The Jurisprudence of the Constitutional Court of Lithuania as a Safeguard for Human Rights Protection: Recent ECtHR Cases against Lithuania

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Šiame straipsnyje autorė nagrinėja Lietuvos Respublikos Konstitucinio Teismo (toliau – Konstitucinis Teismas) jurisprudencijos reikšmę naujausioje Europos Žmogaus Teisių Teismo (toliau – EŽTT) praktikoje (laikotarpiu nuo 2020 m. sausio mėn. iki 2023 m. sausio mėn.). Nagrinėjamu laikotarpiu EŽTT dažnai rėmėsi Konstitucinio Teismo jurisprudencija. Iš EŽTT naujausios praktikos matyti, kad EŽTT aiškiai parodo savo ir Konstitucinio Teismo pozicijų panašumą, lygindamas savo praktiką su Konstitucinio Teismo jurisprudencija. Šių dviejų teismų pozicijų suderinamumas rodo abipusę pagarbą ir suderintą praktiką. EŽTT aiškiai nurodo, kad Lietuvos teismai pareiškėjų bylose nesivadovavo Konstitucinio Teismo jurisprudencija, suformuota remiantis EŽTT praktikoje suformuluotais principais. Straipsnyje nagrinėjamos ir EŽTT bylos, kuriose Konstitucinio Teismo jurisprudencija, kuria tinkamai vadovavosi Lietuvos teismai konkrečiose pareiškėjų bylose, padėjo išvengti Konvencijos pažeidimų. Galiausiai analizuojamos EŽTT bylos, kuriose EŽTT rėmėsi Konstitucinio Teismo jurisprudencija kaip papildomu argumentu savo pozicijai pagrįsti. Pavyzdžiui, EŽTT rėmėsi Konstitucinio Teismo jurisprudencija žmogaus teisių ribojimo pateisinimo tikslais arba Lietuvos Vyriausybės (bylos šalies) argumentams atmesti.

Pagrindiniai žodžiai: Konstitucinis Teismas, Europos Žmogaus Teisių Teismas, EŽTT, Žmogaus teisių ir pagrindinių laisvių apsaugos konvencija, EŽTK, teismų dialogas, teismų praktika

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Introduction

Under the Constitution, the Constitutional Court of the Republic of Lithuania (hereinafter – the *Constitutional Court*) is the institution of constitutional justice which carries out the constitutional judicial control[1]. Pursuant to Article 102 § 1 of the Constitution, the Constitutional Court shall decide whether the laws and other legal acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws (the Constitution of the Republic of Lithuania, 1992). The Constitutional Court also presents the conclusions under Article 105 § 3 of the Constitution and examines the individual constitutional complaint under Article 106 § 4 of the Constitution.

'<...>All subjects of law-making and those of application of law, including courts, must pay heed to the official constitutional doctrine when they apply the Constitution, they cannot interpret the provisions of the Constitution differently from their construction in the acts of the Constitutional Court. <...>'; the acts of the Constitutional Court in which the Constitution is construed are, therefore, binding on, among others, the courts of general jurisdictions and specialised courts (the Decision of the Constitutional Court of 20 September 2005). Pursuant to Article 107 §§ 1 and 2 of the Constitution, 'a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal' (the Constitution of the Republic of Lithuania, 1992; the Ruling of the Constitutional Court of 28 March 2006). 'After the Constitutional Court has recognised that a constitutional law (part thereof) is in conflict with the Constitution, that a law (part thereof) or the Statute of the Seimas (part thereof) is in conflict with the Constitution or with a certain constitutional law, that a substatutory act (part thereof) of the Seimas is in conflict with the Constitution, a certain constitutional law or a law or with the Statute of the Seimas, that an act (part thereof) of the President of the Republic is in conflict with the Constitution, a certain constitutional law or a law, that an act (part thereof) of the Government is in conflict with the Constitution, a certain constitutional law or a law, a constitutional duty arises to

1 The Ruling of the Constitutional Court of 28 March 2006; the Ruling of the Constitutional Court of 9 May 2006.

a corresponding law-making subject—the Seimas, the President of the Republic, or the Government—to recognise such legal act (part thereof) as no longer valid or, if it is impossible to do without the corresponding legal regulation of the social relations in question, to change it so that the newly established legal regulation is not in conflict with legal acts of higher legal force, *inter alia* (and, first of all), the Constitution. But even until this constitutional duty is carried out, the corresponding legal act (part thereof) may not be applied under any circumstances. In this respect the legal force of such legal act is abolished'[2].

