

Partnership of Court and Political Power, Aspects of the Application of EU Law

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Abstract: The article deals with the constitutional foundations of the cooperation between political power and court, the practical expression of the cross-functional partnership from a legislative point of view. Rulings of the SACL, where the Constitution, the constitutional principles were directly applied and which were significant from a legislative point of view, are analysed, practical examples of problems in rulings of the Supreme Administrative Court of Lithuania, where it was bound by unclear provisions of rulings of the Constitutional Court, are revealed. The constitutional identity, the relationship of the European Union (hereinafter also referred to as the EU) and the Constitution of the Republic of Lithuania are analysed separately. The importance of cooperation between EU law and national legal systems is discussed.

Key words: *cross-functional partnership of political power and court, interpretation of constitutional doctrine, constitutional principles, principle of good administration, constitutional identity, interaction between EU law and national law, the Supreme Administrative Court of Lithuania.*

Introduction

The Constitution of the Republic of Lithuania *expressis verbis* provides for a possibility to establish specialized courts for the consideration of administrative cases (paragraph 2 of Article 111), stipulates that only courts shall administer justice, when administering it, the judges shall be independent, and when considering cases, judges shall obey only the law (paragraph 3 of Article 109, paragraph 1 of Article 114), in addition, a special judicial authority, which performs an advisory function in the appointment, dismissal of judges, is provided for, and according to the doctrine of the Constitutional Court, other representatives of political power may not be among the members of such an authority. The Law of the Republic of Lithuania on Administrative Proceedings (hereinafter referred to as the Law on Administrative Proceedings) indicates that *interference* with the activities of the judge or the court by the institutions of State power and government, members of

the Seimas of the Republic of Lithuania and other officers, political parties, political organisations and associations or natural persons shall be prohibited and shall make them liable under law. Article 110 of this law says: If during the hearing of an administrative case the court comes to a conclusion that the officers, institutions, agencies, enterprises, organisations, and persons have violated the laws or other legal acts, it shall make a separate ruling, indicating therein the violations committed, and shall send the ruling to the appropriate institutions of public administration, the heads of enterprises, agencies, organisations. The court shall be within one month submitted a response about the measures adopted in respect of the separate court ruling.

The above-quoted provisions of the Constitution and the Law on Administrative Proceedings, taken alone, which reflect a certain interaction between the court and other political powers, do not allow us to state beyond doubt that cooperation (dialogue) between them is permitted and encouraged.

The aim of this article is to assess the constitutional basis of cooperation defined in the doctrine of the Constitutional Court, the possible forms of cooperation between court and political power, how the final acts of the Supreme Administrative Court of Lithuania (hereinafter also referred to as the SACL) reveal the cross-functional partnership between the SACL and political power, and the institutions established by it in the legislative point of view. The relationship between two legal systems: EU law and national constitutions, the application of EU law in the SACL case law are analysed separately.

1. Constitutional foundations and practices of cooperation between court and other political powers

Constitutional foundations. The forms of cooperation are diverse and cooperation is based not only on contracts and meetings. Does the Constitution allow cooperation between the court and political power and, if so, to what extent? Article 5 of the Constitution says that in Lithuania, State power shall be executed by the Seimas, the President of the Republic, and the Government, and the Judiciary. This rule, the content of which is disclosed in more detail in other articles of the Constitution, enshrines the principle of division of powers. As noted in the ruling of the Constitutional Court of 26 October 1995, this principle means that the legislative, executive, and judicial powers must be separated, sufficiently autonomous, but at the same time they must be balanced. Each public institution is given competence corresponding to its purpose, the specific content of which depends on the place of that institution among other public institutions, the relationship of its authority

with the authority of other institutions (ruling of the Constitutional Court of 23 November 1999). The main authority and functions of the Seimas, the President of the Republic, courts are revealed in the doctrine of the Constitutional Court on a number of occasions.

The Seimas, consisting of representatives of the nation, i.e. members of the Seimas, is an institution of State power that exercises the legislative power (ruling of the Constitutional Court of 13 May 2004); the Seimas approves the national budget and monitors how it is followed, carries out the parliamentary control of institutions of executive power and of other state institutions (except for courts) (the control function), establishes state institutions (ruling of the Constitutional Court of 1 July 2004), performs other functions assigned to it in the Constitution.

The executive power in Lithuania is exercised by the President of the Republic and by the Government (ruling of the Constitutional Court of 13 December 2004). The President of the Republic is the head of the State, he or she represents the State and does everything assigned to him or her by the Constitution and laws, meanwhile the Government manages affairs of the country, implements laws and adopts legal acts.

Courts – jurisdictional institutions – exercise the judicial power, which, equally as the legislative power and the executive power, is a full-fledged power (ruling of the Constitutional Court of 28 March 2006). The Court is the only one of the State powers that is formed on a professional rather than on a political basis (see, for example, rulings of the Constitutional Court of 21 December 1999, 12 July 2001). The judicial power can implement its constitutional duty and function to administer justice only by being autonomous, independent of other State powers – the legislative and executive powers, which are formed on a political basis;¹ the judicial activities are not and cannot be regarded as an area of government, no one can demand that a judge follows a policy direction (ruling of the Constitutional Court of 9 May 2006).

The Constitutional Court has stated that in case the Constitution directly provides for powers of a specific public authority, no other authority can take over such powers from it, and the authority, which is given certain powers by the Constitution, cannot transfer or refuse them. Such powers cannot be amended or restricted by law, either (rulings of the Constitutional Court of 21 April 1998, 26 April 2001, etc.).

Thus, the following rules are clearly visible from the provisions of the Constitution and the provisions of the official constitutional doctrine formed in many acts of the Constitutional Court: each power in the State has a certain place in

1 Rulings of the Constitutional Court of 21 December 1999, 12 July 2001, the conclusion of 31 March 2004, the ruling of 28 March 2006.

the system of powers of the State and performs its inherent functions, no other authority can take over such powers from it, whereas the authority, the powers of which are provided for in the Constitution, cannot transfer and refuse such powers. The judicial power, implementing the function assigned to it by the Constitution, which is to administer justice, can do so only by being autonomous, independent of other powers in the State – the legislative and executive powers.

On the other hand, the Constitutional Court, in its interpretation of Article 5 of the Constitution, *inter alia*, its paragraph 2, according to which the scope of power shall be limited by the Constitution, stated that when general tasks and functions of the State are being accomplished, the activities of State institutions are based on their co-operation, therefore, their interrelations should be defined as cross-functional partnership (ruling of the Constitutional Court of 10 January 1998). It is stated in acts of the Constitutional Court that “when general functions and tasks of the State are being accomplished, State institutions are in the relationship of cross-functional partnership, as well as mutual control and balance” (rulings of 21 April 1998, 9 May 2006). The Constitutional Court has also stated that “the interaction of State powers may not be treated as their conflict or competition, thus, also the checks and balances that the judicial power (its institutions) and other State powers (its institutions) have towards each other, may not be treated as mechanisms of the opposition of powers” (ruling of the Constitutional Court of 9 May 2006).

Thus, it can be concluded that the Constitution tolerates cooperation between the courts and the political power and, at the same time, the institutions it establishes.

Implementation of the principle of division of powers in practice. Over more than two decades of their activities, administrative courts have consistently avoided situations where state institutions attempt to transfer settlement of political disputes to administrative courts. That is apparent from the SACL cases where conclusions were provided on whether actions of the municipal councils, mayors were in gross breach of the Constitution and/or laws: in many cases, due to procedural violations, which were considered by the court to be material, for example, failure to properly perfect the application² to the SACL or restriction of the right of the faction³ to take part in the commission activities of investigation into circumstances and considering a conclusion on the breach of oath, a case used to be dismissed, in other cases, even after the admission of a sufficiently obvious violation, for example, where a mayor was late to sign a decision taken by the council

2 Judgement of the Supreme Administrative Court of Lithuania of 21 July 2021 in administrative case No. eS-2-575/2021.

3 Judgement of the Supreme Administrative Court of Lithuania of 12 May 2021 in administrative case No. eS-1-415/2021.

for fourteen days in the absence of any reason for such a delay,⁴ the violation was not considered such that would lead to the claim that the mayor broke the oath. Such examples can also be found in cases of other type examined by the SACL. The SACL investigates violations of ethics committed by members of municipal councils according to the Code of Conduct for State Politicians of the Republic of Lithuania but the SACL refused to check whether the Commission formed in the Seimas of the Republic of Lithuania reasonably refused to investigate the violations of ethics possibly committed by a member of the Seimas (also the Prime Minister). In the case settled by the SACL on 27 April 2018,⁵ where it was requested to investigate violations of the ethics by the members of a municipal council, the court, in assessing whether the Ethics Commission formed by the municipality reasonably refused to investigate possible violations, explained that decisions of the Ethics Commission⁶ are meant to check whether the limits for conduct of state politicians were overstepped, in this way preventing future violations. In a case examined later,⁷ the position of the SACL was that the case law on activities of ethics commissions of municipalities is not applicable in assessing the actions of the Seimas Commission for Ethics and Procedures. The court arrived at the conclusion that the will and intent of the legislator was to establish such legal regulation that would ensure the politician's rights to appeal against the Commission's decisions made about the Commission's legal assessments on the merits, as having legal consequences for such a politician, but the SACL did not find any legal basis for stating that the jurisdiction of administrative courts also covers the Commission's decisions not to start an investigation when the applicant is given a reasoned reply refusing to start the investigation. In the said case, the SACL emphasized the principle of division of powers and a free mandate of a member of the Seimas as a representative of the nation.

