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Synthèse / Summary / Kurzfassung / резюме

**RÉPUBLIQUE DE LITUANIE / REPUBLIC OF LITHUANIA /
REPUBLIK LITAUEN / ЛИТОВСКАЯ РЕСПУБЛИКА**

**The Constitutional Court of the Republic of Lithuania
Lietuvos Respublikos Konstitucinis Teismas**

Anglais / English / Englisch / английский

COOPERATION OF CONSTITUTIONAL COURTS IN EUROPE – CURRENT SITUATION AND PERSPECTIVES

Summary

Due to the increasingly stronger tendencies of globalisation in the modern world, the national constitutional courts, while securing the supremacy of the Constitution—the act of the supreme legal power—and conducting the control over the constitutionality of other legal acts, can no longer refer only to provisions of the national law and ignore the international context. Therefore, while administering justice, the Constitutional Court of the Republic of Lithuania, as well as other national constitutional courts, invokes not only the Constitution of its own country, but also refers to the provisions of European law and the corresponding jurisprudence interpreting it.

The Constitution obliges the Constitutional Court to apply European law and refer to it, in particular, it is obliged by the constitutional provisions consolidating the principle of Lithuania's respect for international law (the obligation to follow the universally recognised principles and norms of international law) and entrenching the demand for Lithuania's contribution to the creation of the international order based on law and justice, as well as by the international treaties (both ratified and non-ratified) of the Republic of Lithuania and the obligations undertaken of its own free will insofar as it is not in conflict with the Constitution. Alongside, the Constitutional Court, as well as other state institutions, is thus obliged to take account of the interpretation of these principles and norms as provided by competent international institutions and to invoke such interpretation.

When it decides constitutional justice cases, the Constitutional Court makes use of the provisions of European law in a varied fashion: in some rulings the provisions of international documents (from among them, the European Convention on Human Rights (hereinafter—the Convention) is most often mentioned) are cited directly in order to show that the investigated legal area is regulated not only by the Constitution, but by international documents as well and (i.e. the disclosure of the international context); in other cases they are used in the interpretation of certain constitutional provisions (i.e. constitutional provisions are interpreted in the context of the provisions of an international treaty), and in some other rulings indirect reference is made to sources of international law—their influence on the Constitutional Court's decisions is implicit, but of no less importance.

As regards the jurisprudence of the European Court of Human Rights (hereinafter—the ECtHR) and that of the Court of Justice of the European Union (hereinafter—also the CJEU), it should be noted that the Constitutional Court acknowledged that the status of the jurisprudences thereof is the one of an authoritative source of interpretation of law: it was held in the constitutional jurisprudence that “the jurisprudence of the European Court of Human Rights, as a source of construction of law, is also relevant to the construction and application of Lithuanian law”; the same was also said as regards the jurisprudence of the CJEU. The examples from the case-law of the supranational courts as presented in the Constitutional Court's rulings supplement the context of a considered issue from the international aspect, they are used in order to strengthen the position

formulated by the Constitutional Court, whilst in some cases the jurisprudence of the ECtHR and/or that of the CJEU are/is used in order to construe the provisions of the Constitution most favourably according to the jurisprudence of the ECtHR and the CJEU. The positions of the Constitutional Court and of one of the supranational courts—the ECtHR—actually diverged only once, when the right to stand in elections was being decided. According to the Constitutional Court's doctrine that was reiterated several times in its final acts, a person, who breached the oath to the state and grossly violated the Constitution, may never again be elected or appointed to an office the beginning of holding which requires a person to take an oath to the State of Lithuania (i.e. he may not stand in elections for the President of the Republic, a Member of the Seimas, he may not be appointed as a judge, etc.). The ECtHR decided that the permanent and irreversible disqualification from standing in parliamentary elections is incompatible with the provisions of the Convention. The emerged divergence between the interpretation of the Constitution as provided by the Constitutional Court and the position of the ECtHR can be removed only by making amendments to the respective provisions of the Constitution.

The catalogue of human rights and freedoms consolidated in the provisions of the constitutions of the most European states is similar, therefore, it is only natural that, when deciding a case, a constitutional court of one country takes account of the experience of the constitutional courts of other foreign states that have already faced the similar problems, refers to that experience, takes over their developed practice, investigates the argumentation used and applies it to its own situation. The cooperation peculiarities of concrete courts are determined by their belonging to the same legal system, the place of the courts with regard to judicial institutions and the nature of the applied material law, the geographic vicinity, the similarity of the constitutional system, the situation which is decided and the circumstances of the case, the constitutional provision which is to be construed, the context of its application, etc. While deciding the constitutional justice cases, the problems considered wherein may be common to the legal system of more than one state, the Constitutional Court of the Republic of Lithuania refers in its rulings to the practice of the constitutional courts of both European and other foreign states. The decisions of foreign courts cited or referred to in the Constitutional Court's rulings are not regarded as independent arguments and are not the factor determining the final decision taken by the Constitutional Court, however, they sometimes strengthen the position chosen by the Court or illustrate the multiple meanings of the considered issue. An analysis of examples of the rulings of the Constitutional Court shows that the foreign constitutional jurisprudence is usually interesting while one decides the legal questions that are to be attributed to the sphere of constitutional law (the power of the Constitutional Court's rulings, the questions of election law, independence of judges and courts), as well as to the sphere of civil law (the family concept, reduction of the awarded social benefits, etc.).

The justices of the Constitutional Court not only are interested in the jurisprudence of constitutional courts of other states and use it when they consider constitutional justice cases, but have also started informal cooperation with the colleagues from the constitutional courts of foreign

states. The Constitutional Court of the Republic of Lithuania has the closest relations with its neighbours, the Latvians and the Polish with whom the justices regularly meet during the bilateral annual conferences. Recently, the bilateral cooperation with the Constitutional Court of Ukraine has also been started. The Constitutional Court also organises multilateral international conferences in which relevant issues of the constitutional jurisprudence are analysed and the experience is exchanged. The Constitutional Court also accepts delegations of foreign guests.

As regards the interrelation between the two supranational courts—the ECtHR and the CJEU—it should be noted that this interrelation does not have any direct influence on the doctrine formed by the Constitutional Court. As a rule, in the course of the preparation of constitutional justice for the hearing, the Constitutional Court familiarises with the case-law of both of these courts concerning the relevant issue. In case there are any divergences in their jurisprudence on the considered issue, it usually becomes clear during the stage of the preparation of the case, however, it is not necessarily reflected in the final text of the ruling of the Constitutional Court.