The impact of the case-law of the European Court of Human Rights (hereinafter – the *ECtHR* or the *Court*) on the jurisprudence of the Constitutional Court has been determined explicitly in the jurisprudence of the Constitutional Court and has also been explicitly determined in the doctrine (e.g. Žalimas, 2016). Namely, in its jurisprudence, the Constitutional Court has recalled on numerous occasions that the case-law of the ECtHR is important for the interpretation and application of Lithuanian law[3]. Therefore, the Constitutional Court reviews not only the 'constitutionality' of the legal acts (the compatibility of the legal acts with the Constitution), but also, in addition, the 'conventionality' of the legal acts, i.e. their conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the *ECHR* or the *Convention*) (Convention for the Protection of Human Rights and Fundamental Freedoms…). However, it is clear that '<...> the ECtHR claims superiority in its interpretation of the ECHR, and this claim is generally respected by national courts' (Ulfstein, 2021, p. 156, 158, 169). Again, one can state that the Constitutional Courts should act as a 'mediator' (in the words of Ulfstein) between the ECtHR and the national legislature (Ulfstein, 2021, p. 173). The Constitutional Court has stressed that any violation of the rights and freedoms enshrined in the Convention cannot be justified by the domestic laws; the Constitutional Court has stressed the importance of the effective implementation of the norms of the Convention in the domestic legal system[4]. The Constitutional Court, relying on Article 135 § 1 of the Constitution, whereby the Republic of Lithuania is obliged to follow the universally recognised principles and norms of international law, has stressed 'the imperative of fulfilling, in good faith, the obligations assumed by the Republic of Lithuania under international

2 The Ruling of the Constitutional Court of 6 June 2006; the Decision of the Constitutional Court of 8 August 2006.

3 The Rulings of the Constitutional Court of 8 May 2000, of 5 September 2012, of 5 March 2015, of 11 January 2019; the Decision of the Constitutional Court of 9 May 2016.

4 The Conclusion of the Constitutional Court of 24 January 1995; the Decision of the Constitutional Court of 9 May 2016.

law, *inter alia*, international treaties; <..>'[5]. The Constitutional Court made it clear that 'the doctrinal provision that the international treaties ratified by the Seimas acquire the power of the law cannot be construed as meaning that, purportedly, the Republic of Lithuania may disregard its international treaties, if a different legal regulation is established in its laws or constitutional laws from the one established by international treaties'[6]. The Constitutional Court has recalled that 'in cases when a national legal act (it goes without saying, except the Constitution itself) establishes the legal regulation which competes with that established in an international treaty, then the international treaty is to be applied[7].' In case of incompatibility of the provisions of the Convention with the provisions of the Constitution, the adoption of the corresponding amendment(s) to the Constitution is the only way to remove this incompatibility (the Ruling of the Constitutional Court of 5 September 2012).

Since the drafting of the ECHR, the purpose of the Convention is understood in two respects. The proponents of 'individual justice' contend that, under the ECHR, each complainant has the right to have his or her complaint to be examined and, if granted, to individualized relief. According to this view, the Court shall focus on the victim. The second vision perceives the ECtHR as enforcing the Convention as, in the words of the ECtHR itself, the 'constitutional instrument of the European public order'[8]. According to the second 'constitutional justice' view, the judgments of the ECtHR shall focus not on the victim, but rather on the State, and raise the standard of protection of human rights in the Contracting States as well as correct the domestic defects[9]. Ulfstein recognizes that, albeit the ECtHR is an international court operating in a legal system different from that of national constitutional courts, their relationship is integrated. According to Ulfstein, the legal effects of the ECtHR should be considered constitutional because they affect the relationship between the national constitutional organs and the individual, as well as the relationship between different constitutional organs (Ulfstein, 2021, p. 152). Ulfstein argues that the ECtHR 'should apply constitutional standards in its review of decisions by the national legislature and judiciary' (Ulfstein, 2021, p. 156).

5 The Ruling of the Constitutional Court of 5 September 2012, the Ruling of the Constitutional Court of 24 January 2014, the Ruling of the Constitutional Court of 18 March 2014.