4 Conclusion of the Supreme Administrative Court of Lithuania of 7 July 2016 in administrative case No. I-19-143/2016.

5 Judgement of the Supreme Administrative Court of Lithuania in administrative case No. eA-396-1062/2018.

6 Paragraph 1 of Article 7 of the Code of Conduct establishes that the investigation of the conduct of a state politician in the Commission can be initiated provided at least one of the following grounds exists: 1) a complaint, application or notification filed by a natural or legal person about a violation allegedly committed by a politician of principles and rules of the conduct of state politicians established by this Code or requirements for a state politician set in legal acts regulating the activities of an institution in which the politician holds office; 2) valid information published in the media about a violation allegedly committed by a state politician.

7 See the SACL judgement in administrative case No. eA-769-415/2021.

2. The concept and forms of cross-functional partnership

The Constitutional Court has not disclosed in more detail the content of the wording “cross-functional partnership”, however, taking into account that none of the powers provided for in the Constitution may be transferred by one authority to another authority, nor can it take over another authority’s powers assigned to it by the Constitution, i.e. the power to adopt legal acts, which the Constitution assigns to the Seimas and the Government, and the power of the SACL, as the supreme specialised court to administer justice, we could say that all institutions (the Seimas of the Republic of Lithuania, the President of the Republic, the Government, the SACL) are entities of the legal system: the first three act primarily as legislative entities, whereas the SACL acts as an entity that implements law and in certain cases also as an entity that creates law in its specific manner. Therefore, the SACL, by settling specific disputes in cases by its final acts,⁸ can contribute to the improvement of the legal system, *inter alia*, via the case law formation, submission of specific proposals to public authorities on amendments to laws, Government resolutions, other legal acts. These proposals arise out of the interpretation of multiple legal acts (including the Constitution) in cases heard in administrative courts, the actual implementation of the outcome of the legislative process. We may name such cooperation between court and political power (hereinafter also referred to as legislative entities) from a legislative point of view as one of forms of cross-functional partnership. This article will not separately discuss other forms of cooperation or preconditions for cross-functional cooperation between political power and the SACL, such as the annual report published by the SACL to representatives of public authorities for a number of years, public presentation of case law summaries in individual areas, separate rulings adopted by the SACL, which are, *inter alia*, sent to public administration institutions in accordance with Article 110 of the Law on Administrative Proceedings, a reply regarding which must be given within one month.

3. Cooperation of the SACL and political power from a legislative point of view

The court that implements its constitutional purpose – administers justice, is not assigned with functions of the legislator or other legislative entity. In its case law,

8 This article will not analyse the final acts of the SACL, where the conformity of legal acts to the Constitution and other legal acts of superior power was investigated; the article uses the concepts of the SACL decision, judgment, court ruling as synonyms.

the SACL has stated that the activities of the courts, related to administration of justice, are not and cannot be regarded an area of public governance, which is assigned to institutions of executive power.⁹ The SACL, settling the so-called contentious cases, has an effect on legislation as “the court not only settles disputes, it also creates law, fills the gaps between law and life. It preserves democracy both by defending political process and guaranteeing human rights, it ensures the rule of law.”¹⁰ The preconditions for cooperation arise out of various situations, the solution of which comes in different forms of the SACL rulings, decisions, judgements¹¹ when the SACL addresses the Constitutional Court; interprets a provision of law so that it would not cause doubts about its constitutionality; interprets unclear legal regulation, makes specific proposals to legislative entities, offers directions, guidelines for legal regulation; refers to the Court of Justice of the European Union (hereinafter also referred to as the CJEU) for a preliminary ruling, applies EU law directly.

We could identify four situations where certain flaws in legal regulation can be found.

In the first situation, legal regulation is absent – there is no legal act and has never been, or there was a legal act but currently it cannot be applied as it has been admitted as being in conflict with the Constitution. The SACL must assess and make sure that there is no legal act and has never been or that there was one but it cannot be currently applied and, therefore, there is a gap in law (not a legislative omission) that the SACL is filling in *ad hoc*.

In the second situation, there is legal regulation of the relationship in dispute, but there may be doubts about its conformity to the Constitution of the Republic of Lithuania (it establishes what the Constitution and law does not allow to establish) or the relevant legal act contains no provisions, which must be there according to the Constitution (legislative omission). The SACL, having established that there is reason to believe that such regulation is not in line with the Constitution, addresses the Constitutional Court with a request to investigate its conformity to the Constitution.

The third situation is when the legal regulation applicable in the case is incomplete, the legal rules are unclear but this regulation does not lead to doubts as to its conformity to the Constitution. In such cases, the SACL interprets the

9 See the SACL judgement in administrative case No. A-492-704/13.

10 A. Barak. *Teismo diskrecijos prigimtis ir jos reikšmė vykdant teisingumą*. Justitia, 2005, No. 3(57); p. 28.

11 As for the forms of the Constitutional Court rulings, see V. Staugaitytė *Konstitucinio Teismo nutarimų tipai ir jų poveikio teisės sistemai bei teisės taikymo praktikai ypatumai*. Jurisprudencija. Publication of the Constitutional Court. 2007, No. 4, p. 330–361. https://www.lrkt.lt/data/public/uploads/2015/01/ktb_2007-48.pdf

existing legal regulation itself by using the interpretation of legal provisions by expanding or narrowing their limits,¹² various methods of interpretation.

In the fourth situation, the SACL refers to the CJEU for a preliminary ruling or applies a directive directly when it is not transposed into the Lithuanian legal system or is transposed only partially.

Obvious preconditions for cooperation, from a legislative point of view, most often can be found in the SACL cases where the court fills a gap in law in the absence of provisions in a legal act applicable to a case in dispute or when it interprets unclear legal regulation or insufficient legal regulation, *inter alia*, detecting implicit regulation in it.

In its decisions, the SACL applies the same methods to interpret legal acts as the Constitutional Court. In the case settled on 14 August 2018,¹³ the SACL accentuated that the rule formulated by the Constitutional Court, which is presented in its rulings (*inter alia*, the rulings of 25 May 2004, 13 December 2004, 28 March 2006) and says that the Constitution of the Republic of Lithuania cannot be interpreted merely literally, by using only the linguistic (verbal) method, that the Constitution must be explained by application of various methods of interpretation of law: systemic method, method of general principles of law, logical, teleological method, method of intentions of the legislator, method of precedents, historical, comparative and other methods, applies also to interpretation of all subordinate legal acts.

It should be noted that the interpretation of the legal provisions offered by the SACL in relevant cases may narrow or expand their limits, come as a “surprise” – giving the interpreted legal provisions a different meaning than sought by the legislator or another legislative entity, thus calling for their reaction – the need to improve legal regulation.

In its final acts in relevant cases, the SACL points out flaws in legal regulation, makes proposals, offers relevant guidelines for a legislative entity concerning future legal regulation or improvement of existing unclear regulation. Can a legislative entity, when it is “urged” to implement the proposals made in cases settled by the SACL in a certain way, ignore them?

Is the rule of paragraph 1 of Article 9 of the Law on Courts that effective court judgements of the Republic of Lithuania shall be binding for all institutions of State power, officials and civil servants, enterprises, agencies, organisations, other legal and natural persons, and must be enforced on the whole territory of the Republic

12 For more on interpretation of the Constitution by expanding or narrowing its limits, see: R. Ruškytė. *Ar konstitucinė informacijos laisvė yra prioritetinė laisvė?* Jurisprudencija, Mykolas Romeris University; 2020, 28 (2), p. 9–28.

13 Judgement of the Supreme Administrative Court of Lithuania of 14 August 2018 in administrative case No. eA-870-1062/2018.

of Lithuania, to be also interpreted as establishing the direct duty of the legislator to respect the interpretation of legal provisions presented in the SACL final acts and to amend laws and namely in the only way which is proposed?

We believe that a legislative entity, especially the Seimas or the Government, is not directly obliged to implement the proposals exactly in the way as recommended by the court. However, if the legislative entities did not take into account the proposals contained in the decisions of the SACL, the guidelines on the improvement of legal acts, it would artificially encourage other citizens to apply to courts for the defence of their rights, thus increasing the number of court judgments, while at the same time reducing confidence in the State. Therefore, it can be concluded that the legislative entities (not only parties to a case) are indirectly bound by the interpretation of law offered in the final acts of the SACL and, in a certain aspect – proposals contained therein, which cannot fail to affect future legislative initiative of the legislative entities, in this way implementing the cross-functional partnership of political power institutions (legislative entities) and the SACL.

A situation when courts find a gap in law is to be assessed differently. The Constitutional Court has spoken strongly on the necessity of filling gaps in law by adoption of a law: courts may fill gaps in law only *ad hoc*, i.e. they can remove them only as regards a particular social relation, a dispute regarding which is being decided in the case investigated by the court; <...> the possibility of the courts to fill in legal gaps does not mean that the legislator does not have the duty, while paying heed to the Constitution and within a reasonable time period, to establish by law the proper legal regulation of the corresponding relations (decision of 8 August 2006, ruling of 7 June 2007). In other words, the Seimas or another legislative entity may not fail to react when a gap in law is stated. Thus, in this case, there are clear preconditions for cross-functional partnership of court and other political power bodies.

