



## CONSTITUTIONAL REVIEW IN LATVIA AND LITHUANIA: A COMPARATIVE ANALYSIS

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**Abstract.** The article provides an overview of the essential features of the Latvian and Lithuanian constitutional review models. In light of the fact that both countries only restored their independence at the end of the 20<sup>th</sup> century after the collapse of the Soviet Union, the institution of constitutional review is playing a very important role in implementing the main values of democratic society and the rule of law. With the help of comparative analysis, the authors present the historical background of establishing both constitutional courts and the main regulation of the constitutional review bodies; they discuss the appointment, independence and inviolability of justices, and uncover the main aspects of constitutional litigation. At the end the article, the authors conclude that despite several differences, the constitutional review systems in Latvia and Lithuania have a lot in common. Both systems are developing rapidly and serving as effective instruments for preserving supremacy of law in society, which should be evaluated as an important achievement in the circumstances of constitutional crises that several European countries are facing.

**Keywords:** Constitutional Review, Constitutional Court, Constitution, Rule of Law, Justice

### Introduction

Constitutional review is one of the most important procedures in the governance of a state. It ensures the supremacy of the constitution and guarantees implementation of the fundamental principles of justice, equity and rule of law. As stated by Tom Ginsburg and Mila Versteeg, only democracies – regimes that may genuinely want to constrain themselves by constitutional means – are susceptible to following international norms regarding the adoption of constitutional review (2014, p. 2). This leads to the idea that constitutional review strengthens democracy and helps to secure its values.

After restoring their independence at the end of the 20<sup>th</sup> century, the two Baltic countries of Latvia and Lithuania both decided to follow the European model of centralized constitutional review and established specialized bodies – constitutional courts. These institutions gradually developed into irreplaceable authoritative bodies in the legal and political realm, securing constitutional order in the countries and contributing significantly for implementing the system of checks and balances. Nowadays, when several European countries are facing constitutional crises, good practice like this should be analyzed and appreciated.

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The aim of this article is to provide a comparative analysis of constitutional review in the Republic of Lithuania and the Republic of Latvia. In order to achieve this, the first part of the article concentrates on the historical background behind the creation of a constitutional review system in these two countries. The second and third chapters provide a short presentation of the main elements of the legal status of the constitutional court in each country. The main focus is on the procedure for the appointment of justices, their term of office and status, and the independence of constitutional court activities. The authority or competence of the constitutional courts as well as who has the right to apply to them are also analyzed in more detail. The last part provides a comparison of the two models of constitutional review presented. The article ends with brief conclusions that outline the main findings. The research was carried out using scientific literature analysis, document analysis and the comparative method.

It should be made clear that constitutional review is not a new area in legal science. In fact, it is probably one of the most widely discussed institutions in constitutional law (e.g., Cappelletti, M., 1971; Landfried, C., 1988; Kagan, R. A., 2000; Rogowski, R., Gawron, Th. 2002). The authors of this article do not aspire to carry out an in-depth analysis of specific problems in the field; this research is meant more for introducing the features of constitutional review in Latvia and Lithuania to the international community. The article should also be of interest to constitutional law researchers in both countries. The lack of scientific literature in English often creates obstacles for comparatists, and this article aims to fill this gap and to encourage the international academic audience to draw on the experience of the Baltic States.

## 1. Historical background

Constitutional review, as one of the most important guarantees of the supremacy of law, has been an integral part of the state governance system in most countries since the 19<sup>th</sup> century. In younger democracies such as Lithuania and Latvia, these functions only started to be implemented in the late 20<sup>th</sup> century. In this chapter, the historical background of the existing constitutional review systems in Lithuania and Latvia will be presented.

Despite the variety of constitutional review models that are used around the world, one of the most common definitions of constitutional review is the understanding of it as a power of the court “to set aside or strike legislation for incompatibility with the national constitution.” (Ginsburg, T. and Versteeg, M., 2014, p. 4) Still, the specifics of the courts responsible for constitutional review differ. In scientific literature, decentralized and centralized constitutional reviews are named as the most general and well-known models. The American model of constitutional review is characterized by decentralized review exercised at every level of the judiciary, with the Supreme Court at the top. “In contrast with this American model, a growing number of countries today have centralized constitutional review power in a specialized constitutional court, while denying the rest of the judiciary the power to void legislation.” (Ginsburg, T. and Versteeg, M., 2014, p. 5) The majority of European Union countries have chosen the centralized model of constitutional review originating from the ideas of Austrian legal theorist Hans Kelsen (1928). The idea of the review of the constitutionality of laws and other legal acts in Lithuania and Latvia was raised as far back at the first half of the 20<sup>th</sup> century. However, no special institution for constitutional review was established at that time in either Latvia or Lithuania. After the collapse of the Soviet regime and the restoration of independence, the functioning of a law-based state looked unrealistic without the existence of an institution of constitutional control or the constitutional legal proceedings that are a significant component thereof.