6 The Ruling of the Constitutional Court of 14 March 2006, the Ruling of the Constitutional Court of 5 September 2012.

7 The Ruling of the Constitutional Court of 14 March 2006, the Ruling of the Constitutional Court of 5 September 2012, the Ruling of the Constitutional Court of 18 March 2014; the Decision of the Constitutional Court of 9 May 2016.

8 The term used by the ECtHR starting from *Loizidou v Turkey* [ECHR GC], 1995, § 75. For the overview of such a case-law of the ECtHR, see also Ulfstein, 2021, p. 151.

9 For the review of debates in the scholarly articles regarding the status of the ECtHR, see Kūris, 2018, p. 133-134; Fikfak, 2020, p. 337-338; Ulfstein, 2021, p. 153-160.

Having recalled the importance and effects of the jurisprudence of the Constitutional Court under the domestic law, the role of the case-law of the ECtHR in the Lithuanian legal system and having regard to the usually cited statement about the need for the judicial dialogue between the ECtHR and the domestic courts, including the Constitutional ones, one should examine the role of the jurisprudence of the Constitutional Court in the case-law of the ECtHR. Therefore, the object of this paper is the jurisprudence of the Constitutional Court in the recent ECtHR case-law in the cases against Lithuania. The period of time to be examined covers the years of January 2020 – January 2023. This paper examines the cases wherein the ECtHR referred to the jurisprudence of the Constitutional Court while examining the admissibility or the merits of the case. Therefore, the cases wherein the reference to the jurisprudence of the Constitutional Court was made in the section 'Relevant domestic law and practice' of the judgment or the decision of the ECtHR are not analyzed in this paper (e.g. for such a reference, see *Makarčeva v. Lithuania* [ECHR, dec.], 2021, §41). While it can be admitted that the inclusion of the provisions of the Constitution and/or the jurisprudence of the Constitutional Court into the section 'Relevant domestic law and practice' may have led the ECtHR to certain findings, it is rather difficult to establish how exactly that jurisprudence has contributed to the protection of human rights before the ECtHR. The ECtHR has not had a chance to deal with the jurisprudence of the Constitutional Court in the context of the individual constitutional complaint[10]. As the purpose of this paper is to demonstrate the positive impact of the jurisprudence of the Constitutional Court, this paper does not undertake to examine any different positions of the ECtHR and the Constitutional Court that have occured in practice[11].

The purpose of this article is to outline the positive role of the jurisprudence of the Constitutional Court in the case-law of the ECtHR. The tasks are the following: first, to single out the cases wherein domestic courts failed to follow the jurisprudence of the Constitutional Court that had been developed in line with the Convention, in other words, the missed opportunity cases where it was possible to

10 See *Ancient Baltic religious association "Romuva" v. Lithuania*, 2021, §§ 93-97 wherein the ECtHR, in the circumstances of that case (for the procedural reasons not related to the jurisprudence of the Constitutional Court), was unable to find that lodging an individual constitutional complaint could be considered an effective remedy; for the analysis whether the individual constitutional complaint mechanism in Lithuania is an effective domestic remedy to be exhausted before lodging an application with the ECtHR, see Pūraitė-Andrikienė, 2022, p. 1-30.

11 For the different position of the ECtHR and the Constitutional Court as regards the possible limits of the restrictions of human rights, see Padskocimaite, A., 2017, p. 651-684; see also *Teliatnikov v. Lithuania* [ECHR], 2022, §§ 53-55, 62-63, 72-74, wherein the ECtHR noted that 'the outcome of the Constitutional Court's finding is the opposite result to that argued for by the applicant. Namely, rather than releasing ministers of all religious denominations, such as the applicant, from the obligation to perform military service, the Constitutional Court ruled that no ministers, irrespective of religious organisation or association, can be exempted from the obligation to perform military service'.

solve the issue at the domestic level, but it was failed to do so; second, to demonstrate the cases wherein the jurisprudence of the Constitutional Court as applied by the domestic courts in the concrete individual case helped avoid violations of the Convention or Protocols thereto; third, to examine the cases wherein the jurisprudence of the Constitutional Court was used by the ECtHR as an additional argument or an additional ground for the ECtHR.

The study methods are as follows: comparative and systematic. The article compares the jurisprudence of the Constitutional Court with the case-law of the ECtHR. The role of the jurisprudence of the Constitutional Court is examined in a systematic way.

