

I.2. THE CONCEPT OF SUSTAINABILITY IN NATIONAL CONSTITUTIONS: INSIGHTS FROM CONSTITUTIONAL JURISPRUDENCE

Challenges in contemporary societies are also related to the element of sustainability. The content of sustainability and sustainable development which, compared with the rule of law, human rights, and democracy, are treated as relatively new constitutional key concepts (Jakab 2021), still attract attention in various constitutional debates from different legal perspectives – for example, concerning the sustainability of democracy, human rights, and environmental sustainability (the International Conference “Sustainability as a Constitutional Value: Future Challenges” took place on 15–16 September 2022 in Riga). The debates affirm that these concepts of sustainability and sustainable development as broad notions of the rule of law, human rights, and democracy encompass a bouquet of interrelated aspects.

This chapter aims to shed light on the complex concept of sustainability and its aspects from the perspectives of national constitutional regulation and constitutional jurisprudence, formed by constitutional justice institutions. Such perspectives in the scientific literature are rarer than perspectives from the points of view of the international or European Union levels (Kozień 2021). This is understandable because, in the legal framework, sustainable development as a concept was first used and elaborated upon in international law, and this concept has generally been treated as a matter of soft law by international instruments (Boyar 2021). As constitutions also interact with the broader environment of ideas and institutions outside a nation’s borders (Ginsburg *et al.* 2019), this interaction also means exchanging experiences among different countries while seeking the best solutions in their practice.

The author of this chapter tries to confirm the assumption that national constitutions, including the Constitution of the Republic of Lithuania, and constitutional justice institutions, including the Constitutional Court of the Republic of Lithuania, which protect constitutional values, could be seen as strong protectors of such a constitutional value as sustainability. The analysis of national constitutions and the jurisprudence of constitutional justice institutions is of much relevance for achieving the aim of this chapter. According to most constitutions, constitutional courts around the world, while implementing their power of constitutional review, are also bodies with the authority to interpret constitutions (Ginsburg & Elkins 2008), including the interpretation of constitutional provisions reflecting the concept of sustainability. The author of this research focuses not only on

a comprehensive case study – the case law of the Constitutional Court of the Republic of Lithuania – but also on examples from the selected case law of other constitutional justice institutions from Europe, and compares it with Lithuanian constitutional experience. These constitutions and the constitutional jurisprudence based on them are a source of national and international constitutional law, and they could be borrowed as an inspiration for solving future constitutional justice cases.

Lithuanian constitutional law lacks scientific papers or research dedicated to the issue of sustainability. Professor Juozas Žilys, the first president of the Constitutional Court of the Republic of Lithuania, treats the Constitution of the Republic of Lithuania of 1992 as the solid democratic foundation for further development of the statehood of Lithuania, which constitutes a long-term program aimed at the progress of society and the state, striving for an open, just and harmonious civil society and a state under the rule of law (Žilys 2012). Thus, from Professor Žilys' point of view, the sustainability of the Constitution means its stability, durability, and future endurance. Moreover, in this context, Professor Žilys also noted that the stability of the Constitution relates to the principle of the supremacy of the Constitution, as the sustainability of the constitutional regulation is one of the most important constitutional values (Žilys 2017).

The mentioned aspects of constitutional stability and endurance are crucial for the sustainability of the national constitution; however, there are also other separate yet interrelated aspects of sustainability enshrined in the Constitution of the Republic of Lithuania which could be elaborated in more detail. A further reason for this detailed elaboration is the abstract meaning of the word *sustainable* in the Dictionary of the Current Lithuanian Language (n.d.): the meaning of this word is related not only to *durable* and *strong*, but also to *striking a balance* (according to this dictionary, the word *sustainable* in Lithuanian means *patvarus, tvirtas, tvarioji pusiausvyra*). Thus, one might ask what constitutional values are hiding under the constitutional umbrella of sustainability? As Professor Juozas Žilys also abstractly hints at, in implementing constitutional reforms in Europe as well as in Lithuania, sustainable constitutional values which matured in people's enduring fight for democracy and freedom were followed (Žilys 2017).

THE MAIN GROUPS OF CONSTITUTIONAL PROVISIONS REGULATING DIFFERENT ASPECTS OF SUSTAINABILITY

The provisions of some national constitutions suggest that the concept of sustainability is closely interrelated with the concept of sustainable development. In some constitutions, these two constitutional values are even *expressis verbis* enshrined together in the same articles (or paragraphs). Thus, it is quite complicated to identify the exact scope of those concepts.

