevant act of the Seimas, the Government, or the President of the Republic. The Cabinet usually loses

1. They, to a certain extent, are similar to the Andorran llei qualificada.

little time to set forth the new sub-statutory legislation, while for the Seimas it may take years to agree on the new provisions. It has become a commonplace practice to form a special parliamentary commission to work on the necessary legislatives proposals to implement the most complicated rulings of the Constitutional Court.

2. There are no constitutional provisions explicitly forbidding the legislator to de *novo* adopt a statute that would set forth such legal regulation which would not differ from the one which was recognised by the Constitutional Court as unconstitutional. Such provisions as "the power of the Constitutional Court to recognise a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof" and that "rulings passed by the Constitutional Court shall have the power of law and shall be binding to all State institutions, courts, all enterprises, establishments, and organizations as well as officials and citizens" are statutory, not constitutional, provisions (Art. 72 of the Law on the Constitutional Court). But in Lithuania's constitutionalist community the approach that the rulings of the Constitutional Court bind only those who apply the law, and not the legislator (and other law-makers, has very few subscribers. Therefore, there legislator is considered to be bound by the rulings no less than are those who apply the law- unless he endeavors to amend the constitutional provisions on which a specific ruling is based.

There is no difference in opinion about the binding character -with respect to the legislator- of the *resolving parts* of the rulings of the Court, there used to be an opinion that *the parts of reasoning*, in which the arguments and reasons -*ratio and dicta*- on which the resolving parts were based, are merely recommendations. Perceived in this light, constitutional interpretation was thought to facilitate the application of the Constitution, but not to develop the living Constitution by formulating explicit doctrinal imperatives. In fact, it has happened, at times, that the Constitutional Court has had to strike down certain legislative provisions that were adopted in disregard of the Court's doctrine. (Whenever a new piece of legislation is struck down by the Court, it is worthwhile to find out if any official doctrine on the matter has been present at the time of adoption of the legislation, and if so, whether this doctrine has been openly neglected or simply overlooked.) However, the opinion that the reasoning of the Constitutional Court are not binding upon the law-makers has conceded defeat to the opinion that the parts of reasoning of the rulings of the Court are also binding. True, no obligation to observe the reasoning of the Constitutional Court is explicitly formulated in the Constitution. However, there are al least two reasons why both ratio and *dicta* have become an imperative, which is obligatory to the legislator to the same extent as to those who apply the law: first, in the society of a mature constitutional culture, politicians (MPs included) usually do not question rulings of the Constitutional Court (the situation is different with scientists, journalists, various

commentators etc.); second, in case of an "analogous" constitutional dispute the Constitutional Court is likely to make use of the already formulated doctrine. So the more there is of the official constitutional doctrine, the more predictable is the Constitutional Court, and the lawmakers, as well as other participants of legal processes, cannot ignore this.[2]

The purpose of the constitutional jurisprudence and the official constitutional doctrine formulated therein is not only to eliminate unconstitutional acts (or parts thereof) from the legal system, but also, by means of the official constitutional doctrine, to draw guidelines for the future legal regulation and, thus, to perform a "preventive" function. The power of resolving part of the Court's ruling is always *retrospective*; while that of the constitutional doctrine developed in the part of reasoning is *prospective*. Moreover, the Constitutional Court (during the investigation of the case) often finds itself in such situation where it has to consider the constitutionality of legal acts that are no longer valid or the constitutionally of those legal acts, the validity of which expires after the onetime implementation (constitutionality of ad *hoc* legal regulation). The investigation of the constitutionality would loose any practical sense, if after the investigation of the constitutionality of legal acts that are not longer valid or already implemented (*ad hoc*), the legal power and significance of the constitutional jurisprudence and the official constitutional doctrine formulated therein, as of a source of law, were ignored.

3. The official doctrine of the legal force of the rulings of the Constitutional Court is best exemplified in its ruling of 30 May 2003.