As it has been mentioned above, the issue of the relation between the case-law of the ECtHR and the jurisprudence of the Constitutional Court has been examined in the doctrine (e.g. Birmontienė, 2010, p. 7-27; Žalimas, 2016). However, this article focuses specifically on the role of the jurisprudence of the Constitutional Court in the recent case-law of the ECtHR in cases against Lithuania.

1. Domestic Courts Fail to Follow the Jurisprudence of the Constitutional Court that was Developed in Line with the Convention

The case of *Macatė v. Lithuania* demonstrates how important it is for the domestic courts examining individual cases to have proper regard to the principles formulated by the Constitutional Court. In the case of *Macatė v. Lithuania*, the applicant, invoking Article 10 (freedom of expression) of the Convention, complained about the temporary suspension of the distribution of her book (children's fairy tale book wherein two fairy tales depicted marriage between same-sex persons) and the subsequent marking of the book with warning labels which stated that 'information may have a negative impact on persons under the age of 14' (the restrictions were imposed in accordance with Article 4 § 2(16) of the Law on the Protection of Minors against Negative Effects of Public Information (hereinafter – the Minors Protection Act)[12] (*Macatė v. Lithuania* [ECHR GC], 2023). In that case, the respondent Government, among other things, stated that the contested Article 4 § 2(16) of the Minors Protection Act should be read and interpreted in

12 Article 4 § 2 of the Minors Protection Act provides:
"2. The following public information is considered to be harmful to minors:
<…>
16) that which expresses contempt for family values, [or] encourages a different concept of marriage and creation of family from the one enshrined in the Constitution and the Civil Code;
<…>".

the context of the Ruling of the Constitutional Court of 11 January 2019, wherein the Constitutional Court had held that 'the constitutional concept of family was neutral in terms of gender' (the Ruling of the Constitutional Court of 11 January 2019). The Government accordingly argued that 'following the adoption of that ruling, the depiction of same-sex relationships could not be considered contrary to the constitutional concept of family and could not be restricted under Article 4 § 2(16) of the Minors Protection Act (*Macatė v. Lithuania* [ECHR GC], 2023, §§ 159-160). The ECtHR concluded that the contested interference with the applicant's freedom of expression – the temporary suspension of the distribution of the applicant's book and its further marking with warning labels – had a legal basis (namely, Article 4 § 2(16) of the Minors Protection Act) within the meaning of Article 10 § 2 of the Convention, but did not pursue a legitimate aim under Article 10 § 2 of the Convention, there has accordingly been a violation of Article 10 of the Convention (*Macatė v. Lithuania* [ECHR GC], 2023, §§ 183-186, 217-218). When addressing the argument of the respondent Government as to the relevance of the Ruling of the Constitutional Court of 11 January 2019 for the interpretation and application of the domestic legal act, the ECtHR found that 'though it does not doubt the importance of the Constitutional Court's ruling for the protection of LGBTI persons and their families in Lithuania, the Court sees no grounds on which to find that that ruling had any bearing on the applicant's case. In particular, there is nothing in the decision of the Vilnius Regional Court, taken shortly after 11 January 2019, to indicate that it took the Constitutional Court's ruling into consideration when assessing the measures taken on the basis of section 4 § 2(16) in respect of the applicant's book' (*Macatė v. Lithuania* [ECHR GC], 2023, § 199). Therefore, it is clear that the ECtHR, when dealing with a concrete case, examines how that domestic Law applies to that concrete case. It is not enough for the Constitutional Court to formulate the principles which are in line with the principles established in the case-law of the ECtHR if such findings of the Constitutional Court are not properly followed by the domestic courts in the applicants' cases pending before the ECtHR.