Therefore, firstly, the interrelation of these two concepts must be revealed considering the examples of such countries as Luxembourg, Norway, Poland, and Sweden. Accepting the fact that the constitutions of these countries differ very much, one similarity among them can be noticed – they all revised their constitutions in the 2009–2016 period. The Constitution of the Kingdom of Norway (the oldest of them, adopted in 1814) was revised in 2016; the Constitution of the Grand Duchy of Luxembourg (1868) was revised in 2009; the Constitution of the Kingdom of Sweden

(1974) was revised in 2012; and the Constitution of the Republic of Poland (1997) was revised in 2009. In the constitutions of the above-mentioned countries, sustainability is closely related to the concept of sustainable development. On this point, the position of Professor András Jakab should be remembered – according to him, the concept of sustainable development expresses some kind of improvement, while sustainability does not require an improvement, it merely requires that a situation does not deteriorate (Jakab 2021, p. 333). Moreover, the concept of sustainable development is primarily linked to environmental sustainability. These constitutions confirm the fact that, in the words of Professor András Jakab, constitutions traditionally contain sustainability provisions concerning the protection of the environment (Jakab 2021, p. 337).

For example, Article 11bis of the Constitution of the Grand Duchy of Luxembourg in its Chapter dedicated to public freedoms and fundamental rights states that: “The State guarantees the protection of the human and cultural environment, and works for the establishment of a durable equilibrium between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations” (this extract from the Constitution and further texts from the other constitutions are gathered mainly from the Comparative Constitutions Project). Article 112 of the Constitution of the Kingdom of Norway in its Chapter devoted to human rights proclaims that: “Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.”

Moreover, the Constitution of the Kingdom of Sweden stipulates in Article 2 of Chapter I “Basic Principles of the Form of Government” that: “The public institutions shall promote sustainable development leading to a good environment for present and future generations.” The Constitution of the Republic of Poland in its Chapter I on the Republic states that: “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development”; “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights” (Article 5); and “Public authorities shall pursue policies ensuring the ecological security of current and future generations. Protection of the environment shall be the duty of public authorities. Everyone shall have the right to be informed of the quality of the environment and its protection. Public authorities shall support the activities of citizens to protect and improve the quality of the environment” (Article 74).

The above-mentioned constitutional provisions indicate that sustainability is an integrated concept. They also emphasize the protection of the public interest, such as by protecting the natural or human environment by designating state institutions and/or persons for this purpose, establishing a human right to the environment (including its quality), or including the clear public task of protecting the environment for present and future generations (or the duties of today’s citizenry towards posterity). In addition, the aspect of durable equilibrium between the conservation of nature and

the satisfaction of the needs of present and future generations is *expressis verbis* highlighted in the Constitution of the Grand Duchy of Luxembourg.

The conclusion can be drawn that the above-analyzed constitutional provisions on sustainability, including sustainable development (provided for either in Chapters on the fundamental principles on the functioning of the state or on human rights), refer to present and long-term goals in protecting the environment, where these goals must also be balanced.

The environmental aspect

In addition, such goals and their balancing are enshrined in the Constitution of the Republic of France 1958 (revised in 2008). The preamble of the Charter for the Environment, which is a part of the Constitution, declares that sustainable development shall be ensured in order that choices designed to meet the needs of the present generation should not jeopardize the ability of future generations and other people to meet their own needs.

Regarding the protection of environment, sustainable development is also enshrined in paragraph 2 of Article 66 “Environment and quality of life” of Chapter II “Social rights and duties” of Title III “Economic, social and cultural rights and duties” of Part I “Fundamental rights and duties” of the Constitution of the Republic of Portugal of 1976 (revised in 2005). This declares that in order to ensure the enjoyment of the right to the environment within an overall framework of sustainable development, acting via appropriate bodies and with the involvement and participation of citizens, the state shall be charged with corresponding duties.

Moreover, sustainable development in the context of the protection of the environment is also *expressis verbis* treated as a constitutional principle, for example, in the Constitution of Greece (the Hellenic Republic) of 1975 (revised in 2008). In paragraph 1 of Article 24 of Part 2, “Individual and Social Rights,” it is stated that: “The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development...” In the opinion of the author of this chapter, the status of a constitutional principle presupposes a specifically strong protection of the concept of sustainability as having wider interpretational potential than other concrete constitutional norms.

The duty of the state to promote the sustainable development, common welfare, internal cohesion and cultural diversity of the country is also expressed in the Constitution of the Swiss Confederation of 1999 (revised in 2014) (Title One “General Provisions,” Article 2 “Aims”).

Therefore, the right to the environment is an excellent example for highlighting the evolving environmental aspect of sustainability. Many other national constitutions have also progressively recognized the right to the environment as a human or fundamental right which can be expressed in different terms: the right to a clean environment, to a decent environment or to a sound environment (Committee on the Honouring of Obligations 2022, p. 9), etc. Moreover, it has also been stated that the right to a healthy environment is the most well-known sustainability right (Jakab 2021, p. 348). This trend expresses the traditional categorization of three generations of human rights, used in both national and international human rights discourse and tracing the chronological

evolution of human rights as an echo of the slogan of the French revolution: *Liberté* (freedom, “civil and political” or “first generation” rights), *Egalité* (equality, “socio-economic” or “second generation” rights), and *Fraternité* (solidarity, “collective” or “third generation” rights) (Viljoen, n.d.).