In cases before the SACL, when it interprets unclear legal regulation, insufficient legal regulation or fills a gap in law, one of the following measures is often used: direct application of the Constitution, its rules, principles and the doctrine of the Constitutional Court.

Final acts of the SACL from the past decade,¹⁴ by which cases were resolved by direct application of the Constitution, *inter alia*, its principles, the doctrine of the Constitutional Court, are further analysed. Cases, the final acts adopted in which created or could have created preconditions for cooperation of judicial and political powers, have been selected.

14 In the recent years, 3,500 to 4,000 cases are resolved annually.

4. Direct application of the Constitution.

Presentation of proposals, guidelines

The SACL, equally as the Constitutional Court, as a rule, does not assess a challenged legal act and actions (omissions) in terms of political or economic expediency. However, the court makes certain proposals, guidelines for improving the legal regulation applicable in a case in question, in order to defend a particularly significant value, such as the right to accessible healthcare services.

In the case settled by the SACL on 10 June 2020,¹⁵ the SACL accentuated that though the Regulation¹⁶ and the Lithuanian Hygiene Standard¹⁷ did not provide for a requirement to create conditions for each person with movement disability to access the health care institution on his or her own where such an institution building was built long ago and had not been repaired or reconstructed, such a person must still be ensured access to health care services in case of illness. Directly referring to Article 53 of the Constitution, which says that the State shall take care of the health of people, also the United Nations Convention on the Rights of Persons with Disabilities, the SACL stated that a disabled person who cannot access a health care institution on his or her own must be guaranteed accessibility to quality medical services he or she needs in other forms and ways. The Court indicated alternative ways and institutions for ensuring accessibility of the said services to disabled persons. It was emphasized in the case that the Equal Opportunities Ombudsperson, stating omissions, actions of a specific state institution or another legal entity made in breach of (violating) equal opportunities to access health care services, must, *inter alia*, investigate whether a health care institution (a legal entity, including its founder), acting along with the municipality, created a real other (alternative) possibility for persons with movement disability and inability to access the health care institution (the polyclinic) on their own.

The judgment indicates help measures, such as presentation of detailed information to a person who has a movement or another disability and cannot access a health care institution on his or her own, about a social taxi (which not

15 In decision of the Supreme Administrative Court of 10 June 2020 in administrative case No. eA-2124-1062/2020, the court examined a complaint of the Kaunas City Polyclinic against the respondent the Office of the Equal Opportunities Ombudsperson for cancellation of the decision, by which it was admitted that persons with movement disability cannot access the polyclinic, are discriminated.

16 Regulation approved by Order No. 317 of the Minister of Environment of 14 June 2001 "Regarding STR 2.03.01:2001 'Structures and territories. Requirements for the needs of persons with disabilities'".

17 HN 47:2011 "Personal healthcare institutions: general health safety requirements" approved by Order No. V-737 of the Minister of Health of 29 July 2011.

only brings a person but also has a special lifting equipment, other means, escorts a person to the doctor's room), and/or conclusion of an agreement with such a service provider; making it possible for the polyclinic staff, when a disabled person arrives, to meet him or her if such a person informs about it in advance; if necessary, to receive health care services at home upon calling a doctor, conclusion of agreements with other assistants and intermediaries, who would help to ensure accessibility of health care services for a disabled person.

It should be noted that though ensuring of the said assistance is not *expressis verbis* specified in a specific law, the SACL substantiated the duty to organize the said assistance also with the general obligation laid down in the Law on Local Self-government to take care of the disabled by integrating them into society.¹⁸ Thus, in this case, even without any change in the legal regulation, referring, *inter alia*, to Article 53 of the Constitution, emphasis was on the duty both of health care institutions and of municipalities to take care that disabled persons receive quality health care services, the court indicating specific alternatives how to ensure that.

It is important to note that after the said SACL judgment, some municipalities initiated social taxi activities for carrying the disabled, also a group of members of the Seimas presented a draft of the supplement to the Law on the Social Integration of the Disabled, by which it was proposed to establish an office of the coordinator for affairs of the disabled in municipalities, who would take care of the issues of the health care of the disabled, adaptation of the environment. In the explanatory note to the draft, the idea of introduction of a new office was supported with the fact that for certain reasons the activities of the Equal Opportunities Ombudsperson are not effective in ensuring the rights of the disabled.

5. Application of the constitutional doctrine

The SACL, in the cases before it, at first refers to the doctrine of the Constitutional Court, where there is one, and, where it is absent, the SACL itself, as a "small" Constitutional Court, directly applies provisions of the Constitution and the constitutional principles enshrined in the Constitution to the extent necessary in a case. We can also find cases in which the provisions of law applied in the case are interpreted referring not only to the Constitution, the doctrine of the Constitutional Court, but also to articles by legal researchers.

¹⁸ According to the Law of the Republic of Lithuania on Local Self-government, caring for the disabled, creating conditions for their integration into society is an independent function of municipalities (subparagraph 14 of Article 6, subparagraph 2 of paragraph 2 of Article 34).

The SACL,¹⁹ interpreting the content of the wording “person who fled Lithuania before 11 March 1990” in the Law on Citizenship on 20 November 2013, not only applied a few methods of interpretation of law, the Constitution, the doctrine of the Constitutional Court, but also based its position on scientific articles of three authors²⁰ related to the issue of dual citizenship. The constitutional doctrine regarding the principle of the exclusivity of dual citizenship was of great significance in the case discussed below.

The interpretation of the provision of the law in the case is related to the right to restore the citizenship of the Republic of Lithuania – it is the right of a person who had citizenship of the Republic of Lithuania before 15 June 1940 and his or her descendants²¹ to restore citizenship of the Republic of Lithuania under the procedure set in the Law on Citizenship (paragraph 17 of Article 2 of the Law on Citizenship). A descendant of a citizen of the Republic of Lithuania means a child, grandchild or great-grandchild of a person who held citizenship of the Republic of Lithuania before 15 June 1940 (paragraph 7 of Article 2 of the Law on Citizenship).

The panel of judges, having assessed the legal context, including the wording “person who fled Lithuania before 11 March 1990”, noted that this legal construct is enshrined in Article 7 of the *Law on Citizenship*, which regulates cases where a citizen of the Republic of Lithuania can be a citizen of another State at the same time. Following a systematic analysis of cases of dual citizenship established by the legislator, the panel of judges arrived at the conclusion that dual citizenship is associated not with just any but with exceptional circumstances – exile, persecution or other exceptional circumstances, which are usually beyond the will of a person. The panel of judges, having assessed the wording “person who fled Lithuania” in the context of the principle of exclusivity of dual citizenship provided for in paragraph 2 of Article 12 of the Constitution, stated that a person’s *fleeing* Lithuania before 11 March 1990 cannot be identified with any case of leaving Lithuania by a person. The concept of “fleeing” has to be understood and interpreted not in a general sense but as a legal term of special significance – “fleeing” means a person’s departure from Lithuania due to a certain threat to him. With regard to the historical, legal and political context of that time, a person, who fled Lithuania before 11 March 1990, means a person who, while in Lithuania, was reasonably afraid of persecution by the occupation regime due to religion, political views or membership in a particular social group, and for these reasons left Lithuania be-

19 Administrative case No. A756-1967/2013.

20 Quoting research papers is a usual phenomenon in case law of other states, for example, in Germany, Poland, meanwhile in Lithuania it still has been particularly rare.

21 A descendant of a citizen of the Republic of Lithuania means a child, grandchild or great-grandchild of a person who held citizenship of the Republic of Lithuania before 15 June 1940 (paragraph 7 of Article 2 of the Law on Citizenship, as in effect at the time of the dispute).

fore 11 March 1990 and could not or was reasonably afraid to come back to Lithuania. The presented explanation acquired a different legal expression in a subsequent case, but its essence remained unchanged: the departure from the territory of Lithuania was due to the emerging or already existing unfavourable political reasons before 15 June 1940.²² It should be noted that namely such clarification as outlined above was approved by the Supreme Court of the Republic of Lithuania on 7 October 2021.²³

In this case, the Seimas did not see a need to amend the law (though there were separate initiatives for this) by removing the unclear provision, so its content, as interpreted by the SACL, probably coincided with the position of the Seimas.

6. Recognition of a flawed provision to be constitutional

In the absence of a sufficiently reasonable doubt about the contradiction of a specific provision to the Constitution, the SACL, taking into account the overall legal regulation established by a law, interprets the existing legal regulation by application of various methods of interpretation itself in a way that it would not be contrary to the Constitution. If such an interpretation is not in line with the position of the legislator or the Government, it is “encouraged” in this way to amend the existing regulation.

In the case settled by it,²⁴ the SACL arrived at the conclusion that the nature of recommendations, opinion of the Chief Official Ethics Commission (hereinafter also referred to as the COEC), provided for in the applied law, is different, they are general, analysis-based, and intended for institutions, they do not bind a specific person if he has not committed a breach. In the case in question, the SACL gave a narrower interpretation than the Seimas of the Republic of Lithuania and/or the COEC probably sought when adopting the law applied in the case. In the said case, the SACL, having pointed out that only such interpretation of the provisions, as discussed in the case, caused no doubts for the panel of judges as to their conformity to the Constitution, did not separately pronounce on the reasoning in the appeal on addressing the Constitutional Court regarding conformity of provisions of the law to several articles of the Constitution, as insignificant for the final

22 Decision of the Supreme Administrative Court of 31 October 2017 in administrative case No. eA-4691-756/2017.

23 Decision of the Supreme Court of Lithuania in civil case No. e3K-3-239-701/2021.

24 Decision of the Supreme Administrative Court of 14 August 2018 in administrative case Administrative case No. eA-870-1062/2018.

decision of the court. Thus, in this case the SACL applied the rule used in constitutional jurisprudence of states that “<...> the constitutional court announces that a specified law is not unconstitutional if it is interpreted giving it a certain meaning, i.e. with regard to the essence of the Constitution. In this way, the constitutional justice, by its systematising and progressing definition, seeks to ensure legal order, following constitutional criteria in interpretation and application of law.”²⁵

Thus, in this case, a rule of law acquired a slightly different content than if interpreted merely grammatically. The legislator has to assess whether the legal regulation by law that has acquired new quality is acceptable and, if the legislator does not think so, to adjust it accordingly. Thus, we believe that in this case we have an element of cooperation of the SACL and a legislative entity.