The case of *Macatė v. Lithuania* is not an isolated example wherein the ECtHR pinpointed to the failure of Lithuanian courts to follow the relevant jurisprudence of the Constitutional Court which ensures the protection of human rights. For example, in the case of Beizaras and Levickas, the ECtHR made it clear that the domestic court in the applicants' case had followed the jurisprudence of the Constitutional Court improperly. In particular, the ECtHR noted that the Klaipėda District Court, invoking the Constitution and the Constitutional Court's jurisprudence, had stated that 'the majority of Lithuanian society very much appreciate[d] traditional family values', according to which 'family, as a constitutional value, [was] the union of a man and a woman'. After the ECtHR recalled its own previous case-law, the ECtHR also doubted about the correctness of the argument of the domestic court with regard to

the jurisprudence of the Constitutional Court which, as early as in 2011, had underlined that the concept of family was not limited to the union of a man and a woman and in 2019 the Constitutional Court also underlined not only the fact that under the Lithuanian Constitution 'the constitutional concept of family <...> is neutral in terms of gender' but also that 'the Constitution is an anti-majoritarian act'. What is important is that in its judgment, the ECtHR at the same time refers to the similar attitude of the ECtHR itself in its previous case-law ('[t]he Court, for its part, has also held that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority <…>') (*Beizaras and Levickas*, §§ 122-123). The ECtHR explicitly demonstrated its agreement with the Constitutional Court ('sharing the view of the Constitutional Court that the attitudes or stereotypes prevailing over a certain period of time among the majority of members of society may not serve as justifiable grounds for discriminating against persons solely on the basis of their sexual orientation, or for limiting the right to the protection of private life') and, referring to its own previous case-law, considered that the assessment made by the domestic authorities 'was not in conformity with the fundamental principles of a democratic State governed by the rule of law' (*Beizaras and Levickas*, § 125).

In the case of *Tarvydas*, the relevant jurisprudence of the Constitutional Court was also referred to by the ECtHR. The ECtHR, examining whether the domestic courts adequately reasoned their decisions by responding to pertinent and important points raised by the applicant, recalled that the obligation for the courts to provide adequate reasons for their decisions is likewise established in the Code of Civil Procedure and in the case-law of the Constitutional Court (*Tarvydas v. Lithuania* [ECHR], 2021, § 49).

Therefore, one may conclude that in case the ECtHR holds that the jurisprudence of the Constitutional Court is 'conventionally' right, the ECtHR pinpoints to the failure of the domestic courts to follow it and thus to the failure to evade a violation of the Convention at the domestic level. The next section of this paper will examine the cases wherein the domestic courts safeguarded human rights protection in line with the Convention by properly following the jurisprudence of the Constitutional Court (that was in its turn developed on the basis of the case-law of the ECtHR).

2. The Way to no Violation of the Convention: the Domestic Courts Properly Follow the Jurisprudence of the Constitutional Court that is in Line with the Convention

The cases to be examined in this section demonstrate the above-mentioned role of the Constitutional Court as a 'mediator' between the ECtHR and the national legislature. One can find such examples in earlier cases. One of the important

examples for the Lithuanian history was the group of cases of *Vasiliauskas and Drėlingas v. Lithuania* (Bruskina, 2020).

Turning to the more recent cases, the case of *Adomaitis v. Lithuania* should be mentioned (*Adomaitis v. Lithuania* [ECHR], 2022). The *Adomaitis* case concerned interception of telephone communications during criminal intelligence (hereinafter – the *CI*) investigation against the prison director, Mr Adomaitis (the applicant) and the use of that declassified CI investigation information in disciplinary proceedings against the applicant which led to his dismissal. The applicant started the administrative court proceedings regarding the lawfulness of the use of declassified CI information in his disciplinary proceedings and the lawfulness and proportionality of the applicant's dismissal. Upon the applicant's request, the first-instance court (the Vilnius Regional Administrative Court) suspended the court proceedings until the Constitutional Court gave a ruling which related to the same CI measure. In its Ruling of 18 April 2019, the Constitutional Court, among other things, recalled that the case-law of the ECtHR is important for the interpretation and application of the Lithuanian law. Therefore, among other sources relevant for the constitutional justice case, the Constitutional Court extensively invoked the relevant provisions of the ECHR (Articles 6, 8 and 13 of the ECHR) and the case-law of the ECtHR (the Ruling of the Constitutional Court of 18 April 2019, paras. 59-67). If one reads the Ruling of 18 April 2019, one can see that the Constitutional Court examined the constitutionality of the domestic laws in line with the principles formulated in the case-law of the ECtHR, including the lawfulness requirement, a legitimate aim pursued by the interference in question and the proportionality of the interference as well as its necessity in the democratic society; the Constitutional Court stressed the right to lodge an appeal against the lawfulness, reasonableness, and proportionality of the collection of the CI information in question about him or her and against the transmission of that information for the purposes of investigating misconduct in office of a corrupt nature (the Ruling of the Constitutional Court of 18 April 2019, paras. 74.4., 86.3.1., 86.7). The Constitutional Court thus concluded that the domestic legal regulation consolidated in Article 19 § 3 of the Law on CI, which provides for the possibility of declassifying the aforementioned CI information and using such information in investigating disciplinary violation with the characteristics of a corruption criminal act, should be assessed as a measure which is necessary in a democratic society (paras. 74.2-74.4 of the ruling of the Constitutional Court of 18 April 2019). After the Constitutional Court delivered its Ruling of 18 April 2019, the administrative court proceedings were resumed in the applicant's case. Both the first-instance court and, upon the applicant's appeal, the Supreme Administrative Court, referring to the ruling of the Constitutional Court of 18 April 2019 (in particular, paragraphs 86.3 and 86.3.1. of the Ruling), dismissed the applicant's complaint.