The right to the environment as a human right, economic, financial, and social aspects of constitutional stability, and the perspective of constitutional stability

The rights of the so-called third generation have been clearly reflected in new constitutional provisions relating to the environment and climate change (so-called climate constitutionalism), which were proposed last year in Italy (Abebe *et al.* 2021, p. 29). On February 8, 2022, the Italian Parliament amended the Constitution of the Republic of Italy (adopted in 1947) to expand its environmental protection regime. Two articles of the Constitution of Italy were amended (Articles 9 and 41). Article 9 now states that the republic “protects the environment, biodiversity and ecosystems, also in the interest of future generations.” Additionally, it places a duty on the state to “govern the methods and forms of animal protection.” Article 41 was also amended to prohibit private industry from damaging “health and the environment,” in addition to the existing limits of “security, freedom, and human dignity.” Additionally, Article 41 now empowers the legislature to regulate both public and private activity not only for “social” purposes, but also for “environmental purposes” (Abebe *et al.* 2021, p. 29). Therefore, such amendments to the Constitution of Italy can be treated as substantially contributing to the promotion of sustainable development.

The right of the third generation to the environment is also protected in the Republic of Latvia. The Constitution of the Republic of Latvia of 1922 (revised in 2016) establishes, in Article 115 of Chapter VIII “Fundamental Human Rights,” that: “The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.” In addition, the Preamble of this Constitution states that: “Each individual takes care of oneself, one’s relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature”; and “While acknowledging its equal status in the international community, Latvia protects its national interests and promotes sustainable and democratic development of a united Europe and the world.”

Thus, the Constitution of the Republic of Latvia strengthens the sustainable and democratic development of a united Europe and world, noting specifically the responsibility of today’s society towards future generations, the environment, and nature.

Professor Jelena Bäumlér explains that “the principle of sustainable development provides for two important dimensions: on the one hand, the balancing of the social, economic and ecological spheres; and, on the other, it mandates equity for present and future generations” (Bäumlér 2021). Such an explanation is based on the famous Brundtland Report, which developed the formula that “[s]ustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future” (United Nations 1987). According to Professor

Jelena Bäumlér (2021), “at its heart, sustainable development is a principle of responsibility, requiring taking into consideration the consequences of one’s own actions for others now as well as for all of us tomorrow; it is basically a principle for fairness in light of infinite resources and the earth’s indefinite ability to cope with harmful activities.”

Such a position has also been confirmed by the provisions of the constitutions of other countries composing totally different aspects of sustainability and sustainable development. For example, the Constitution of the Republic of Austria of 1920 (revised in 2013), in its Chapter I “General provisions. European Union,” introduces a constitutional provision securing the sustainable, balanced budgets of the Federation, the Laender, and the municipalities (paragraph 2 of Article 13).

The concept of sustainable development in national constitutions is used not only in an environmental, economic and financial sense, but also from a social perspective. As Professor András Jakab (2021, pp. 348–349) states, many constitutions also introduce provisions concerning the financial protection of families or minors, and they also enshrine the protection of pension issues.

The aspects of constitutional stability and endurance are also crucial for the perception of the concept of sustainability in national constitutions. The European Commission for Democracy through Law (Venice Commission), acting as an advisory body to the Council of Europe on constitutional matters, expresses an opinion on the values of adopting sustainable constitutional text and constitutional continuity, as well as enhancing constitutional stability. For example, in the case of Iceland, the Venice Commission noted that, instead of drafting an entirely new Constitution of Iceland, “the changes could have been done through amendments to the current Constitution. This approach would have the advantage of symbolic continuity and would enhance constitutional stability. Constitutional stability is an important element for the stability of the country as a whole and one should not adopt a new Constitution as a ‘quick fix’ to solve current political problems” (European Commission for Democracy through Law 2015, p. 8).

According to the Venice Commission, national constitutions provide for limitations to constitutional amendments, which are one of the most sensitive issues of any constitution – i.e., unamendable provisions and other special limitations on constitutional amendment. Their overview in comparative constitutional law shows that most constitutions do not provide for unamendable provisions; moreover, nearly all unamendable provisions are substantive, and therefore not related to the procedure for the revision of the Constitution. Some Constitutions do contain “unamendable” (or intangible) provisions, i.e., provisions that are legally precluded from revision (for example, such provisions exist in the Fundamental Law of Germany). “Provisions outlining the power to amend the Constitution are not a legal technicality, but they may heavily influence or determine fundamental political processes. In addition to guaranteeing constitutional and political stability, provisions on qualified procedures for amending the constitution aim at securing broad consensus; this strengthens the legitimacy of the constitution and, thereby, of the political system as a whole” (European Commission for Democracy through Law 2015, pp. 9, 17–20).