The case was caused by the fact that the Seimas has passed a statute which provided for the Seimas members', elected to the municipal councils, the right to take part in the first session of the municipal councils of the 2003–2007 term. This was done in defiance of the Constitutional Court's doctrine (as elaborated in the earlier ruling of 24 December 2002) according to which Seimas members cannot at the same time serve also as members of municipal councils and, therefore, if they are elected to the council, they have to renounce one of these positions before the newly elected municipal council convenes to its first session. Actually, the said doctrine was formulated only as *dicta*; no provision of any statute was recognised unconstitutional in the said ruling of 24 December 2002 (or in any other ruling), and this was just for the simple reason that there *never had been a provision* which would allow the Seimas members to serve, at the same time, also as members of municipal councils. However, there was in place a widespread unconstitutional practice of combining these two positions, and the Seimas had tried to prolong this practice for a while by passing (already after the Constitutional Court has passed its ruling

2. E. Küris. "Politinių klausimų jurisprudencija ir Konstitucinio Teismo obiter dicta: Lietuvos Respublikos Prezidento institucija pagal Konstitucinio Teismo 1998 m. sausio 10 d. nutarimą" in Politologija, No. 1, 1998; Id. Judges as Guardians of the Constitution: „Strict" or „Liberal" Interpretation // E. Smith (ed.). Old and New Constitutions: The Constitution as Instrument of Change, 2003; Id. „The Constitutional Court and Interpretation of the Constitution", in E. Jarašiūnas, E. Küris et al. Constitutional Justice in Lithuania, 2003.

of 24 December 2002) a relevant statutory amendment (of the Law on the Elections to Municipal Councils). So, even though while adopting the disputed statutory amendments the Seimas openly ignored the Court's doctrine, in the *formal sense* the said amendments did not constitute the adoption of a "repeated" unconstitutional legislation. Sure, the amendments were turned down by the Court.

In its ruling of 30 May 2003, the Constitutional Court has elaborated on the finality of its rulings by stating *inter alia* that the Seimas (as well as the Government and the President) are *forbidden* to repeatedly set forth such legal regulation which was recognised as unconstitutional. Thus, by adopting such a statute the Seimas attempted to overrule the power of the Constitutional Court and, thus, violated *the principle of the separation of powers* enshrined in the Constitution. It is especially noteworthy that the Constitutional Court has provided a broad meaning to the provision that the power of the Constitutional Court to recognize a legal act or part thereof as unconstitutional may not be overruled by a repeated adoption of a like legal act or part thereof, which covers *also those cases* when by "repeated adoption" not only the legal regulation is established whereby *once again* the norms or principles are consolidated which have been recognized by the Constitutional Court to be in conflict with the Constitution by its previous ruling, but also the legal regulation which explicitly formulates certain provisions for the first time, which, however, disregard or openly ignore the interpretation of relevant constitutional norms or principles presented in former rulings of the Constitutional Court.

Paradoxically enough, although the Constitutional Court has used to cite the provision of the Law on the Constitutional Court that the rulings of the Constitutional Court "shall have the power of law" (Art. 72), in fact, and if the doctrine is read in its whole, these rulings have *the power of the Constitution*, as they can be overruled *only by constitutional amendment.*

4. As the legal act (or part thereof) may not be applied from the day of official promulgation of the Constitutional Court's ruling that this act (or part thereof) is in conflict with the Constitution, there is no possibility to set forth a time-limit for a new regulation to replace the one which has been recognised as unconstitutional––the ruling shall become effective as soon as it is published in the official gazette. However, in certain exceptional cases, the Court is faced with the situation where the absence of *any* legal regulation pertaining to certain matters can do more harm to the values the Constitution aims to defend than the flawy legal regulation which has been struck down by the Court. E.g., it happened in the case where the mentioned ruling of 24 December 2002 was adopted. In this ruling, a number of legislative provisions pertaining to the formation of municipal authorities were turned down; in fact, the blow was so overwhelming that even all mayors and boards of municipalities (elected according to the legislation which the Court recognized as unconstitutional) could turn, overnight, into illegal holders of office. The situation was even more aggravated by the fact that the ruling was adopted in the very end of the fiscal year.