In the case of Lithuania, legal scientists and well-known politicians began discussing the need for establishing a body of constitutional review or granting the courts this competence in the early 20<sup>th</sup> century. One of the most renowned scholars of that time – Mykolas Romeris – raised this idea in his book *At the Frontiers of Constitutional and Judicial Law* (1931).<sup>3</sup> Certain attempts to introduce constitutional review into state governing can be noted in the 1938 Constitution of the Republic of Lithuania that was in force before World War II. Article 106 stipulated that “laws that are contrary to the Constitution shall have no force”; however, no institution of constitutional control was established,

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<sup>3</sup> For more information: (Andriulis, V. 1995); (Žilys, J., 2001).

so no review of the constitutionality of laws or other legal acts was carried out. World War II and the dramatic changes that ensued prevented this idea from being developed.

The concept of constitutional review was implemented for the first time in the Republic of Lithuania in the Constitution of 1992. The new constitution, which was adopted in a referendum on 25 October 1992, includes a separate chapter (Chapter VIII) dedicated to the Constitutional Court. In fulfilling the constitutional regulations, the Seimas adopted the Law on the Constitutional Court on 3 February 1993. One might note that while drafting the constitution, the independent body of centralized constitutional review – the Constitutional Court – was not the subject of a long discussion. The decision was grounded by the fact that this model of control was effectively in place in most European countries.

In Latvia, the idea of the necessity of an institution that could realize constitutional control goes back to the 1930s, when Saeima deputy Pauls Šīmanis mentioned it in his article “Eight Years of the Satversme of Latvia” (1930). Supporting the idea, Saeima deputy Hermanis Štegmanis submitted a motion on 8 May 1934 to supplement the Satversme (the Constitution of Latvia) with Article 86,<sup>4</sup> envisaging the creation of a specific state court entrusted with examining the compliance of acts passed by the President of Latvia and the Cabinet of Ministers with the Satversme (Akmentiņš, R., 1934). Interestingly, these two deputies were both of German descent, and were both part of the Baltic German faction in the Saeima. Unfortunately they did not receive the required majority. The subsequent developments in Latvia demonstrated the relevance of the motion.

As democracy was being renewed in Latvia, there was no doubt that the creation of a constitutional court was necessary. Compared with the quick decision made in Lithuania regarding the model of constitutional review, the decision to establish a constitutional court in Latvia took six years. Despite item 6 of the 4 May 1990 Declaration on the Renewal of the Independence of the Republic of Latvia which established the necessity of the constitutional court, it was only on 5 June 1996 that the Saeima adopted an amendment to the Satversme which provided for the legal constitutional status of the Constitutional Court and the Constitutional Court Law. Item 6 of the 4 May 1990 Declaration on the Renewal of the Independence of the Republic of Latvia stated that “during the transition period, to consider the possibility to implement those constitutional and other legislative acts of the Latvian SSR, which are in effect in Latvia at the moment of adoption of this decision, insofar as they do not contradict Articles 1, 2, 3 and 6 of the Republic of Latvia Satversme (Constitution). Conflicts of implementation of legislative acts shall be resolved by the Constitutional Court of the Republic of Latvia.”

Initially, the Latvian legislator (the Supreme Council) was influenced by the thinking of the American and Nordic countries and held that a separate independent institution – a constitutional court – was not necessary. The Law on Judicial Power was passed in December 1992 and called for the creation of the Constitutional Supervision Chamber within the Supreme Court. However, this never came to fruition.

After becoming more familiar with the experience of European countries that had quickly created democratic systems following totalitarian regimes, the Latvian legislator concluded that there was in fact a need for a separate institution – the Constitutional Court.

In February 1994, the Cabinet of Ministers approved this, and the draft law was submitted to the Saeima in March. For various political reasons, it took quite some time for the Saeima to debate the draft law on the Constitutional Court. When refining the draft law at the 5<sup>th</sup> Saeima and then later at the 6<sup>th</sup> Saeima, the Saeima Legal Committee improved it, and amendments to the Satversme were also worked out. It must be mentioned that in developing the draft law, the Saeima Legal Committee studied the constitutional court norms incorporated into the laws of different countries and tried to apply the best practice most suitable for Latvia. Both laws were only passed in June 1996.