In this part of the chapter, the conclusion can be drawn that the different examples of constitutional provisions prove that sustainability is an integrated concept which has very often been treated (or enshrined) together with the concept of sustainable development. Both concepts comprise present and long-term national goals, which are especially visible in protecting the environment and

nature. Moreover, they both oblige today's generation to balance those goals and, more specifically, refer to long-term thinking which is aimed at the future of a united Europe and world. Finally, they both emphasize constitutional stability by, inter alia, adopting sustainable constitutional text and ensuring constitutional continuity.

ENVIRONMENTAL AND OTHER ASPECTS OF SUSTAINABILITY IN THE CASE LAW OF CONSTITUTIONAL JUSTICE INSTITUTIONS

The best example in this field is the landmark ruling in the case of *Neubauer et al. v Germany*, adopted in April 2021 by the Federal Constitutional Court of Germany, in which the Court decided that the provisions of the 2019 State Federal Climate Change Act would be insufficient to meet Germany's climate targets under the 2015 Paris Climate Agreement and, therefore, violated the Basic Law.

The Federal Constitutional Court of Germany agreed with the complainants' argument that the state had "failed to create a legal framework sufficient for reducing greenhouse gases" by placing too high a burden on emissions reductions after 2030 to be feasibly attainable, violating their fundamental right to life and physical integrity enshrined in the Basic Law (see also Press Release No. 31/2021 of the Federal Constitutional Court of 2021). It further found that, by virtue of Article 20a, the state must consider "how environmental burdens are spread out between different generations." The German Government passed an amendment to the Climate Change Act in June 2021 that brought forward the state's climate neutrality goal to 2045, raised the emissions reduction goal from 55 to 65 per cent by 2030 compared with 1990 levels, and set a goal of achieving negative emissions by 2050 (Abebe et al. 2021, p. 30).

It was also argued that "in a decision published on 29 April 2021, the German Federal Constitutional Court joined other Courts around the world in their criticism of governments for failing to take efficient measures against climate change. The Federal Constitutional Court ruled that Germany's Climate Protection Act of December 2019 is not sufficient to meet Germany's obligations. The principle of sustainable development lies at the heart of the judgment's reasoning, requiring political action to take into consideration effects for current and future generations" (Bäumler, 2021).

Additionally, it should also be mentioned that it was argued that "the Court translated the concept of sustainable development into the fundamental rights context and strengthened both the intra-generational as well as the inter-generational relevance of political decision making" (ibid).

Such a position of the Federal Constitutional Court of Germany provides a good legal basis for the obligation of the State to take proper actions for current and future generations, so that efficient measures against climate change are implemented. It also confirms the words of Justice Heinrich Amadeus Wolff from the Federal Constitutional Court of Germany, that "sustainability refers to durability and balance" (Wolff, Vortrag für Riga. Submitted to the International Conference "Sustainability as a Constitutional Value: Future Challenges" which took place on 15–16 of September 2022 in Riga).

On this issue, the decision that the High Council of the Netherlands adopted on 20 December 2019 can be mentioned. In this decision, it was ordered that the Dutch State has to reduce greenhouse gas emissions by 25%, compared to 1990 levels, by the end of 2020. This decision has been treated as a landmark ruling for climate change litigation. It establishes that climate change is a human rights issue, and the protection of human rights is an essential component of a democratic state under the rule of law. This decision also illustrates the environmental aspect of the concept of sustainability and emphasizes that climate change is a human rights issue.

This statement is also clearly reflected in the case law of the Constitutional Court of the Republic of Latvia, which refers to environmental sustainability as well as to the sustainability of democracy and human rights (International Conference “Sustainability as a Constitutional Value: Future Challenges” took place on 15–16 of September 2022 in Riga).

Some insights from the case law of constitutional justice institutions on different above-mentioned aspects of sustainability provide the possibility to treat national constitutions as living instruments capable of reacting to changes in states and societies. Environmental case law which is especially dynamic illustrates this perfectly.

Therefore, on the basis of the analysis provided it is evident that national constitutions embody certain foundations developed by constitutional courts for the sustainable continued existence of these constitutions. As can be seen below, Lithuania is no exception.

ASPECTS OF SUSTAINABILITY IN THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND THE CASE LAW OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

In the context of debates on sustainability as a constitutional principle, it must be clarified that neither the Constitution of the Republic of Lithuania of 1992 (revised, among others, in 2019) nor the Constitutional Court of the Republic of Lithuania treat this concept as a separate constitutional principle.

The Constitutional Court refers to the notion of sustainability in the official constitutional doctrine in relation to the European Union legal acts. For example, the notion of sustainability is related to the rules of the European Union on competition (including in-house transactions) aiming at the sustainable development of Europe. In the rulings of 5 March 2015 on competition in the sphere of waste management services and of 22 May 2022 on in-house transactions concluded by municipalities for the provision of public services, the Constitutional Court emphasized the importance of Paragraph 3 of Article 3 of the Treaty on the European Union, stipulating that: “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.”