In these circumstances, the Court had to find a Solomonic judgment. It decided to postpone,

for two months, the official publication (i.e. the publication in the official gazette) of its ruling which has already been announced in the courtroom and, thus, made known to the legislator and to the public. To quote:

> <...> the Constitutional Court has powers, while taking account of the circumstances of a concrete case, to decide in which of the indicated publications its ruling must be officially published first and, in particular, when this must be done. Alongside, the Constitutional Court notes that the Constitutional Court rulings related to the protection of human rights and freedoms must, in all cases, be published without delay.
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> <...> if this Ruling of the Constitutional Court were officially published immediately after its public promulgation in the Constitutional Court hearing, there would appear vacuum in the legal regulation concerning local self-government, which would in essence disrupt the functioning of local self-government mechanism and state administration. In order to remove this vacuum in legal regulation, some time is necessary.
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> Taking account of this, this Ruling of the Constitutional Court is to be officially published in the official gazette "*Valstybės žinios*" upon the expiration of two months of its promulgation in the public hearing of the Constitutional Court, i. e. on 25 February 2003."

Subsequently, in 2003, the Seimas has explicitly consolidated, in the amendment to the Law on the Constitutional Court, the power of the Constitutional Court to decide when the official publication has to take place.

5. In the ruling quoted above, the Constitutional Court has formulated the maxim that the Court's rulings related to the protection of human rights and freedoms must, in all cases, be published without delay. However, later, an important development of this principle has been made in the Constitutional Court's ruling of 23 August 2005 (to be officially published on 30 December 2005). In this case, the Court has defended ownership rights of the people who were entitled to receive compensation for the property which had been nationalized by the Soviet regime and not restituted in view that it has been used for the needs of society. Immediate publication could discontinue the process of payment of compensation and, thus, harm it even more than the flawy law that was in conflict with the Constitution. Therefore, the promulgation of the ruling was postponed.

Here are some fragments of the reasoning of the Constitutional Court:

> <...> after a ruling of the Constitutional Court goes into effect, whereby the law (part thereof) is recognised as conflicting with the Constitution, there might appear various indeterminacies in the legal system, *lacunae legis*-gaps in the legal regulation, or even a vacuum. In order to evade this, one must correct the legal regulation in time so that the gaps in the legal regulation as well as other indeterminacies could be removed and that the legal regulation might become clear and harmonious.

<...> the Constitutional Court, having *inter alia* assessed what legal situation might appear after a Constitutional Court ruling becomes effective, may establish a date when this Constitutional Court ruling is to be officially published; the Constitutional Court may postpone the official publishing of its ruling if it is necessary to give the legislator certain time to remove the lacunae *legis* which would appear if the relevant Constitutional Court ruling was officially published immediately after it had been publicly announced in the hearing of the Constitutional Court and if they constituted preconditions to basically deny certain values protected by the Constitution. The said postponement of official publishing of the Constitutional Court ruling (*inter alia* a ruling by which a certain law (or part thereof) is recognised as contradicting to the Constitution) is a presumption arising from the Constitution in order to avoid certain effects unfavourable to the society and the state, as well as the human rights and freedoms, which might appear if the relevant Constitutional Court ruling was officially published immediately after its official announcement in the hearing of the Constitutional Court and if it became effective on the same day after it had been officially published.

If this Ruling of the Constitutional Court was officially published after its public promulgation at the hearing of the Constitutional Court <...> there would appear such indeterminacies and gaps in the legal regulation of restoration of the rights of ownership to the existing real property due to which the restoration of the rights of ownership to the existing real property would be disturbed in essence or even it would be temporarily discontinued.

<...> appears a duty to the legislator to respectively amend and/or supplement the Law <...> so that its provisions are in compliance with the Constitution.