The applicant Adomaitis lodged an application with the ECtHR. The applicant complained before the ECtHR that he had not had a fair hearing and was not able to contest the lawfulness of the interception of his telephone communications and the subsequent use of those materials in his disciplinary proceedings. The applicant also complained that such a CI measure violated his right to privacy. In the *Adomaitis* case, the ECtHR found that, when assessing the use of declassified CI information in the further disciplinary proceedings concerning the applicant, 'the administrative courts followed the Constitutional Court's guidelines' and afforded effective protection of his rights both under Article 6 § 1 and Article 8 of the Convention. The ECtHR paid attention both to the conclusions of the domestic courts in the applicant's case and to the conclusions of the Constitutional Court regarding the lawfulness, a legitimate aim, and the necessity and proportionality of the use of such CI information for the investigation of the applicant's disciplinary offences. The ECtHR saw 'no reason to depart from the domestic courts' findings' (*Adomaitis v. Lithuania* [ECHR], 2022, §§ 71-74, 83, 84, 87, 89, 90). One may see that albeit in its judgment the ECtHR did not mention explicitly that the Constitutional Court had referred to the case-law of the ECtHR in its Ruling of 18 April 2019, the ECtHR positively assessed the analysis completed by the Constitutional Court. One may state that the case of *Adomaitis* is an example of 'a qualified deference' wherein the ECtHR's deference depends on the 'quality' of the judgments by the national courts which examined the case in conformity with the principles formulated by the ECtHR (Ulfstein, 2021, p. 162)[13].

Contrary to the above situations which concerned the issue whether domestic courts followed or failed to follow the relevant jurisprudence of the Constitutional Court, the following section of this paper deals with the cases wherein the jurisprudence of the Constitutional Court (with which the ECtHR agrees) was used by the ECtHR as an additional argument or an additional ground.

3. Jurisprudence of the Constitutional Court as an Additional Argument for the ECtHR

Similarly to the case of *Adomaitis* examined in the previous section, the ECtHR dealt with one more similar Lithuanian case related to the use of the materials gathered via the secret surveillance of the applicant in the further disciplinary in-

13 For the deference by the national constitutional court, the ECtHR and the Court of Justice of the European Union to each other's decisions 'provided those decisions respect mutually agreed essentials', see also European Convention on Human Rights and national constitutions, 2023, p. 7; European Convention on Human Rights and national constitutions, Resolution, 2023, para. 7.