As can be seen from the case law of the Constitutional Court, the Constitution of Lithuania of 1992 has been “friendly” in relation to the law of the European Union. Such a position is based

on the essential doctrinal statement developed by the Constitutional Court that membership of the State of Lithuania in the European Union stems from the Constitution itself, from a constitutional act that is a constituent part of the Constitution (under paragraph 2 of said constitutional act, the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania). Moreover, such membership in the official constitutional doctrine has been regarded as a constitutional principle of the State of Lithuania and the State's geopolitical orientation (decision of 16 May 2016 of the Constitutional Court of Republic of Lithuania).

Aspects of the national economy, public finances and guarantees of the social system

The Constitutional Court refers to sustainability in its cases mainly in the context of such aspects as national economy, public finances, and the guarantees of the social system. Sustainability is related to constitutional principles such as those enshrined in Article 52 of the Constitution concerning the social system (while interpreting this Article, the principles of the state's social orientation and social solidarity, as well as the principle of responsible governance, have been developed), emphasizing that, among other things, the sustainable social and economic development of the state means that, through granting privileges to certain persons, the state may not suffer financial depletion (in the context of the right to a pension for service; ruling of 26 January 2016 of the Constitutional Court of Republic of Lithuania). Moreover, social assistance relations may be determined by various factors including, inter alia: the resources of the state and society; material and financial possibilities; the need to ensure the financial stability of the state, economic sustainability, and development (in the context of the right to social housing; ruling of 26 May 2015 of the Constitutional Court of Republic of Lithuania); and unemployment insurance benefits (ruling of 7 February 2013 of the Constitutional Court of Republic of Lithuania).

While the Constitution of the Republic of Lithuania does not *expressis verbis* enshrine the duty (obligation) to balance the state budget, the Constitutional Court – for example, in its ruling of 15 February 2013 on the adoption of the law on the 2009 state budget and related laws – has revealed that, under the Constitution, the drafting of the state budget, which is the plan of state revenue and expenditure (allocations) for a specific period, is the exceptional competence of the Government. Some elements of balancing can be seen from the statement of the Court in this ruling: “all planned state budget revenue and expenditure must be specified sufficiently clearly and by concretely indicating state revenue sources and the estimated sums of funds to be received from those sources, the purpose of the expenditure for financing various spheres, the precise sums of the allocated funds and the subjects to which those funds would be allocated” (ruling of 15 February 2013).

In the ruling of 5 July 2013, the Constitutional Court also acknowledged that “the funds of the budget of the state, as the organization of the entire society and as the organization that is obliged to act in the interests of the entire society, so that social harmony is ensured, must be allocated for the performance of various functions of the state and the provision of public services.”

However, the Court has also stressed that the question of whether certain needs (goals) are provided sufficient or insufficient funds from the state budget is not about the compliance of the

state budget with the Constitution, but is about budget planning, the evaluation of the needs of society and the state, their balance with the possibilities of society and the state, and, consequently, social and economic expediency. These questions are not dealt with by the Constitutional Court, except in some defined cases. These cases are: “where the law on the state budget establishes the legal regulation in which it is clear from the start that one has clearly provided for insufficient or no finance for certain needs (objectives), alongside, by not providing for any other (alternative) sources of finance, which, under the Constitution, may be provided for corresponding needs, and this is clearly in conflict with the welfare of the Nation, the interests of society and the State of Lithuania, and clearly denies the values entrenched in, as well as defended and protected by the Constitution” (ruling of 15 February 2013 of the Constitutional Court of the Republic of Lithuania).

In the context of the status of sustainability as a constitutional principle, it could be added that sustainability could be incorporated into the principle of civil society (which is inseparable from the constitutional principle of a state under the rule of law and the principles of justice and democracy). The content of the latter principle is not widely revealed in the official constitutional doctrine and, thus, as Professor Egidijus Kūris (2002, p. 60) noted, this content is not and probably will not be for some time understood by all in the same manner.

The environmental aspect, including human rights issues and the perspective of constitutional stability

The Constitutional Court has often dealt with the constitutional foundations of the protection of the environment, including various human rights enshrined in the Constitution and, especially, people’s rights to a healthy and clean environment. The Constitution of the Republic of Lithuania, in its Chapter IV “National Economy and Labour,” stipulates that: “The State and each person must protect the environment from harmful influences” (paragraph 3 of Article 53); and “The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature and areas of particular value and shall supervise a sustainable use of natural resources, their restoration and increase. The destruction of land and the underground, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law” (paragraphs 1 and 2 of Article 54).

For example, already in its ruling of 1 June 1998 on compensation for damage done to forests, the Constitutional Court based its position on paragraph 1 of Article 54 of the Constitution, and explained that “in this norm one of the aims of the activities of the State is formulated, i.e., to ensure people’s rights to a healthy and clean environment. The environment, as a rule, is understood as the entirety of interrelated elements (the surface and subsurface of the earth, air, water, soil, flora, fauna, organic and non-organic substances, anthropogenic components), as well as natural and anthropogenic systems uniting them, which function in nature.”