It needs to be noted that the amendments and/or supplements to the said law must be made so that the restoration of the rights of ownership to the existing real property is not disturbed or stopped and that it should not discontinued: in order that the state could, properly and in time, fulfill the obligations undertaken by it, this process has to be consistent and discontinued.

<...> Taking account of the fact that a certain time period is needed in order to make the changes and/or amendments to the laws and that the fulfillment of the state financial obligations to the persons to whom the rights of ownership to the existing real property are restored is related to the formation of the State Budget and corresponding redistribution of state financial resources, this Ruling of the Constitutional Court is to be officially published in the official gazette "*Valstybės žinios*" on 30 December 2005.

CONCLUSIONS: IMPEACHMENT AND ELECTIONS

1. As mentioned, the Constitutional Court presents of conclusions on: whether there were violations of election laws during elections of the President of the Republic or elections of members of the Seimas; whether the state of health of the President of the Republic permits him

to continue to hold office; whether international treaties of the Republic of Lithuania are not in conflict with the Constitution; whether concrete actions of members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution.

Here, the jurisprudence is sparse: (a) there is no Constitutional Court's jurisprudence pertaining to the issue of the state of health of the President of the Republic and his continuation to hold office; (b) there also has been only one case pertinent to the international treaties (in the form of preliminary review); although, in the formal sense, the Constitutional Court may present conclusions on their constitutionality both before ratification in the Seimas and after ratification, i.e. both in the way of preliminary review and of subsequent review; of course, the realization of latter competence, if the Court recognizes a treaty as unconstitutional, would be extremely problematic from the point of view of international law; however no such case was ever filed with the Constitutional Court; (c) the Court has presented several conclusions on whether there were violations of election laws during elections of members of the Seimas, however, no such violation that would serve as a basis for annulment of the results has been found by the Constitutional Court; (d) in 2004, the conclusion on whether the actions of the President of the Republic were not in conflict with the Constitution was presented, and on the basis of this conclusion the President of the Republic was impeached by the Seimas.

2. The conclusions of the Constitutional Court differ from the rulings not only in that in the specific character of subjects on which they are presented, but also in that the final word on the matter is reserved to the Seimas. Art. 107 of the Constitution inter alia provides that on the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues.

This provision shall not be interpreted as reserving, for the Seimas, a complete discretion in either accepting (and, thus, "confirming") the conclusion presented by the Constitutional Court, or rejecting it. The Constitutional Court has elaborated on the issue in its conclusion of 31 March 2004:

> <...> the Constitutional Court shall present conclusions whether concrete actions of members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution.
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> <...> Paragraph 3 of Article 107 of the Constitution provides that on the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution.
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> <...> the principle of separation of powers that is entrenched in the Constitution inter alia means that after the Constitution has directly established the powers of a concrete state institution, one state institution may not take over such powers from the other, nor transfer or waive them, and that such powers may not be changed or restricted by means of a law.

<...> Paragraph 2 of Article 107 of the Constitution provides that the decisions of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal. <...> Thus <...> a conclusion whether concrete actions of the President of the Republic against whom an impeachment case has been institute are in conflict with the Constitution is final and not subject to appeal.

<...> in cases when impeachment proceedings are instituted against the President of the Republic for gross violation of the Constitution, the Seimas has a duty to apply to the Constitutional Court, requesting for a conclusion whether the actions of the President of the Republic are in conflict with the Constitution.

<...> The provision of Paragraph 2 of Article 107 of the Constitution that the decisions of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal also means that the Seimas, when deciding whether to remove the President of the Republic, may not deny, change, nor question the conclusion of the Constitutional Court that concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution. Such powers of the Seimas are not provided for in the Constitution. The conclusion of the Constitutional Court that concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution are binding to the Seimas in the aspect that, under the Constitution, the Seimas does not enjoy powers to decine whether the conclusion of the Constitutional Court is grounded and lawful-the legal fact that the actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is established only by the Constitutional Court.