7. Limits of the SACL discretion in interpretation of the Constitution and legal acts

Does the SACL have a certain discretion in the presence of a specific doctrine of the Constitutional Court or interpretation of the provisions of legal acts given in the acts adopted by the Constitutional Court?

There is no doubt that the SACL, equally as other courts, must respect the doctrine of the Constitutional Court and interpretation of the provisions of laws or other legal acts presented by it. The SACL has certain discretion only if the doctrine of the Constitutional Court as such is unclear or if the interpretation of the provisions of the law or another legal act, which are applicable in the case before the SACL, as presented in acts of the Constitutional Court, is questionable. In this case, the SACL can choose either to address or not to address the Constitutional Court with a request for clarification of the provisions of the doctrine of the Constitutional Court or further interpretation of interpreted provisions of legal acts. Both the cases are well illustrated by a referendum case settled by the SACL in 2021 (hereinafter also referred to as R-17).²⁶

It is indicated in paragraph 4 of Article 9 of the Constitution that the procedure for calling and conducting referendums shall be established by law, but there was no such law at the time of adoption of contested decision No. Sp-225 of the Central Electoral Commission (16 September 2021) and examination of the

25 Lopez Guerra L. Le role et les competences de la Cour constitutionnelle. *Le role de la cour constitutionnelle dans la consolidation de l'Etat de droit*. Strasbourg: Editions du Conseil de l'Europe, 1994, p. 29. Quotation from: Jarašiūnas E. *Parlamentas, įstatymai ir konstitucinė justicija*. Justitia, 1997, No. 6, p. 6.

26 Decision of the Supreme Administrative Court of 29 November 2021 in administrative case Administrative case No. R-17-261/2021.

case by the SACL (11 October 2021) after the Constitutional Court admitted by its ruling of 30 July 2020 that the Law on Referendums (the version of 20 December 2018), according to the procedure of its adoption, was in conflict with paragraph 3 of Article 69 of the Constitution, the constitutional principle of the rule of law, and according to its form – in conflict with subparagraph 5 of paragraph 1 (the version of 9 October 2014) of Article 2 of the Constitutional Law on the List of Constitutional Laws.²⁷

In this case, the SACL could address the Constitutional Court with a request for clarification: does the fact that the Law on Referendums is admitted to be in conflict with the Constitution according to the procedure of its adoption mean that it is in conflict with the Constitution according to its content, too? The Constitutional Court, in a case of constitutional justice where it adopted a ruling of 30 July 2020, in contrast to some other cases, did not investigate the conformity of the provisions of the Law on Referendums according to their content, it limited itself to the recognition that they are in conflict with the Constitution according to the procedure and form of their adoption. For example, in a ruling adopted another case on 13 May 2021, the Constitutional Court, having admitted that the procedure of coming into effect of Article 38³ (version of 17 December 2019) of the Law on Corporate Income Tax was not in line with the Constitution, at the same time also investigated if the content of that article was in line with the Constitution. Having investigated the conformity according to the content, the Constitutional Court has stated that Article 38³ (version of 17 December 2019) of the Law on Corporate Income Tax, by its content, was not in conflict with Article 29 of the Constitution, the constitutional principle of the rule of law. The Constitutional Court would also adopt such rulings where the Constitutional Court would admit that an act (its part) was contrary to the Constitution according to the adoption procedure but would not investigate its conformity to the Constitution according to its content and would pronounce about it in its ruling accordingly (that the content is not questioned).

The ruling of the Constitutional Court of 30 July 2020 indicates only that under the Constitution²⁸ and the Law on the Constitutional Court, after the official publication of this ruling of the Constitutional Court, the Law on Referendums will no longer apply from the date of its official publication, it also indicates that if

27 According to subparagraph 5 of paragraph 1 (the version of 9 October 2014) of Article 2 of the Constitutional Law on the List of Constitutional Laws, the referendum relationship must be governed by the constitutional Law on Referendums.

28 It is probable that paragraph 1 of Article 107 of the Constitution is meant here, according to which a law (or a part thereof) of the Republic of Lithuania or another act (or a part thereof) of the Seimas, act of the President of the Republic, act (or a part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court saying that the act in question (or a part thereof) is in conflict with the Constitution of the Republic of Lithuania.

the ruling of the Constitutional Court in this case were officially published immediately after its public pronouncement at the hearing of the Constitutional Court (30 July 2020), “<...> a gap and uncertainty would occur in the legal regulation of calling, organising, and conducting referendums, due to which *no referendum could be called, organised, or conducted (italics emphasis by R. Ruškytė)*. In view of the fact that a certain period of time is necessary to remove the said gap and uncertainty in the legal regulation of referendum relationships, this ruling of the Constitutional Court is to be officially published in the Register of Legal Acts on 1 July 2021.” A question arose whether the quoted reasoning of the Constitutional Court and the wording therein – a certain period of time is necessary to remove the said gap and uncertainty in the legal regulation of referendum relationships – is linked only to the basis for delaying the publication of its ruling or whether it also confirms the fact that the investigated Law on Referendums is contrary to the Constitution not only according to the procedure of its adoption and form but also according to its content? Thus, in this aspect, the SACL had a possibility to address the Constitutional Court with a request to clarify whether the above-mentioned wording in the final part of the Constitutional Court ruling, meant for the delay of the official publication of the ruling, linked to the appearance of gap and uncertainty in the legal regulation if the ruling of the Constitutional Court were published immediately, also means that the Law on Referendums does not conform to the Constitution according to its content. If the SACL had asked for clarification of the Constitutional Court ruling of 30 July 2020, the Constitutional Court would have had the opportunity to formulate a clear rule or criteria in which case the recognition of a law as contrary to the Constitution in accordance with the procedure of adoption and form means its contradiction/non-contradiction to the Constitution according to its content. Such clarity is crucial for the legislative bodies in implementing such rulings in the future.

In this context, it should be noted that Prof. Egidijus Kūris has already drawn attention to the problem mentioned above in his research article: “In case law, we could also find cases where such “quasi-unconstitutional” – constitutionally impeccable by their content but rather individual provisions of law, would not be excluded from the legal system.”²⁹

In the above-discussed administrative case R-17, having stated a gap in law, in filling it, the SACL was bound³⁰ also by the interpretation of provisions of the Law on Legislative Framework and the Law on the Central Electoral Commission,

29 Egidijus Kūris. *Notariatas: Konstitucija, teisėkūra ir Konstitucinė kontrolė: retrospekciniai ir metodologiniai svarstymai. Lietuvos Respublikos Konstitucijos dvidešimtmetis: patirtis ir iššūkiai*, set of peer-reviewed research articles, p. 58.

30 Provision of paragraph 13 of Article 67 of the Constitution: The Seimas shall form the Central Electoral Commission and alter its composition.

presented by the Constitutional Court in its ruling of 11 July 2014. According to the Constitutional Court, the authority of the Central Electoral Commission to register an initiative group of citizens to hold a referendum, provided for in subparagraph 1 of paragraph 6 of Article 3 of the Law on the Central Electoral Commission (hereinafter also referred to as the CEC), is to be interpreted as meaning that the CEC must assess whether an initiative group of citizens to hold a referendum complies with statutory requirements for draft laws proposed for the referendum, *inter alia*, whether a draft law on amending the Constitution meets requirements that the amendments to the Constitution must be in harmony with its provisions, respect the substantive restrictions on the amendments to the Constitution, and must refuse to register such an initiative group of citizens to hold a referendum where a draft proposed for referendum by it does not meet such requirements.” Such interpretation by the Constitutional Court by assigning to the CEC powers not provided for in the Constitution – to assess the conformity of the presented amendments to the Constitution to the effective Constitution and reject them – has been criticised by Prof. Vytautas Sinkevičius.³¹ The SACL, choosing the position not to address the Constitutional Court for interpretation of the above-mentioned provisions of the Law on the CEC that had been previously interpreted by the Constitutional Court, rejected the applicants’ complaint³² (basically upholding the assessment offered by the CEC) as not in line with the Constitution.

Thus, depending on the interpretation of the Constitutional Court doctrine applied in the administrative case or of its legal regulation previously presented by the Constitutional Court, when the SACL chooses a position not to address the Constitutional Court, it is bound by the presented interpretation and such a position chosen by it does not create preconditions for cross-functional partnership with political power in the aspect discussed above. It should be noted that the SACL did not interpret provisions of the final part of the Constitutional Court ruling: “after the official publication of this ruling of the Constitutional Court, the Law on Referendums will not apply”, “no referendum could be called, organised, or conducted” as prohibiting organisation of a referendum for a period before adoption of a new constitutional Law on Referendums. The SACL took into account the previous constitutional doctrine, according to which “the statement that the announcement of an initiative to organise a referendum already implies

31 V. Sinkevičius: *Legislatyvinė omisija Konstitucinio Teismo nutarimuose: kai kurie diskusiniai klausimai*. Jurisprudencija 24, (2), 2017, p. 238–255.