Furthermore, not only the Preamble of the Constitution, with its striving for an open, just, and harmonious civil society and a state under the rule of law, but also the definition of the Constitution reflects an orientation towards current and future generations, including seeking a balance between them. In the official constitutional doctrine, the Constitution of the Republic of Lithuania

is treated as a social contract, designed for current and future generations. In its ruling of 25 May 2004, the Constitutional Court of Republic of Lithuania noted that: “The Constitution reflects a social contract – a democratically accepted obligation by all the citizens of the Republic of Lithuania to the current and future generations to live according to the fundamental rules entrenched in the Constitution and to obey them in order to ensure the legitimacy of the governing power, the legitimacy of its decisions, as well as to ensure human rights and freedoms, so that the concord would exist in the society.”

In connection with the perspective of sustainability, it is worth noting that the Constitution is also characterized by its stability. Having adopted the Constitution, the Lithuanian Nation formed a standardized basis for the common life of its own state community – the civil Nation – and consolidated the state as serving the common good of the whole of society (ruling of 25 May 2004 the Constitutional Court of Republic of Lithuania).

The Constitutional Court has spoken more than once about the value of the stability of the Constitution – the Constitution, as supreme law, must be a stable act. The stability of the Constitution is a feature which, together with its other features (foremost among which is the special, supreme legal force of the Constitution), makes constitutional legal regulation different from ordinary legal regulation established by the means of lower-ranking legal acts. This makes the Constitution different from every other legal act. The stability of the Constitution is a great constitutional value, and the Constitution should thus not be altered if it is not legally necessary. This is guaranteed by the more difficult and more complex procedure for making amendments to the Constitution compared with constitutional and ordinary laws. The stability of the Constitution is one of the preconditions for ensuring the continuity of the state, respect for the constitutional order and law, and the implementation of the aims of the Lithuanian Nation declared in the Constitution and on which the Constitution itself is based (ruling of 28 March 2006 of the Constitutional Court of Republic of Lithuania).

By safeguarding the stability of the Constitution, the Constitutional Court, *inter alia*, safeguards fundamental constitutional values. Article 1 consolidates these values – the independence of the state, democracy, and the republic – which are inseparably interrelated and form the foundation of the state. Moreover, it is not permitted to make any such amendments to the Constitution that would deny them, and they cannot be denied under any circumstances (decision of 19 December 2012 and ruling of 24 January 2014 of the Constitutional Court of Republic of Lithuania). Such a position was formed in the official doctrine on the limitations on the alteration of the Constitution, which was developed in the rulings of the Constitutional Court of 24 January 2014 and 11 July 2014. These fundamental constitutional values are treated as a part of Lithuanian constitutional identity.

Furthermore, as the Constitutional Court has also emphasized, the Constitution is based on unquestionable universal values such as, *inter alia*: respect for law and the rule of law; the limitation on the scope of powers; the duty of state institutions to serve the people and their responsibility for society; justice; striving for an open, just and harmonious society and a state under the rule of law; and the recognition of, and respect for, human rights and freedoms (the Constitutional Court’s rulings of 25 May 2004, 19 August 2006, and 24 September 2009).

The Constitutional Court held in its ruling of 19 August 2006 that one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect universal

constitutional values, as well as human rights and freedoms; otherwise, one would not be able to consider the state as serving the common good of the whole of society (the Constitutional Court's rulings of 19 August 2006 and 24 September 2009).

These above-mentioned elements can be regarded as the most important objectives of every democratic political order and must properly be defended. Such defense has been ensured by the Constitutional Court. For example, as regards the constitutional definition of democracy, it could be stated that the Constitution of the Republic of Lithuania as the foundation of society and the state is sustainable because democracy – alongside the independence of the state, the republic (decision of 19 December 2012 and ruling of 24 January 2014 of the Constitutional Court of Republic of Lithuania) and the innate nature of human rights and freedoms (ruling of 11 July 2014 of the Constitutional Court of Republic of Lithuania) – is one of the fundamental constitutional values which must not be denied under any circumstances (decision of 19 December 2012 and ruling of 24 January 2014 of the Constitutional Court of Republic of Lithuania). As the Constitutional Court has clearly concluded in its case law, the denial of the provisions of the Constitution consolidating these fundamental constitutional values, i.e., including democracy, would amount to the denial of the essence of the Constitution itself, and would put an end to the restored “independent State of Lithuania, founded on democratic principles” as proclaimed by the Act of Independence of Lithuania of 16 February 1918.

CONCLUSIONS

The analysis of the selected provisions of the constitutions of European states confirms the assumption that national constitutions – as well as the corresponding constitutional justice institutions, with their important mission of implementing constitutional justice and protecting constitutional values – could be seen as strong protectors of sustainability, which is a constitutional value. Sustainability as an integrated concept, treated together with the concept of sustainable development, refers to current and long-term national goals in protecting the environment, and emphasizes the need of the proper balance of those goals. Constitutional sustainability can be regarded as being closely related to the person's right to a clean environment, as well as it is reflected in economic, financial, or social constitutional aspects from different perspectives, and, finally, it is evident in the requirement related to constitutional stability and endurance. These aspects could be treated as a minimum basis (standards) for the perception of sustainability, but not as a comprehensive conceptual system.