<...> the Constitution provides for different functions of the Seimas and the Constitutional Court in impeachment proceedings, and establishes respective powers necessary to implement these functions: the Constitutional Court decides whether concrete actions of the President of the Republic are in conflict with the Constitution and presents a conclusion to the Seimas <...>, while the Seimas, if the President of the Republic grossly violated the Constitution, decides whether to remove the President of the Republic from office <...>. Thus <...> the Seimas enjoys powers to decide whether to remove the President of the Republic from office, but not whether concrete actions of the President of the Republic are in conflict with the Constitution.

<...> by the constitutional provision that only the Constitutional Court enjoys powers to decine (present a conclusion) whether concrete actions of the President of the Republic are in conflict with the Constitution, a guarantee is consolidated in the Constitution for the President of the Republic that against him constitutional responsibility will not be applied unreasonably. Thus, if the Constitutional Court draws a conclusion that the actions of the President of the Republic are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office for gross violation of the Constitution.

<...> The statement that the actions of the President of the Republic are in conflict with the Constitution also means that the President of the Republic violated the Constitution. However, not every violation of the Constitution is, in itself, gross violation of the Constitution.

<...> Under the Constitution only the Constitutional Court enjoys the powers to decide whether concrete actions of the President of the Republic are in conflict with the Constitution, thus whether the President of the Republic violated the Constitution; the Constitution does not provide for such powers for the Seimas. The Seimas, having no powers to adopt a decision whether the President of the Republic violated the Constitution, does not have constitutional powers to decide whether the President of the Republic grossly violated the Constitution. The establishment of a violation of the Constitution is a matter of legal but not political assessment, therefore legal issues, the fact of violation of the Constitution, thus also that of gross violation of the Constitution, can only be established by an institution of judicial power, the Constitutional Court. The interpretation that, purportedly, the Seimas might establish the fact of gross violation of the Constitution, would constitutionally be groundless, since this would mean that the legal issue whether the President of the Republic violated the Constitution, whether the Constitution has been violated grossly, might be decided not by an institution of judicial power, the Constitutional Court, which, as all other courts, is formed on professional basis, but by the Seimas, an institution of state power, which in its nature and essence is an institution of political character, in whose decisions the political will of the majority of Seimas members is reflected, whose decisions are based on political agreements, various political compromises etc. It is evident that the Seimas, an institution of political character, may not decide whether the President of the Republic violated the Constitution, whether the violation of the Constitution is a gross one, i. e. it may not decide an issue of law. Otherwise, the statement of the fact of violation of the Constitution as well as that of gross violation of the Constitution might be grounded upon political arguments, while the constitutional responsibility of the President of the Republic might arise from the statement that the Constitution has grossly been violated, which would be based upon political arguments. The Constitution contains only the legal regulation whereby it is only the Constitutional Court that has the powers to decide whether the President of the Republic violated the Constitution, whether the violation of the Constitution is a gross one. The Constitution provides for such powers for neither the Seimas, nor any other state institution, nor any state official.

<...> in the impeachment proceedings at the Seimas one does not decide the fact whether actions of the President of the Republic are in conflict with the Constitution, nor the fact whether the President of the Republic grossly violated the Constitution. Under the Constitution, this is decided by the Constitutional Court. In the impeachment proceedings at the Seimas one decides only the question of the constitutional responsibility of the President of the Republic. i.e. <...> only whether to remove the President of the Republic from office for gross violation of the Constitution. The removal

of the President of the Republic from office is a constitutional sanction for gross violation of the Constitution. <...> It is only the Seimas that may adopt a decision on the application of the constitutional sanction, i. e. on the removal of the President of the Republic from office."