32 Regarding Articles 1 and 2 of the draft Law of the Republic of Lithuania on Amending Article 55, Amending and Supplementing Article 59 of the Constitution of the Republic of Lithuania, intended to amend relevant provisions of paragraph 1 of Article 55 and paragraphs 2 and 4 of Article 59 of the Constitution and supplement Article 59 of the Constitution with paragraph 5, presented by the coordinators of an initiative group of citizens to hold a referendum to the Central Electoral Commission.

the beginning of the referendum is not justified; the formation of an initiative group, the collection of the signatures of citizens for organising a referendum, the submission of documents and their verification and consideration are only certain obligatory actions during the stage of organising a referendum.”³³ It should be noted that such a position that initial actions of organising a referendum such as formation of an initiative group, collection of citizens’ signatures for the organization of the referendum, giving airtime on the Lithuanian national radio and television can be taken in the absence of the Law on Referendums, has also been followed in other settled cases in connection with organising a referendum.³⁴ Such a position of the court, on the one hand, was not sending a signal to the Seimas to urgently adopt the constitutional Law on Referendums, on the other hand, after collection of a sufficient number of citizens’ signatures, the relationship in connection with calling and conducting a referendum will start, where the Seimas is, *inter alia*, involved, therefore such relationship must be regulated in a timely manner so as not to create new disputes, which would again have to be settled in the SACL.

8. Application of the constitutional principles

The SACL, filling in a gap in law (not a legitimate omission) in cases examined by it, interpreting unclear legal provisions, among other things, often refers to the principles of constitutional law that do not allow such interpretation of provisions of a legal act that would distort or negate the meaning of any provision of the Constitution, values enshrined in the Constitution and defended by it. Further below, there is an analysis of more significant cases where disputes were settled following the constitutional principles of responsible governance, justice, equality (equal rights) of persons, reasonableness, fairness, frequently applying several of them in a case.

8.1. Constitutional principle of responsible governance

The principle of responsible governance is not established in the Constitution of the Republic of Lithuania *expressis verbis*. The Constitutional Court referred to this principle for the first time in its ruling³⁵ only on 1 July 2004. This principle

33 Rulings of the Constitutional Court of 1 December 1994, 11 July 2014.

34 Decision of the Supreme Administrative Court in administrative case No. R-14-1062/2021; decision of the Supreme Administrative Court in administrative case No. R-18-492/2021.

35 The principle of responsible governance set in the Constitution implies that all state institutions and officials must perform their functions in accordance with the Constitution, law, acting in the interests of the Nation and the State of Lithuania.

had already been applied in the United Kingdom. The Constitutional Court linked this principle, *inter alia*, to paragraphs 2 and 3 of Article 5 of the Constitution: all state institutions and officials must perform their functions in accordance with the Constitution, law, acting in the interests of the Nation and the State of Lithuania; ministers must properly implement the internal administration powers granted them by the Constitution and laws in respect of the relevant ministry and the agencies assigned to the area that the ministry is in charge of, *inter alia*, take lawful and reasonable decisions; the principle of reasonable governance implies requirements of publicity and transparency of legislative procedures, which, *inter alia*, must be observed by institutions exercising the State power.³⁶

In the SACL cases, the first signs of the responsible governance principle are found somewhat later. The SACL in its ruling of 6 September 2012³⁷ interpreted provisions of the Statute of the Internal Service regarding the responsibility of the head of an institution by expanding their limits. It is evident from the content of the ruling as a whole that the SACL followed the constitutional principle of responsible governance though it did not refer to it *expressis verbis*. The SACL noted in the ruling that “it was not enough for the applicant to merely give orders, by which he ordered civil servants in the centre to perform functions related to the implementation of tasks assigned to the institution, the head also has a duty to consistently control (organise control of) the implementation of the tasks assigned to the institution and the performance of functions.”

The SACL keeps developing the same rule related to wider limits of responsibility of the head than of other state officials, civil servants, who are not heads of institutions, already *expressis verbis* referring to the constitutional principle of responsible governance. For example, in the ruling of 17 August 2017,³⁸ the court, having taken into account that subparagraph 1 of paragraph 1 of Article 15 of the Law on the Civil Service establishes that a civil servant must follow the Constitution, also that the Constitutional Court has stated in its acts for a number of times that the principle of responsible governance enshrined in the Constitution implies that all state institutions and officials have to perform their functions in accordance with the Constitution, law, acting in the interests of the Nation and the State of Lithuania, properly use the authority given to them by the Constitution and laws, arrived at the conclusion that the interpretations given by the SACL in its ruling of 6 September 2012 *mutatis mutandis* also apply to heads of structural units of the ministries: the head must show interest in how tasks and functions assigned to a unit are performed, including timely fulfilment of

³⁶ See the ruling of the Constitutional Court of 8 July 2016.

³⁷ Administrative case No. A⁴⁹²-1889/2012.

³⁸ Decision of the Supreme Administrative Court in administrative case No. A-954-1062/2017.

assignments, no matter that they were given not by the head himself but by a civil servant substituting for him.

By such case law of the SACL the legislator and other legislative entities are indirectly urged to adjust legal regulation related to the limits of responsibilities of the head accordingly, taking into account the direction of change in regulation proposed by the SACL in this process.

8.2. The constitutional principle of the rule of law, the principle of responsible governance

The SACL, in the case settled on 3 January 2019,³⁹ following the principles of responsible governance and the constitutional principle of the rule of law (in this way indicating at the same time that these principles are not identical), interpreted provisions of the Description of the Procedure on Vacation Granting, Payment and Formalisation, taking into account subparagraph 2 of paragraph 2 of Article 166 of the Labour Code, which establishes that employees, who raise a child under 14 or a disabled child under 18 alone, are given annual minimal vacation of thirty-five calendar days. The panel of judges, taking into account the essence of subparagraph 2 of paragraph 2 of Article 166 of the Labour Code – granting of extended annual vacation (35 calendar days instead of 28 days), its purpose (additional efforts necessary to take care of the child), the employer's duty to give vacation each year, following the constitutional principle of the rule of law, the principle of responsible governance (*inter alia*, in planning the budget of an institution and organising its work), stated that in the case at hand the applicant acquired the right to the annual minimal vacation of 35 calendar days for one year which started at the moment of acquisition of the right to them (not from the moment of notifying the administration of such a right, which was later). In other words, the said subparagraph 2 of paragraph 2 of Article 166 of the Labour Code, following the principle of responsible governance and the constitutional principle of the rule of law, has been interpreted as allowing to provide the administration with proof of appearance of the right to extended vacation later than the date when a person acquired this right, but for a period no longer than one year.

The principle of responsible governance was the main “key” to the interpretation of the said provisions. After the presented interpretation, no intervention in the Labour Code by adoption of a law was required, it was enough for a legislative entity to amend the Description with regarding to the principles of responsible governance and the rule of law.

39 Decision of the Supreme Administrative Court in administrative case No. A-2848-1062/2018.

8.3. Principle of equality of persons

In the absence of sufficient legal regulation, in one of the election cases settled by it on 11 September 2020, the SACL assessed whether the debates procedure established by the Lithuanian national radio and television (hereinafter referred to as the LRT) was reasonable and fair. The case was settled referring to Article 29 of the Constitution (the principle of equality of persons). In this case, a political party objected to the procedure of debates set by LRT, according to which the participants of the discussion had to discuss in groups formed on the basis of candidates' ratings. The panel of judges, taking into account that according to paragraph 1 of Article 46 of the Law on Elections to the Seimas, after the Central Electoral Commission announces the names of candidates and lists of candidates, the candidates for members of the Seimas in the constituencies shall have the equal rights to speak at voters' meetings or any other meetings, gatherings, conferences as well as through the state media, and to announce their respective election programmes, explained that this provision must also be respected when LRT, acting on its own initiative, organises debates (on television) according to paragraph 5 of Article 51 of the Law on Elections to the Seimas (Conditions and procedure for election campaigning),⁴⁰ i.e. the principle of equal rights must be observed throughout the election campaigning. The panel of judges held that the rule set by LRT, allowing to group debate participants (candidates) according to the "ratings", does not respect of the principle of equal rights established in the constitutional jurisprudence.

This interpretation by the SACL is to be treated as expanding the limits of provisions of the Law on Elections to the Seimas and, if the legislator does not agree with it, it may amend the law, however respecting the principle of equality of persons.