In the official constitutional doctrine of the Constitutional Court of the Republic of Lithuania the content of sustainability has mainly been expressed while interpreting different constitutional norms and principles, including the duty of the State to protect the environment and, especially, a person's right to a healthy and clean environment; this concept can be identified in the understanding of the Constitution as a social contract, designed for current and future generations, and, moreover, in the official constitutional doctrine on limitations to the alteration of the Constitution. The Constitutional Court, as other European constitutional justice institutions, has the duty to properly balance all constitutional values, including those which are especially protected by their

non-amendable nature under the Constitution, thus ensuring constitutional stability and endurance.

REFERENCES

National Constitutions

- Constitution of the Republic of Austria in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Austria_2013?lang=en [Accessed 4 November 2022].
- Constitution of the Republic of France in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/France_2008?lang=en [Accessed 4 November 2022].
- The Constitution of the Grand Duchy of Luxembourg in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Luxembourg_2009?lang=en [Accessed 4 November 2022].
- Constitution of Greece in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Greece_2008?lang=en [Accessed 4 November 2022].
- Constitution of the Kingdom of Norway in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Norway_2016?lang=en [Accessed 4 November 2022].
- Constitution of the Republic of Latvia in the Constitutional Court of the Republic of Latvia. Available from: <https://www.satv.tiesa.gov.lv/en/2016/02/04/the-constitution-of-the-republic-of-latvia/> [Accessed 4 November 2022].
- Constitution of the Republic of Lithuania in the Parliament of the Republic of Lithuania (Seimas). Available from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21892> (without constitutional amendments of 2019) [Accessed 4 November 2022].
- Constitution of the Republic of Lithuania in the Comparative Constitutions Project (with subsequent amendments). Available from: https://www.constituteproject.org/constitution/Lithuania_2019?lang=en [Accessed 4 November 2022].
- Constitution of the Republic of Poland in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Poland_2009?lang=en [Accessed 4 November 2022].
- Constitution of the Republic of Portugal in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Portugal_2005?lang=en [Accessed 4 November 2022].
- Constitution of the Kingdom of Sweden in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Sweden_2012?lang=en [Accessed 4 November 2022].
- Constitution of Swiss Confederation in the Comparative Constitutions Project. Available from: https://www.constituteproject.org/constitution/Switzerland_2014?lang=en [Accessed 4 November 2022].

Special literature

- ABEBE, A.K., S. BISARYA, W.E. BULMER *et al.*, 2021. *Annual Review of Constitution-building*. Stockholm: International Institute for Democracy and Electoral Assistance. Available from: <https://constitution-net.org/sites/default/files/2022-09/annual-review-of-constitution-building-2021-CBP.pdf> [Accessed 4 November 2022]. <https://doi.org/10.31752/idea.2022.36>.

- BÄUMLER, J., 2021. Sustainable Development Made Justiciable: The German Constitutional Court's Climate Ruling on Intra- and Inter-generational Equity. *EJIL:Talk!*, June 8. Available from: <https://www.ejiltalk.org/sustainable-development-made-justiciable-the-german-constitutional-courts-climate-ruling-on-intra-and-inter-generational-equity/> [Accessed 4 November 2022].
- BOYAR, O., 2021. Constitution and Sustainable Development. *İstanbul Hukuk Mecmuası*, 78 (4). Available from: <https://cdn.istanbul.edu.tr/file/JTA6CLJ8T5/970D03632BAE49D3B333E9292AA3EB4F> [Accessed 4 November 2022].
- COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS BY MEMBER STATES OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT (MONITORING COMMITTEE) AND CURRENT AFFAIRS COMMITTEE, 2022. A Fundamental Right to the Environment: A Matter for Local and Regional Authorities Towards a Green Reading of the European Charter of Local Self-Government. Report CG(2022)43-15final. Available from: <https://rm.coe.int/a-fundamental-right-to-the-environment-a-matter-for-local-and-regional/1680a78e2b> [Accessed 4 November 2022].
- Dabartinės lietuvių kalbos žodynas [Dictionary of Current Lithuanian Language], n.d. Tvarus. *Kalba*. Available from: <https://ekalba.lt/dabartines-lietuviu-kalbos-zodynas/tvarus,%20~~iai,%20~~umas?paieska=tvarus&i=a07bea87-f609-42f1-926d-aab6f24b770f> [Accessed 4 November 2022].
- EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), 2015. Compilation of Venice Commission Opinions Concerning Constitutional Provisions for Amending the Constitution CDL-PI(2015)023. Available from: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)023-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e) [Accessed 4 November 2022].
- GINSBURG, T., & Z. ELKINS, 2008. Ancillary Powers of Constitutional Courts. *Texas Law Review*, 87. Available from: http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2439&context=journal_articles [Accessed 4 November 2022].
- GINSBURG, T., T.C. HALLIDAY & G. SHAFFER, 2019. Constitution-Making as Transnational Legal Ordering. In: G. Shaffer, T. Ginsburg & T. Halliday, eds., *Constitution-Making and Transnational Legal Order*, Cambridge: Cambridge University Press, *UC Irvine School of Law Research Paper No. 2019-35*. Available from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3406279 [Accessed 4 November 2022]. <https://doi.org/10.1017/9781108561792.001>.
- JAKAB, A., 2021. An Emerging Key Concept in European Constitutional Law: Sustainability. *Hungarian Journal of Legal Studies*, 60 (4). Available from: <https://akjournals.com/view/journals/2052/60/4/article-p332.xml> [Accessed 4 November 2022]. <https://doi.org/10.1556/2052.2019.00020>.
- KOZIEŃ, A., 2021. The Principle of Sustainable Development as the Basis for Weighing the Public Interest and Individual Interest in the Scope of the Cultural Heritage Protection Law in the European Union. *Sustainability*, 13 (7), 3985. Available from: <https://www.mdpi.com/2071-1050/13/7/3985/html> [Accessed 4 November 2022]. <https://doi.org/10.3390/su13073985>.
- KŪRIS, E., 2002. Koordinaciniai ir determinaciniai konstituciniai principai (2). *Jurisprudencija*, 27 (19). Available from: <https://ojs.mruni.eu/ojs/jurisprudence/article/download/3618/3410> [Accessed 4 November 2022].
- Programme of International Conference “Sustainability as a Constitutional Value: Future Challenges” (2022) which took place on 15–16 of September in Riga. Available from: <https://www.satv.tiesa.gov>