The obligation of the Seimas to act on the basis of the Constitutional Court's conclusions was even further consolidated in the ruling of the Constitutional Court of 25 May 2004. To cite:

> <...> When evaluating the relationship between the constitutional powers of the Constitutional Court and the Seimas during the impeachment procedure it needs to be noted that the conclusion of the Constitutional Court that the actions of the President of the Republic are (are not) in conflict with the Constitution, are binding to the Seimas in that, according to the Constitution, the Seimas has no power to decide whether the conclusion of the Constitutional Court is well-founded and lawful, the legal fact that the actions of the President of the Republic are (are not) in conflict with the Constitution is established only by the Constitutional Court <...>. Although members of the Seimas, when deciding the issue of removal of the President of the Republic from office for gross violation of the Constitution, or breach of oath, vote freely, still this does not mean that members of the Seimas, when deciding whether to remove the President of the Republic from office for gross violation of the Constitution, or breach of oath according to the procedure for impeachment proceedings, are not bound by the oath of the member of the Seimas taken by them, which obligates the member of the Seimas in his activity to follow the Constitution, the interests of the state and his conscience, and not be bound by any mandates. The free mandate of a member of the Seimas, which is entrenched in the Constitution, may not be understood only as a permission to act at one's own discretion, following only one's conscience and to ignore the Constitution. The Constitution implies such a notion of discretion of a member of the Seimas and conscience of a member of the Seimas, which contains no gap between the discretion of a member of the Seimas and the conscience of a member of the Seimas, and the requirements of the Constitution, as well as the values preserved and protected by the Constitution: according to the Constitution, the discretion of a member of the Seimas and his conscience should be oriented towards the Constitution, and the interests of the Nation and the State of Lithuania. Therefore, an especially great responsibility is borne by the Seimas, which decides whether to remove, according to the procedure for impeachment proceedings, the President of the Republic from office for gross violation of the Constitution and breach of oath: in a democratic state under the rule of law a person, who has grossly violated the Constitution, or breached the oath, should not evade the constitutional liability-the removal from office.
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> The Constitution does not provide that upon a lapse of certain period of time the President of the Republic, whose actions were recognised by the Constitutional Court as those by which the Constitution was grossly violated, and he himself was recognised

> as the one who has breached the oath, and who has been removed from office by the Seimas for the breach of oath and gross violation of the Constitution, might be treated as the one who has not breached the oath or grossly violated the Constitution. The President of the Republic, whose actions were recognised
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> by the Constitutional Court as those which grossly violated the Constitution, and who was removed from office by the Seimas, the representation of the Nation, according to the procedure for impeachment proceedings, under the Constitution, will always remain as the one who breached the oath to the Nation and grossly violated the Constitution, and who was removed from the office of the President of the Republic for the said reasons.

3. In one of the cases pertaining to electoral issues, the Constitutional Court has found certain violations of election laws during elections of members of the Seimas, however, the Court held that these violations were not such that could, while assessing each of them separately and as a whole, determine the declaration of elections in a respective district as invalid. Thus there is no sufficient doctrinal and/or factual basis for generalization as to what shall the Seimas's actions be if (and after) the "negative" conclusion is presented by the Constitutional Court. However, the Court also expanded on the statutory provisions pertaining to the elections of members of the Seimas. To quote the conclusion of 5 November 2005:

> It is clear from the material of the case that in the 2004 elections to the Seimas during the repeat vote by mail there were a number of violations of the Law on Elections to the Seimas in Raseiniai One-candidate Electoral District No. 42, where the requirements of secret ballot and personal (direct) voting were disregarded. At the hearing of the Constitutional Court it came to light that similar violations of the Law on the Election to the Seimas took place in other electoral districts as well. In the election practice direct and indirect buying of voters' votes has taken to spreading, while this distorts the real will of the voters, it creates preconditions to compete in elections dishonestly, and decreases the trust in the representation of the Nation.
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> <...> This shows that the provisions of the Law on Elections to the Seimas that regulate voting by mail are not effective enough. Neither the Law on Elections to the Seimas, nor any other laws contain an effective mechanism, which would ensure that voting by mail be not abused, and that the institute of voting by mail itself not create preconditions to distort the real will of the voters.
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> It needs to be emphasized that respective correction of the legal regulation is a constitutional duty of the legislator.

It shall be mentioned that the Seimas commission has been formed to draft the necessary changes into relevant election laws.