It should be noted that the SACL often resolves cases in accordance with the principle of equality of persons. However, in cases where a doubt arises, in respect of the violation of the principle of equality of persons, that there may be a gap in law, which the Constitution does not tolerate, i.e. a legislative omission, then the SACL refers to the Constitutional Court in order to find out whether the applicant(s) in the case did not find themselves in a situation worse than other persons. For example, in 2021, the SACL referred to the Constitutional Court with a request to investigate whether the fact that the law does not provide for payment of the difference in state pension amounts for some officers and servicemen is in

40 Paragraph 5 of Article 51 of the Law on Elections to the Seimas: "All broadcasters shall have the right to prepare, on their own initiative, debate broadcasts in compliance with the provisions of the Law on Funding of Political Campaigns and Control of Funding thereof. Other terms and conditions provided for in this Article shall not apply to the said broadcasters."

conflict with Articles 29, 52 of the Constitution of the Republic of Lithuania. The Constitutional Court admitted the request.⁴¹

8.4. Principles of fairness, reasonableness, justice

The SACL has repeatedly interpreted that in order to implement the principle of good public administration, both public authorities and courts must ensure the protection of human rights and freedoms, and a private person as the weaker party in the relationship with public administration bodies, and must, in any situation, follow the principles of reasonableness, justice, fairness. Provisions of the administrative rules approved by the Minister of Agriculture, dealing with filing and examination of complaints against decisions of the National Paying Agency under the Ministry of Agriculture (hereinafter referred to as the NPA), established an alternative complaints filing procedure: to address either the Ministry of Agriculture or court. Grammatical interpretation of this complaints filing procedure eliminates a possibility to lodge a complaint with court as, in case a complaint is filed with the Ministry, a period of one month to lodge a complaint with court is missed. The SACL indicated that the said provisions of the rules cannot be interpreted in such a way that the applicant, who consistently sought to have his or her dispute with the NPA resolved under the procedure set by law, would lose a possibility to exercise his or her right of defence in court or such a possibility would be hindered greatly (see the SACL judgment of 29 October 2018 in administrative case No. A-2495-624/2018). However, other administrative rules adopted subsequently⁴² provide for a similar complaints filing procedure. This position of the legislative entity is difficult to explain.

The SACL, in its ruling of 28 July 2021,⁴³ repeated its earlier interpretation. If the minister does not amend his order in this aspect in the future, the SACL, when examining a new dispute, can start an investigation of lawfulness of the regulatory act (order) of the minister,⁴⁴ its conformity to the Constitution.

Please note that in some rulings analysed in this section 8, where disputes were settled by application of principles, reference was made not only to the constitutional principles of responsible governance, reasonableness, justice, and other principles, but also to the principle of good public administration, which is not a constitutional principle.

41 See <http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta2439/content>.

42 Rules for administration of the Lithuanian Rural Development Program 2014–2020 approved by Order No. 3D-507 of the Minister of Agriculture of 26 August 2014.

43 Decision of the Supreme Administrative Court in administrative case No. eA-2231-520/2021.

44 Paragraph 3 of Article 113 of the Law on Administrative Proceedings.

9. Non-recognition of the principle of good administration

The SACL, examining administrative disputes already for the second decade, assesses whether the public administration entity has not violated the principle of good administration taken over from the CJEU. This principle is provided for as a right in Article 41 of the Charter of Fundamental Rights of the European Union⁴⁵ (hereinafter also referred to as the Charter) “Right to good administration”.⁴⁶ According to Article 41 of the Charter, this right includes: (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions.

First of all, it should be noted that the principle of good administration is absent in the constitutional doctrine, and the content of the principle of responsible governance, that has been developed in it case after case since 2004, is not identical to the content of the principle of good administration. The principle of good administration is designed to ensure a proper relationship between a public authority and an individual in the context of adoption of an individually applicable administrative decision. One should agree with Prof. A. Bakaveckas that these principles are used synonymously in some SACL cases,⁴⁷ but it should be emphasized that this is not the case in the doctrine of the Constitutional Court. The principle of good administration is not among the thirteen principles indicated in Article 3 of the Law of the Republic of Lithuania on Public Administration (hereinafter also referred to as the Law on Public Administration), either. However, certain elements of this principle can be found in Article 22 of the Law on Public Administration (the version of 28 May 2020), which are expressed as the following rights of the person subject to the administrative procedure: “submit additional information and provide explanations”; “get access to the documents received during the administrative procedure and other information”; “express his opinion on issues arising during the administrative procedure”. However, these rights of a person, “collected” from the Law on Public Administration, including

45 The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law (Article 51(1)).

46 For more information, see Jurgita Paužaitė-Kulvinskienė. *Atsakingo valdymo principas bei jo procesinės garantijos. Administraciniai teismai Lietuvoje Administraciniai teismai Lietuvoje. Nūdienos iššūkiai*. Vilnius. Supreme Administrative Court of Lithuania. Vilnius. 2010. P. 228–243.

47 Audrius Bakaveckas. *Administracinė teisė: teorija ir praktika*. Vilnius, 2012. p. 102–105.

the duty of the administration to reason their decisions, as provided for in subparagraph 6 of paragraph 5 of Article 10 of the Law on Public Administration, are not totally identical to the content of the right to good administration provided for in Article 41 of the Charter.

It should be considered that the elements of the principle of good administration found in the Law on Public Administration according to the constitutional doctrine could be a part of the content of a person's right to due process of law. The Constitutional Court emphasized in its ruling of 16 January 2006 that a person's right to due process of law is implied by the constitutional principle of the rule of law. It is evident from the analysis of the ruling of the Constitutional Court of 13 August 2007 that a person's right to due process of law includes the right to access the case file, the right to receive information related to the suspected violation, the right to present evidence and explanations, a person's right to be heard and the duty of the institution to give reasons for its decision that is unfavourable for a person. In this case, the resolution of the Government, by which a representative of the Government was dismissed from office, was admitted to be unconstitutional according to the procedure of its adoption, as he was not guaranteed the right to due process, was not provided with necessary information, was not properly familiarised with the alleged violation, was not given the right to speak during the Government meeting when the issue of his dismissal from office was considered.

We can see two trends in cases heard by the SACL: we can find decisions, where a violation of the principle of good administration was found, interpreting it within the meaning of Article 41 of the Charter, as currently in force, and at the same time we can also find decisions, where violation of the right to due process of law, violation of the principle of ensuring the right of defence was found without assessing whether the principle of good administration was violated.

For example, the SACL decision of 29 April 2010⁴⁸ indicates that the general imperatives originating from the principle of good administration impose a duty on a public administration entity to question the applicant and give the applicant the right to be heard before a decision is taken. The principle of good administration also includes the right of a person to be informed of the facts found (see the ruling of 27 February 2015)⁴⁹ and the ruling of 12 March 2014⁵⁰ indicates that the principle of good administration obligates public administration entities to give persons, whose issues are being discussed, an effective opportunity to speak. In its ruling of 27 March 2014,⁵¹ the SACL emphasized that the principle of good

48 Decision of the Supreme Administrative Court in administrative case No. A⁸⁵⁸-737/2010.

49 Decision of the Supreme Administrative Court in administrative case No. eA-616-858/2015.

50 Decision of the Supreme Administrative Court in administrative case No. A²⁶¹-2014/2014.

51 Decision of the Supreme Administrative Court in administrative case No. A⁵⁰²-727/2014.

administration means that before a public administration entity adopts an administrative act, a person must be given sufficient time to get ready for presentation of arguments or proof.

At the same time, another trend is observed when cases are resolved by establishing the lack of due process of law, the lack of protection of the rights of defence, i.e. the doctrine formulated by the Constitutional Court is followed. For example, in its decision of 11 September 2014,⁵² the SACL, having regarded that the applicant had no opportunity to effectively present his opinion before the contested decision was made, held that his right of defence was not ensured. In a case settled by it on 17 May 2019,⁵³ the SACL presented a number of essential provisions from CJEU cases, for example, that the CJEU emphasized in its judgment of 3 July 2014⁵⁴ that the principle of ensuring the right of defence is a general principle of Union law and that the right to be heard during any procedure is an integral part of this principle, in its judgment of 22 November 2012⁵⁵ the CJEU noted that the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely. This SACL case also presents the essence of the CJEU judgment of 10 January 2019:⁵⁶ the General Court did not err in law when it held that “the claimant’s right of defence was violated therefore the contested decision must be annulled, as the claimant proved, to a sufficient extent, not that in the absence of this procedural violation the content of the contested decision would have been different but that she could have had a possibility, even if small, to have better defence on this issue”.

In the latter cases of the CJEU discussed above, the principle of good administration was not accentuated, the cases were settled referring to a person’s right of defence, the right to be heard. The SACL, taking into account the above-presented CJEU jurisprudence related to the right of adequate defence, an opportunity for a person to make his views known effectively, held in the case settled on 17 May 2019 that the applicant was not given time to prepare for consideration of

52 Decision of the Supreme Administrative Court in administrative case No. A⁴³⁸-1102/2014.

53 Decision of the Supreme Administrative Court in administrative case No. eA-1316-1062/2019.

54 Judgment of 3 July 2014 *Kamino International Logistics BV and Datema Hellmann Worldwide Logistics BV v. Staatssecretaris van Financiën*, C-129/13 and C-130/13, ECLI:EU:C:2014:2041, p. 28, 29.

55 Judgment of the European Court of Justice of 22 November 2012 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland and Attorney General*, C-277/11, ECLI:EU:C:2012:744, p. 87; Judgment of the European Court of Justice of 5 November 2014 *Mukarubega v. Préfet de police and Préfet de la Seine-Saint-Denis*, C-166/13, ECLI:EU:C:2014: 2336, p. 46.

56 Judgment of the General Court of 10 January 2019 *RY v Commission*, T-160/17, ECLI:EU:T:2019:1; see Judgment of the European Court of Justice of 25 October 2011 *Solvay v. Commission*, C-109/10 P, ECLI:EU:C:2011:686, p. 57.

an additional alleged violation before a meeting of the Commission of Ethics in Providing Information to the Public, whereto the applicant was invited for other issues. The court noted that failure to guarantee this right cannot be justified by a possibility to provide explanations during the Commission meeting, as the case file did not indicate that UAB Lietuvos žinios knew beforehand that such an issue may be considered.