lv/wp-content/uploads/2022/09/Programme_Conference_ENG_0609.pdf [Accessed 4 November 2022].

UNITED NATIONS, 1987. Report of the World Commission on Environment and Development (1987). Available from: https://www.are.admin.ch/dam/are/en/dokumente/nachhaltige_entwicklung/dokumente/bericht/our_common_futurebrundtlandreport1987.pdf.download.pdf/our_common_futurebrundtlandreport1987.pdf [Accessed 4 November 2022].

VILJOEN, F., n.d. International Human Rights Law: A Short History. *UN Chronicle*. Available from: <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history> [Accessed 4 November 2022].

WOLFF, H.A., 2022. *Vortrag für Riga*. Submitted to the International Conference “Sustainability as a Constitutional Value: Future Challenges” which took place on 15–16 of September in Riga.

ŽILYS, J., 2012. Konstitucija – visuomenės ir valstybės tvarumo pagrindas. *Konstitucinė jurisprudencija*, No. 4. Available from: https://lrkt.lt/data/public/uploads/2015/01/ktb_2012-428.pdf [Accessed 4 November 2022].

ŽILYS, J., 2017. The Essence and Main Features of the Constitution of the Republic of Lithuania of 1992. In: A. Jakubčionis *et al.*, *Lithuanian constitutionalism: the past and the present*. Vilnius: Constitutional Court of the Republic of Lithuania. Available from: <https://lrkt.lt/data/public/uploads/2017/12/lithuanian-constitutionalism.pdf> [Accessed 4 November 2022].

Case law of Constitutional Courts

Decision in case No. 43/2009, Constitutional Court (Lithuania), 19 December 2012.

Decision in case No. 13/2000-14/2000-20/2000-21/2000-22/2000-25/2000-31/2000-35/2000-39/2000-8/01-31/01, 04/04, Constitutional Court (Lithuania), 16 May 2016.

Decision in case No. 19/00135, Supreme Court (Netherlands), 20 December 2019.

Press Release No. 31/2021, Federal Constitutional Court (Germany), 29 April 2021.

Ruling in case No. 24/04, Constitutional Court (Lithuania), 25 May 2004.

Ruling in case No. 33/03, Constitutional Court (Lithuania), 28 March 2006.

Ruling in case No. 23/04, Constitutional Court (Lithuania), 19 August 2006.

Ruling in case No. 16/2009, Constitutional Court (Lithuania), 24 September 2009.

Ruling in case No. 42/2009, Constitutional Court (Lithuania), 7 February 2013.

Ruling in case No. 28/2009, Constitutional Court (Lithuania), 15 February 2013.

Ruling in case No. 22/2013, Constitutional Court (Lithuania), 24 January 2014.

Ruling in case No. 16/2014-29/2014, Constitutional Court (Lithuania), 11 July 2014.

Ruling in case No. 44/2011, Constitutional Court (Lithuania), 5 March 2015.

Ruling in case No. 7/2013, Constitutional Court (Lithuania), 26 May 2015.

Ruling in case No. 39/2014-2/2015, Constitutional Court (Lithuania), 26 January 2016.

Ruling in case No. 3/2021, Constitutional Court (Lithuania), 22 May 2022.