In summary, Latvia and Lithuania both decided to apply a centralized model of constitutional review and established constitutional courts to this end after the restoration of their independence in the late 20<sup>th</sup> century.

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<sup>4</sup> For more information: (Endziņš A., 2002); (Commentary on the Constitution of the Republic of Latvia, 2013).

## 2. The Status of the Constitutional Court of the Republic of Lithuania

As already mentioned above, the Constitution of the Republic of Lithuania (1992) establishes the so-called *European (continental)* model of constitutional review, wherein the compliance of laws and other legal acts with the constitution is adjudicated by a special institution of constitutional review. In Lithuania, this function is exclusively performed by the Constitutional Court; thus, the Lithuanian constitutional review system is *centralized*. The review carried out of the constitutionality of laws and other legal acts in Lithuania is *abstract*. This review is *a posteriori* and has a repressive nature, since laws and other legal acts that contradict the Constitution are removed from the legal system. The status and activities of the Constitutional Court are regulated by the Constitution, the Law on the Constitutional Court (1993), as well as the Rules of the Constitutional Court approved by the Constitutional Court (2015).<sup>5</sup>

The Constitution includes two individual chapters devoted to institutions of judicial authority: “Courts” (Chapter IX) and “The Constitutional Court” (Chapter VIII). The fact that the Constitution contains a separate chapter on the Constitutional Court and that the Constitutional Court is not included in the chapter on courts does not mean that the Constitutional Court is not a court.<sup>6</sup> In its ruling of 28 March 2006, the Constitutional Court held that the Constitution lays down three independent systems of courts: the Constitutional Court; courts of general jurisdiction<sup>7</sup> and specialized courts.<sup>8</sup> The Constitutional Court is the institution of constitutional justice – it “administers constitutional justice and guarantees the supremacy of the Constitution in the legal system and constitutional legitimacy.” (Ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006) The Constitutional Court is an autonomous and independent court. Although the Constitution provides for court systems that are separate and independent in terms of organization and administration, this does not mean that they are not interrelated: the Constitutional Court has held that general jurisdiction and administrative courts, in the course of considering cases assigned to them, may not interpret or apply the provisions of the Constitution in a way that is not consistent with the interpretation provided by the Constitutional Court (Ruling of the Constitutional Court of the Republic of Lithuania of 6 June 2006).

Article 103 of the Constitution of the Republic of Lithuania (1992) provides that the Constitutional Court consists of nine justices, each appointed for a single nine-year term of office. Every three years, one-third of the Constitutional Court is reconstituted. Citizens of the Republic of Lithuania with an impeccable reputation, higher education in law and at least 10 years of experience in the field of law or in a branch of science and education as a lawyer may be appointed as justices of the Constitutional Court. Constitutional Court candidates are submitted by the President of the Republic, the Speaker of the Seimas and the President of the Supreme Court, and they are appointed as justices by the Seimas. The Seimas appoints the President of the Constitutional Court from among its justices upon submission by the President of the Republic. Neither the Constitution nor the Law on the Constitutional Court defines the term for which the President of the Constitutional Court is appointed. A constitutional tradition has evolved that the term of office of the President of the Constitutional Court coincides with his/her term as a justice of the Constitutional Court. Before taking office, the justices of the Constitutional Court take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

While in office, the justices of the Constitutional Court must be independent of any other state institution, person or organization and follow only the Constitution of the Republic of Lithuania (Article 104(1) of the Constitution of the Republic of Lithuania, 1992). Interference by any institutions of state power and governance, members of the Seimas

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<sup>5</sup> Article 3 of the Law on the Constitutional Court of the Republic of Lithuania (1993) provides that the Rules of the Constitutional Court regulate internal questions of the Constitutional Court, the rules of professional conduct of the justices, the structure of the apparatus of the Constitutional Court, its clerical work and other issues. The Rules of the Constitutional Court of the Republic of Lithuania were approved by decision of the Constitutional Court on 31 August 2015.

<sup>6</sup> Legal scholarly literature indicates that although the Constitutional Court is not an organic part of the system of ordinary courts, it still performs special functions in relation to the exercise of constitutional jurisdiction. For example, see, (Lapinskas, K., 1995).