The SACL stated in that case that subparagraph 2 of paragraph 1 of Article 20 of the Law on Public Administration (a person, regarding whom an administrative procedure is started, has the right to provide additional information and give explanations), paragraph 18 of the Rules of Procedure of the Commission, according to which the Commission must inform mass media, disseminator, producer of public information about the possibility to present explanations within a set term, were infringed. The key emphasis in this case was not a violation of the principle of good administration, though it was specified in the ruling, but violation of the right to due process of law by failure to guarantee its effective implementation.

It should be emphasized that the SACL deems the right to due process of law, the right of a person to be heard to be violated not only when this right fails to be guaranteed at all, but also when it is not guaranteed effectively. Please note that in the ruling discussed above, the court interpreted Article 20 of the Law on Public Administration, which provides only for the right to provide information and give explanations, by expanding its limits, and the court also held that a person must be given adequate time to get ready for presentation of an explanation. A violation was found in this case because the said right to provide additional information and explanations was not guaranteed effectively. Such an assessment corresponds to the position discussed above in the Constitutional Court case settled on 13 August 2007.

In another ruling, dated 11 December 2019,⁵⁷ the SACL emphasized that the Constitutional Court had stated that the constitutional principle of the rule of law implies the right of a person to due process of law (rulings of the Constitutional Court of 16 January 2006, 13 August 2007), also that the CJEU, pronouncing on Article 47 of the Charter (Right to an effective remedy and to a fair trial), noted that an integral part of the right to effective remedy is the right to be heard, which guarantees an opportunity to any person to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely. The SACL held that the right to be heard is an element of the right to due process of law. We see from the content of the ruling adopted by the SACL in the said case that a person's right to be heard is linked to the right

57 Decision of the Supreme Administrative Court in administrative case No. eA-2473-1062/2019.

of defence, the constitutional principle of the rule of law (which presupposes the right to due process of law), but not to the principle of good administration.

In a case of impeachment of a member of a municipal council,⁵⁸ the SACL held that the applicant's request for an opinion whether a member of the municipal council broke the oath of a member of the municipal council, was made ignoring the requirements for a due process of law and, having indicated that, *inter alia*, the constitutional principle of the rule of law was violated, dismissed the administrative case. Thus, in this case and in other cases relating to impeachment, decisions were taken after the assessment of whether the right to due (fair) process of law was breached.

Based on the latter final acts of the SACL discussed above, we could arrive at the conclusion that the SACL tends to assess whether the right to due process of administrative law has been breached, following the constitutional doctrine, formation of which started in 2016. This right, as it is apparent from the case law of the SACL, depending on the circumstances of the case being assessed, can cover all or some of the elements of the principle of good administration but the court does not analyse the compliance of actions investigated in a case with this principle, though it sometimes formally refers to it.

This ambiguous position of the court is not currently sending a signal to the legislator to establish the principle of good administration by law. The author of this article thinks that the issue raised in research literature that establishing this principle in the Law on Public Administration lags behind case law for over ten years, is debatable: wouldn't the establishment of this principle by law be excessive in the Lithuanian legal system when its main elements are expressed in the form of relevant rights in the Law on Public Administration; does the quality of good administration suffer because it is not called the principle of good administration? Besides, national law does not provide for a mandatory requirement to establish it.⁵⁹

In summary of the first part of this article, it has to be said that in case of unclear legal regulation, a gap in law, the SACL settles cases by directly applying the Constitution, the constitutional principles, the doctrine of the Constitutional Court itself. It assesses provisions of legal acts by applying various methods of interpretation, in relevant cases the result of interpretation can narrow or expand the limits of a legal provision, in this way indirectly "urging" the legislator to adjust legal regulation. The SACL addresses the Constitutional Court in rare cases, if possible, it interprets a legal provision applicable in a case so that it would conform to the Constitution and if such interpretation is not in line with the will

58 Decision of the Supreme Administrative Court of 21 July 2021 in administrative case No. eS-2-575/2021.

59 Oana Stefan, *European Union Soft Law: New Developments Concerning the Divide between Legally Binding Force and Legal Effects*, 2012, p. 865, 880.

of the legislator or another entity, it is “urged” by this to adjust legal regulation. In addition, in individual cases the SACL makes specific proposals, guidelines not only to adjust the existing legal regulation by amending it, but also to supplement legal acts (for example, on issues of liability of managers, protection of the rights of persons with disabilities discussed in this article). Though political power chooses independently how to implement the proposals, guidelines of the SACL but ignoring this soft law would increase the number of cases in courts and would reduce confidence in political power. When the SACL finds a gap in law, the Seimas cannot omit to react to this – regardless that a specific case has been already resolved in court, it is the duty of the legislator to regulate public relations. Therefore, it can be said that cooperation between the SACL and political power, in terms of legislation, exists, without making a separate assessment of its effectiveness.

10. Constitution and EU law

The position often found in legal literature and in some court judgments that “national authorities must implement Community law but the forms and procedures of this implementation depend on the constitutional system of a Member State, its national law, though national provisions which are in conflict with the Community law cannot be applied”⁶⁰ is incomplete to the extent that it fails to deal with law applicable when EU law is in conflict with the Constitution of the Republic of Lithuania. What are the constitutional limits to the application of EU law?

First, paragraph 1 of Article 7 of the Constitution says that any law or other act which contradicts the Constitution shall be invalid. In the preamble of the Constitutional Act “On Membership of the Republic of Lithuania in the European Union” of 13 July 2004 (hereinafter also referred to as the Act), the Seimas noted that the European Union respects the national identity and constitutional traditions of its Member States. The said Act constitutionally approved the membership of the Republic of Lithuania in the European Union, according to Article 150 of the Constitution this Act is a constituent part of the Constitution. Paragraph 2 of the Act says that “The norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.” The

60 Ieva Deviatnikovaitė. *Užsienio šalių ir Europos Sąjungos administracinė teisė*. Vilnius, VĮ Registrų centras. 2017, p. 509.

Constitutional Court, when interpreting this paragraph, has stated that in respect of the European Union law, the provisions of paragraph 2 of the Constitutional Act of the Republic of Lithuania “On Membership of the Republic of Lithuania in the European Union” *expressis verbis* establish a rule of a conflict of laws that provides for supremacy of application of the European Union legal acts in those cases when the European Union legal rules arising out of the founding Treaties of the European Union compete with the legal regulation established in the national legislation of Lithuania (irrespective of their legal power), however except for the Constitution itself.⁶¹ Thus, we can state that the Constitutional Court, having interpreted paragraph 2 of the Act together with paragraph 1 of Article 7 of the Constitution to the effect that the Constitution does not fall into the concept of legal acts specified in paragraph 2 of the Act, stated existence of a constitutional reservation. In the opinion of Prof. E. Kūris, by its ruling the Constitutional Court “constructed” the algorithm of coexistence of EU law and Lithuanian constitutional law, which <...> does not sacrifice the supremacy of the Constitution and the hierarchy of all legal acts that arises from it.”⁶²

Decisions of constitutional courts of other states, such as Germany, France, Czech Republic, Poland, Belgium, Latvia, Spain, develop the content of the concept of constitutional identity. The Federal Constitutional Court of Germany (hereinafter referred to as the FCC) stated in its judgment of 15 December 2015 that the control of compliance with the constitutional identity does not negate either the duty of loyal cooperation according to Article 4(3) TEU or the requirement of uniform application of EU law. The Constitutional Council of France, in its decision of 27 July 2006, indicated the possibility of constitutional control in case if the provisions of the disputed Community act were contrary to the rule or principle inherent in the constitutional identity of France, except for cases when the constituent power consented to this.

Some constitutional courts consider the constitutional identity unshakably strong (the FCC of Germany: EU power is derived from the constitutional law of the Member States), others – as the one capable of change when the constituent power consents to this (the Constitutional Council of France) or as the concept of constitutional identity almost clearly defined by the Constitutional Court of Spain. Certain manifestation of the position of constitutional identity, expressed slightly differently, can be found in the rulings of the Constitutional Court of the Republic of Lithuania of 24 January 2014, 11 July 2014. In this context, it is noteworthy that the preamble to the above-mentioned Act adopted by the Seimas highlights that

61 Rulings of the Constitutional Court of 14 March 2006, 21 December 2006, etc.

62 Egidijus Kūris. *Europos Sąjungos teisė Lietuvos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos. Teisė besikeičiančioje Europoje*. Vilnius: Mykolas Romeris University, 2008, p. 682–683.

the European Union respects the national identity and constitutional traditions of its Member States.

Thus, agreeing with Prof. E. Jarašiūnas and other foreign researchers that the operation of the principle of supremacy of EU law is not absolute, we must conclude that EU law cannot fail to take into account the requirements arising from the constitutional identity nucleus of the constitutions (constitutional systems) (inviolable values and principles that have been historically tested and express the essence of the constitutional system). In this context, we should also mention a Lithuanian case where the CJEU admitted in its judgment of 12 May 2011⁶³ that the aim to protect the state language enshrined in Lithuanian legal acts is legitimate as according to Article 4(2) TEU, the Union must also respect the national identity of its Member States, which includes protection of a State's official national language. Thus, in this case the CJEU recognized the Lithuanian language peculiarity as an element of national identity.