vestigation against the applicant. Namely, the case of *Starkevič v. Lithuania* concerned the applicant's complaints about the right to a fair hearing and the right to respect for his private life on account of the use of the pre-trial investigation information in subsequent disciplinary proceedings, which led to his dismissal from the police (*Starkevič v. Lithuania* [ECHR], 2022). The ECtHR found no violations of Article 6 § 1 and Article 8 of the Convention. The ECtHR, examining the applicant's complaint under Article 6 of the Convention, among other things, paid attention to the Government's position that 'it would run counter to the essence and aims of the implementation of justice if evidence gathered within a criminal investigation concerning a corruption-related criminal offence, such as abuse of office, could not be used within disciplinary proceedings concerning the same actions'. In this regard, the ECtHR paid attention to the abovementioned Ruling of the Constitutional Court of 18 April 2019 wherein 'the lawfulness of such use ha[d] been scrutinised and confirmed by the Constitutional Court'. It is important to note that the ECtHR had regard to the abovementioned Ruling despite the fact that the Constitutional Court had delivered its Ruling of 18 April 2019 after the administrative proceedings in the applicant's case (*Starkevič v. Lithuania* [ECHR], 2022, § 71). In the context of the applicant's complaint under Article 8 of the Convention, the applicant contested the lawfulness of the use of such pre-trial investigation material in his disciplinary proceedings. He stated that the ruling of the Constitutional Court of 18 April 2019 was not relevant for the assessment of the justification and proportionality of the use of the pre-trial investigation information during the disciplinary investigation. According to the applicant, even if Article 19 § 3 of the Law on CI did explicitly provide for such use, it could not be applied by analogy in criminal proceedings (*Starkevič v. Lithuania* [ECHR], 2022, § 81). The ECtHR, addressing the applicant's arguments as regards the legal ground for the use of the pre-trial investigation materials for the further disciplinary proceedings, noted that the legal ground was provided for in Article 214 § 6 of the Code of Criminal Procedure that had been referred to by the prosecutor in the applicant's case. The ECtHR agreed with the respondent Government that, although Article 19 § 3 of the Law on the Prosecutor's Office (related to the authority of the prosecutors to 'adopt a decision requiring an official investigation of the activities of a State official, civil servant or equivalent person and recommend instituting disciplinary or service-related proceedings against that person') and the above-mentioned Constitutional Court's Ruling of 18 April 2019 had not been referred to in the prosecutor's decision in the case of the applicant Starkevič, 'that legal framework also supports the lawfulness of using such information within the disciplinary proceedings <…>'. It is noteworthy that the ECtHR referred to the Ruling of the Constitutional Court of 18 April 2019, notwithstanding that that Ruling had been delivered after the prosecutor's decision in the case of the applicant Starkevič (*Starkevič v. Lithuania* [ECHR], 2022, § 87). Therefore, one may conclude that the ju-

risprudence of the Constitutional Court was used as one of the tools to demonstrate the lawfulness of the impugned domestic measure. Therefore, in such cases, the ECtHR examines the domestic legal regulation systematically, not confining itself to the legal acts or the case-law explicitly invoked in the concrete individual cases, but also having regard to the relevant jurisprudence of the Constitutional Court that had not been referred to explicitly in the concrete individual case or had even been delivered after the decisions in the concrete individual case. One may see that, in the *Starkevič* case, the ECtHR, referring to its previous case-law, found that 'the interference in question pursued the legitimate aim of preventing disorder or crime' and, regard being had to the status of the applicant (the police officer), the rights of others. It is important to note that the same above-mentioned Ruling of the Constitutional Court of 18 April 2019 served for the ECtHR as an additional basis for establishing the existence of a legitimate aim in the applicant's case. Namely, the ECtHR, referring to the Ruling of 18 April 2019, added as follows, '[i]ndeed, in a similar context, the Constitutional Court held that information obtained via secret surveillance could be used to achieve objectives such as the proper functioning of the civil service and its transparency' (*Starkevič v. Lithuania* [ECHR], 2022, § 89). Besides the ECtHR's examination of the proportionality of the interference in issue regard being had to the findings of the domestic courts in the applicant's case and to the facts in the applicant's case, the ECtHR again referred to the findings of the Constitutional Court in the abovementioned Ruling of 18 April 2019 as regards the necessity of the impugned measure. In particular, the ECtHR recalled the conclusions of the Constitutional Court as regards negative consequences of 'not introducing the possibility of imposing official liability on a civil servant (official), *inter alia*, by using information collected about him or her by other authorised public authorities in the cases and in accordance with the procedure established by law' (*Starkevič v. Lithuania* [ECHR], 2022, § 90). One may note that, in *Starkevič* case, the restrictions of the applicant's rights had their own legal grounds, legitimate aims, and were proportionate, but the jurisprudence of the Constitutional Court (which was not invoked by the domestic courts in the case of Starkevič) was referred to by the ECtHR as an additional argument/source for the analysis of the ECtHR.