<sup>7</sup> Article 111(1) of the Constitution of the Republic of Lithuania (1992) prescribes that the system of courts of general jurisdiction is comprised of the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts and local courts.

<sup>8</sup> Article 111(2) of the Constitution of the Republic of Lithuania (1992) provides that specialized courts may be established according to law for the consideration of administrative, labor, family and cases of other categories. At present, there is only one type of specialized courts formed and functioning in Lithuania, i.e. administrative courts, which adjudicate disputes arising from administrative legal relations.

or other officials, political parties, political or public organizations or citizens with the activities of a justice of the Constitutional Court or a court is prohibited and leads to liability provided for by law (Article 114(1) of the Constitution). Article 114(2) of the Constitution stipulates that the justices of the Constitutional Court “may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic.”

Under the Constitution, the justices of the Constitutional Court possess inviolability of the person and procedural independence and are provided with material and social guarantees.<sup>9</sup> The inviolability of the term of office of the justices of the Constitutional Court is an important guarantee of their independence. The powers of a justice of the Constitutional Court cease only on the specific grounds provided for in the Constitution: (1) upon the expiry of the term of powers; (2) upon his/her death; (3) upon his/her resignation; (4) when he/she is incapable of holding office for health reasons; (5) when the Seimas removes him/her from office by impeachment. The list of constitutionally established grounds for cessation of the powers of a justice of the Constitutional Court is exhaustive (complete), and may not be extended by means of laws.

Like all judges, justices of the Constitutional Court “may not hold any other elective or appointive office, or work in any business, commercial or other private establishments or enterprises, or receive any remuneration other than the remuneration established for judges and payment for educational or creative activities.”<sup>10</sup> Nor may they participate in the activities of political parties or other political organizations (Article 113(2) of the Constitution).

Article 102(1) of the Constitution provides that the Constitutional Court shall decide whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws. The Constitutional Court (Ruling of the Constitutional Court of the Republic of Lithuania of 5 September 2012) has held that Article 102 of the Constitution, which establishes the competence of the Constitutional Court, may not just be interpreted literally. The Constitution not only provides for laws, but also for other forms of legal acts – for example, constitutional laws (Article 69(3) of the Constitution), whose legal force is higher than that of ordinary laws but lower than that of the Constitution. Another specific form of a legal act is the Statute of the Seimas (Article 76 of the Constitution), which has the force of a law but is amended by the Statute of the Seimas rather than by legal means. The principles established in the Constitution such as the supremacy of the Constitution and a State under the rule of law imply, *inter alia*, the hierarchy of legal acts, the essence of which is that no lower-ranking legal act may be in conflict with a higher-ranking legal act and, primarily, with the Constitution. Thus, the Constitutional Court has the exclusive competence to decide whether any act (or part thereof) issued by the Seimas, the President of the Republic or the Government or adopted by referendum is in conflict with any higher-ranking legal act and, primarily, with the Constitution, i.e. whether any constitutional law<sup>11</sup> (or part thereof) is in conflict with the Constitution; whether any law (or part thereof) or the Statute of the Seimas<sup>12</sup> (or part

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<sup>9</sup> The Constitutional Court of the Republic of Lithuania has held that it is impermissible to reduce the remuneration of the justices of the Constitutional Court except in the event of a difficult economic and financial situation in the country due to which funds allocated to all state institutions are insufficient. However, even in these cases, reductions may not be limited to the remuneration of the justices of the Constitutional Court but must be applied to the remuneration of all state officials and servants; the reduction of remuneration must be proportionate; and the remuneration of judges may be only reduced by legal means and on a temporary basis until the economic and financial situation in the country improves. In its ruling of 1 July 2013, the Constitutional Court recognized that the law providing for reduced coefficients of the basic (positional) salary of judges, insofar as, under its legal regulation, the remuneration of judges had been reduced disproportionately, was in conflict with Article 29(1), the provision of Article 48(1) – “everyone <...> shall have the right <...> to receive fair pay for work” – and Article 109(2) of the Constitution of the Republic of Lithuania, as well as with the constitutional principle of a State under the rule of law.

<sup>10</sup> The Constitution of the Republic of Lithuania prohibits the members of the Seimas, the President of the Republic and the members of the Government from engaging in educational activity, but it permits such an activity for judges.