In summary, it is to be stated that there is no reason to doubt that the constitutional identity revealed by Prof. E. Jarašiūnas is to be regarded an important instrument in ensuring the cross-systemic balance of national and EU legal systems (and, therefore, it is significant for both the legal systems). This balance of the two systems is ensured by cooperation of both the systems.

The FCC of Germany has stated that the interaction between EU law and national legal systems is based on cooperation. According to Article 19 of the Treaty on European Union, interpretation of European Union law is a task of the CJEU but the Constitutional Court also has a duty to protect the Constitution of Germany. The Union powers are limited to the areas in which the Member States delegated their competence to it. Judgments of the CJEU that clearly go beyond the limits of such competence are not a part of the constitutional system that provides that Union legal acts are mandatory in Germany. Such judgments are to be regarded *ultra vires* and incompatible with the basic principles of the Constitution of Germany such as democracy and the sovereignty of the nation. According to the FCC, if the reasoning of the CJEU judgments is not comprehensible and must be considered arbitrary from an objective perspective, thus turning the interpretation as such into an *ultra vires* judgment, it will not respect such a judgment.⁶⁴

63 Judgment of the European Court of Justice of 12 May 2011 *Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilniaus miesto savivaldybės administracija and Others*, C-391/09, ECLI:EU:C:2011:291, p. 86.

64 See the FCC judgment of 12 October 1993, rulings of 30 July 2019, 5 May 2020. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/05/rs20200505_2bv085915en.html

11. EU law in the SACL case law

How are EU law and the CJEU judgments reflected in the SACL rulings?

First of all, it should be pointed out that the interaction between the CJEU and the SACL can be seen in two directions. First, the SACL is particularly active in referring to the CJEU for a preliminary ruling on the interpretation of the EU legal acts. As of writing this article, from the Lithuania's accession to the EU in 2004, Lithuanian courts have made 89 references to the CJEU (one reference for a preliminary ruling was examined under urgent procedure), including 39 references by the SACL. The number of references made by the SACL has been increasing recently, for example, it made one reference in 2018, three references in 2019, 4 references in 2020 and already 10 references in 2021.

Second, in cases settled by it the SACL often quotes EU law and refers to the CJEU case law. The prevailing trend in the final acts of the SACL is that when a directive is not transposed into the Lithuanian legal system or is transposed improperly, the EU directive should be applied directly. It should be noted that it is not often assessed whether a provision of the applied directive, which is absent from the Lithuanian legal system, is in line with the Constitution of the Republic of Lithuania or, if such an assessment is made, it is omitted in the text.

There are also such final acts of the SACL, which show that constitutional verification has been carried out. The SACL emphasized in its ruling⁶⁵ that the Constitutional Court has explained that in cases set in paragraph 2 of the Constitutional Act of the Republic of Lithuania "On Membership of the Republic of Lithuania in the European Union", the European Union legal rules apply directly and in case of a conflict of law they have primacy over laws and other legal acts of the Republic of Lithuania, except for the Constitution itself. Having considered that in the case at hand, the provisions of Article 7 of the directive did not compete with the provisions of the Constitution of the Republic of Lithuania, it ruled that the State must compensate the applicants (who have been applying to administrative courts for a number of years) for losses suffered by them by reason of the failure by the State to comply with its obligation to implement the directive properly. In the said case and in a number of many other similar cases, the tourists' rights to full compensation of the money paid for the journey in the event of the insolvency of a tour organiser, which was guaranteed by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, was not ensured.

Please note that in this case the legislative entity (the Minister of Economy) had a reason, following the constitutional principle of responsible governance, either to adopt a legal act itself or initiate its adoption for compensation of losses to

65 Decision of the Supreme Administrative Court in administrative case No. A-1356-1062/2019.

the parties injured, however, as it had not done that, a number of people defended their right in administrative courts.

In another case that the SACL settled on 20 October 2021,⁶⁶ the panel of judges, having presented the concept of property and moral damages in accordance with Article 30 of the Constitution and the Constitutional Court doctrine, stated that in the circumstances of the case at hand the national legal acts did ensure the right of traffic accident victims to compensation of damages guaranteed by Directive 2009/103/EC (moral damages in the said case) in the amount not limited to an amount less than set in the said rule of the directive. The SACL held that the applicant suffered damage which the State must compensate.

However, the number of such final acts where the SACL, before applying the directives, assessed whether the legal regulation is in line with the Constitution of the Republic of Lithuania, is not big. Maybe such a direction where the relationship of EU law with the Constitution of the Republic of Lithuania is not assessed or, if assessed, the text does not reflect such assessment, is the result of inaccurate interpretation of the statement made in the ruling of the Constitutional Court of 21 December 2006 that “the jurisprudence of the Court of Justice of the European Communities and of the Court of First Instance of the European Communities is important for interpretation and application of Lithuanian law,”⁶⁷ also the first sentence of paragraph 3 of Article 4 of the Law on Administrative Proceedings: “In application of rules of law of the European Union, the court shall also follow decisions of the judicial authorities of the European Union.”

First of all, it should be noted that the so-called national broadcaster case settled by the Constitutional Court on 21 December 2006 contained a detailed overview of the media law, the legal status of the national broadcaster in various countries, including EU law. However, the statement that the CJEU jurisprudence is important for interpretation and application of Lithuanian law during the examination of the case at hand⁶⁸ and in the later doctrine of the Constitutional Court (until the ruling of 20 December 2017,⁶⁹ which it was modified) meant only that the case law of the CJEU is the source of interpretation of law, however, it is not and cannot be a source of constitutional law.

66 Decision of the Supreme Administrative Court in administrative case No. eA-3411-556/2021.

67 For more, see Jarukaitis I. *Europos žmogaus teisių konvencija ir Europos Sąjungos teisė: požiūrių konvergencija Baltijos valstybių teismų praktikoje*. Supreme Administrative Court of Lithuania. *Žmogus, teisinė valstybė ir administracinė justicija*. 2012, p. 180.

68 The author of the article was the judge-rapporteur in this case before the Constitutional Court.

69 For more, see T. Birmontienė. Mykolas Romeris University. *Liber Amicorum S. Katuokai. Konstitucinė teisė ir tarptautinė bei Europos Sąjungos teisė: kas diktuoja teisės sistemų sąveikos ribas?*

The author of this article holds that the quoted provision of Article 4 of the Law on Administrative Proceedings that court “shall also follow decisions of the judicial authorities of the European Union” is not in line with Article 7 of the Constitution, provisions of paragraph 2 of the Act discussed above, therefore, it should be adjusted as follows: “shall also take into account decisions of the judicial authorities of the European Union”. Taking into account the judgments of the CJEU would not deny national and constitutional identity and would at the same time ensure cooperation between the two legal systems.

Neither the SACL nor the Constitutional Court of the Republic of Lithuania doubted conformity of the CJEU judgments to the Constitution of the Republic of Lithuania but such examples can be found in other States. For example, the FCC of Germany formulated the *ultra vires* doctrine in its judgment of 12 October 1993, which was activated by the FCC decision of 20 May 2020. The FCC stated that the CJEU, in assessing a decision of the European Central Bank in its judgment of 11 December 2018,⁷⁰ failed to properly apply requirements of the principle of proportionality, the decision lacked the necessary democratic legitimation and could not bind the German authorities. The FCC of Germany recognised the decision of the European Central Bank to be an *ultra vires* act. The further search for a solution to the dispute between the ECB and the authorities of the Federation of Germany took place in an elegant way of cooperation.

Conclusions

The Constitution restricts cooperation between political power and the court, including the SACL, only if such cooperation can harm independence of courts.

The cross-functional partnership of the SACL and another political power is best revealed in the legislative aspect, which should be encouraged. The SACL takes decisions following laws passed in the Seimas and, in their application, when legal regulation is unclear or there is no necessary provision, it makes proposals, gives guidelines to the legislator on how to improve a specific law applied in a case. The legislative entity is not obligated *expressis verbis* to take into account the SACL's proposals, however, its refusal to adjust the legal regulation would create preconditions for an additional flow of cases to the SACL, the outcome of which is known in advance, in this way reducing confidence in the political power. The legislator cannot avoid filling a gap in law by law but it has the discretion to do so in a specific way.

70 Judgement of the European Court of Justice of 11 December 2018 *Heinrich Weiss and Others*, C-493/17, ECLI:EU:C:2018:1000.

The ambiguous case law of the SACL is not a signal for the legislator whether or not the principle of good administration should be enshrined in law.

The SACL is bound by the doctrine of the Constitutional Court. If such a doctrine is not clear, it may address the Constitutional Court with a request to clarify it. The SACL is not active in addressing the Constitutional Court if a doubt about the conformity of a legal act to the Constitution is not sufficiently substantiated, and taking into account the principle of cost-effectiveness of the process, it resolves disputes itself, also in significant cases such as regarding organization of a referendum in the absence of the constitutional Law on Referendums. The SACL actively refers to the CJEU for a preliminary ruling; in directly applying EU law, it rarely makes an assessment in the text whether or not the provisions of a directive raise doubts about their conformity to the Constitution. The Law on Administrative Proceedings that provides for a court duty to follow decisions of the judicial authorities of the European Union fails to reflect the provision of paragraph 1 of Article 7 of the Constitution that “any law or other act which contradicts the Constitution shall be invalid” and paragraph 2 of the constitutional Act, according to which the supremacy of application of EU legal acts does not extend to the Constitution of the Republic of Lithuania.