One may find more examples wherein the ECtHR referred to the jurisprudence of the Constitutional Court searching for some additional arguments to substantiate its position. For example, in *Beizaras and Levickas* case, the ECtHR, relying on the individual facts, found that the negative comments on the first applicant's Facebook page had affected the applicants' psychological well-being and dignity, thus falling within the sphere of their private life within the meaning of Article 8 of the Convention. The ECtHR added, '[t]he fact that human dignity as a constitutional value must be protected by the State has also recently been emphasised by the Constitutional Court <…>' (*Beizaras and Levickas*, § 117). In *Kamins-*

kas case, wherein the applicant complained about the court order to demolish his home as it had been built unlawfully on forest land, the ECtHR, examining the legitimate aim (protection of the environment) of that State interference with the applicant's right to respect for his home, recalled its numerous relevant case-law related to such a legitimate aim and afterwards also referred to the Constitution of Lithuania and the jurisprudence of the Constitutional Court regarding 'the obligation of the State to take care of the natural environment, including forests, in the interests of society' (*Kaminskas v. Lithuania* [ECHR], 2020, § 48).

The jurisprudence of the Constitutional Court was also used by the ECtHR to reject the arguments adduced by the respondent Government in the ECtHR case. Namely, addressing the argument of the Lithuanian Government regarding the provocative nature of the photo in issue due to the shape of a cross on the second applicant's sweater in that photo, the ECtHR noted that this argument had not been the subject of any analysis at the domestic level and referred to 'the Constitutional Court's case-law to the effect that Lithuania is a secular State where there is no State religion' (*Beizaras and Levickas*, § 120). Similarly, in the case of *Černius and Rinkevičius v. Lithuania*, which concerned refusal to reimburse the applicants' costs in the domestic court proceedings, the ECtHR, examining the proportionality of the interference, referred to the jurisprudence of the Constitutional Court to rebut the arguments of the respondent Government. Namely, addressing the argument of the Lithuanian Government 'that the applicants should have chosen to be represented by a person of a lesser caliber than an advocate, in order to mitigate the costs', the ECtHR agreed with the applicants that 'this argument as put forward by the Government appears to be primarily based on economic considerations, and disregards both the case-law of the Constitutional Court, which emphasises the importance of the right to have an advocate to defend a person's interests <…>, as well as the Court's case-law which also highlights the special role of lawyers, as independent professionals, in the administration of justice'. The ECtHR also referred to the Constitutional Court's jurisprudence which states that the State should not leave a person in a disadvantageous situation (*Černius and Rinkevičius v. Lithuania* [ECHR], 2020, §§ 70-71).

Therefore, one can note the dialogue between the ECtHR and the Constitutional Court in a harmonized way. As was rightly noted by Ulfstein, albeit the ECtHR and the domestic courts act in two separate legal orders, and each of them is superior in their own order, the ECtHR 'should take account of the constitutional roles of national legislatures and national courts. National courts should, on the other hand, acknowledge the roles of the ECtHR and the national legislature' (Ulfstein, 2021, 172-173). It seems that the examples provided in the second and third sections have testified to that.

Conclusions

1. One can see that in its recent case-law in cases against Lithuania, the ECtHR has extensively invoked the jurisprudence of the Constitutional Court and has stressed that a number of the findings/approaches taken by the Constitutional Court are in line with the case-law of the ECtHR. In its case-law, the ECtHR explicitly demonstrates the similarity of its own views with those of the Constitutional Court by comparing its own case-law with the jurisprudence of the Constitutional Court. Such findings of the ECtHR as regards the compatibility of the approaches of these two courts demonstrate mutual respect and activity in a harmonized way.
2. In case the ECtHR is of the view that the jurisprudence of the Constitutional Court is in line with the ECHR, the ECtHR explicitly pinpoints to the failure of Lithuanian courts to follow that jurisprudence of the Constitutional Court. The following conditions for finding no violation of the Convention can be singled out: 1) an alleged violation of the Convention or Protocol thereto stems from application of the domestic law; 2) the jurisprudence of the Constitutional Court is in line with the Convention; 3) the domestic courts properly follow the jurisprudence of the Constitutional Court.
3. The recent case-law of the ECtHR demonstrates that the ECtHR, besides the analysis of the individual facts, the legal acts and the decisions of the authorities (including the courts) in the applicants' cases, has relied on the jurisprudence of the Constitutional Court as an additional argument to demonstrate the lawfulness of the impugned domestic measure, to establish the existence of a legitimate aim in the applicant's case, and to demonstrate the necessity of the impugned measure. The ECtHR also refers to the jurisprudence of the Constitutional Court as an additional ground to reject the arguments adduced by the respondent Government before the ECtHR in the ECtHR case.

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