<sup>11</sup> The Constitution of the Republic of Lithuania (1992) provides for several types of constitutional laws. Article 150 of the Constitution specifies the constitutional laws (constitutional acts) that form a constituent part of the Constitution; these constitutional laws have the same legal force as the Constitution, i.e. they have supreme legal force. Constitutional laws of a different type are referred to in Articles 47(3) and 69(3) of the Constitution: these constitutional laws rank higher than ordinary laws but lower than the Constitution. The constitutional laws referred to in Articles 47(3) and 69(3) of the Constitution may not contradict the Constitution.

<sup>12</sup> Article 76 of the Constitution of the Republic of Lithuania (1992) stipulates that the structure of the Seimas and the procedure for the activities of the Seimas are established by the Statute of the Seimas, as well as that the Statute of the Seimas has the force of a law. Although the Statute

thereof) is in conflict with constitutional laws or the Constitution; whether any sub-statutory legal act (or part thereof) of the Seimas<sup>13</sup> is in conflict with laws, the Statute of the Seimas, constitutional laws or the Constitution; whether any act (or part thereof) of the President of the Republic<sup>14</sup> is in conflict with laws, constitutional laws or the Constitution; and whether any act (or part thereof) of the Government<sup>15</sup> is in conflict with laws, constitutional laws or the Constitution (Decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006).

According to the Constitution, the Constitutional Court has the power to investigate the constitutionality of a legal gap (*legislative omission*) in a law or other legal act, since said is prohibited by the Constitution. A *legislative omission* means that the legal regulation of particular public relations *is not established*, either explicitly or implicitly, in a particular legal act (or part thereof) or any other legal acts in general, even though there is a need for the legal regulation of these public relations, and this legal regulation, in view of the imperatives stemming from the Constitution, such as the consistency and non-contradiction of the legal system, as well as in light of the content of the public relations concerned, must be established precisely in that particular legal act (or part thereof), since this is required by one of the higher-ranking legal acts, *inter alia*, the Constitution itself (Decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006).

The Constitutional Court is also vested with the powers to investigate whether a law adopted by the Seimas or by referendum on amending the Constitution is in conflict with the Constitution. Although such powers of the Constitutional Court are not *expressis verbis* stipulated in the Constitution, the Constitutional Court has regarded them as deriving from the integrity of the Constitution and from the entirety of the constitutional regulation. In its rulings of 24 January 2014 and 11 July 2014 (Ruling of the Constitutional Court of the Republic of Lithuania of 24 January 2014; Ruling of the Constitutional Court of the Republic of Lithuania of 11 July 2014), the Constitutional Court pointed out that amendments to the Constitution change the content of the provisions of the Constitution and the interrelations between these provisions; also, the balance of values consolidated in the Constitution might be changed; amendments of certain provisions of the Constitution may cause changes in the content of other provisions of the Constitution and the content of the overall constitutional legal regulation. No amendments to the Constitution may violate the harmony of the provisions of the Constitution or the harmony of values entrenched in these provisions. The Constitution establishes the procedural and substantive requirements for amending the Constitution. *Substantive limitations* on amending the Constitution mean that the Constitution gives rise to certain *requirements for the content of constitutional amendments*, and that non-compliance with these limitations constitutes a ground to declare a particular amendment to the Constitution to be in conflict with the Constitution. As held by the Constitutional Court, it is not permitted to introduce any such amendments to the Constitution that would deny the constitutionally established fundamental values that lay the foundation for the life of society and the state and the foundation for the Constitution itself: the independence of the state, democracy, the republic, the innate nature of human rights and freedoms, the rule of law, justice, etc. Neither is it permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania assumed in relation to its membership in the European Union as long as the Constitutional Act on Membership of the Republic of Lithuania in the European Union is not amended by referendum. No amendments may be made to the Constitution that would deny other international obligations of the Republic of Lithuania, either, as long as these international obligations have not been renounced in accordance with international legal norms. No provisions of the Constitution or values enshrined therein may be placed in contradiction to one another by any amendments to the Constitution. More substantive limitations on amending the

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of the Seimas has the force of a law, nevertheless, it has no form of a law. The Statute of the Seimas is a legal act of a specific form. Regardless of the fact that the Statute of the Seimas has the force of a law, it can be amended not by means of a law but by the Statute of the Seimas.

<sup>13</sup> Substatutory legal acts passed by the Seimas have lower legal force than laws and the Statute of the Seimas. The substatutory legal acts of the Seimas include resolutions, declarations, statements and other acts adopted by the Seimas.

<sup>14</sup> Article 85 of the Constitution of the Republic of Lithuania provides that the President of the Republic, while implementing the powers vested in him/her, issues acts-decrees. The Constitutional Court has noted that the President of the Republic issues decrees when he/she implements the powers vested in him/her as the Head of State. In cases concerning other issues, the President of the Republic may issue legal acts of another form as, for example, ordinances.

<sup>15</sup> Article 95 of the Constitution of the Republic of Lithuania prescribes that the Government decides the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government. The Government may adopt decisions and resolutions on issues provided for in the Constitution. The Constitution does not prevent the Government from adopting legal acts of another form such as, for example, declarations, statements, etc.

Constitution are identified in the rulings of the Constitutional Court.<sup>16</sup> The Constitutional Court has emphasized that substantive limitations on amending the Constitution are equally applicable not only in cases where amendments to the Constitution are made by the Seimas but also where the Constitution is amended in a referendum by the nation. Under Article 110 of the Constitution, judges may not apply any laws that are in conflict with the Constitution. In cases where there are grounds to believe that a law or other legal act that should be applied in a specific case is in conflict with the Constitution, the judge must suspend consideration of the case and apply to the Constitutional Court with a request to decide whether the law or other legal act in question is in compliance with the Constitution. The Constitutional Court, which held upon its inception that according to the Constitution, it only has the power to decide on the constitutionality of the laws and other legal acts that are *in force* (Decision of the Constitutional Court of the Republic of Lithuania of 25 January 1995), subsequently elaborated the constitutional doctrine by stating that it has the power to decide on the constitutionality not only of the laws and legal acts that are in force, but also of laws and legal acts that are *no longer in force* (Ruling of the Constitutional Court of the Republic of Lithuania of 13 November 2007). Further developing this constitutional doctrine, the Constitutional Court held that it has the power to investigate the constitutionality not only of laws and legal acts that are either in force or no longer in force, but that it also has the power to investigate the constitutionality of laws and other legal acts that have already been adopted, signed and promulgated but have *not yet entered into force*, irrespective of the established date of the entry into force of said laws or other legal acts or parts thereof (Ruling of the Constitutional Court of the Republic of Lithuania of 19 September 2002). The Constitutional Court is granted the power to investigate the compliance of legal acts with the Constitution irrespective of whether these acts are individual or normative, whether they are of one-off (*ad hoc*) application or permanent validity, or whether these legal acts are secret, confidential, or otherwise classified (Ruling of the Constitutional Court of the Republic of Lithuania of 5 April 2000). The fact that all provisions of the Constitution (norms and principles) are interrelated both formally and in terms of their content, i.e. they form a certain harmonious system of values, means that an investigation into whether a law or any other legal act is in conflict with any articles of the Constitution requires the review of compliance of the contested legal act with the entire Constitution and not just the article of the Constitution indicated by the applicant.

The Constitutional Court does not investigate whether a legal act is in conflict with another legal act of the same legal force (Decision of the Constitutional Court of the Republic of Lithuania of 3 February 2004). For instance, the Constitutional Court does not review the compliance of a law with another law. In cases where a law is not aligned with another law, or where there are certain inconsistencies among laws, or it is unclear how a law must be applied, making a decision on which law must be applied and how is the prerogative of the subject applying the given law. The Constitutional Court does not interpret how a law or other legal act must be applied (Ruling of the Constitutional Court of the Republic of Lithuania of 18 April 2012), or how a ruling of the Constitutional Court must be implemented (Decision of the Constitutional Court of the Republic of Lithuania of 26 February 2014).

Article 105(3) of the Constitution provides that the Constitutional Court *presents conclusions* on: (1) whether there were violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas; (2) whether the state of health of the President of the Republic allows him/her to continue to hold office; (3) whether the international treaties of the Republic of Lithuania are in conflict with the Constitution; (4) whether the concrete actions of members of the Seimas or state officials against whom an impeachment case has been instituted are in conflict with the Constitution. Under Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues set out in the third paragraph of Article 105 of the Constitution. While interpreting the content of this provision, the Constitutional Court has stated that,

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<sup>16</sup> For instance, in its rulings of 24 January 2014 and 11 July 2014, the Constitutional Court of the Republic of Lithuania indicated that, without correspondingly amending, by referendum, the provisions of Chapter I (“The State of Lithuania”) and Chapter XIV (“The Alteration of the Constitution”) of the Constitution, it is not permitted to introduce any such amendments to the Constitution that would lay down a constitutional legal regulation contradicting the said provisions of Chapters I and XIV of the Constitution. All amendments to the Constitution (both those that can be adopted by referendum and those that can be made by the Seimas) must be appropriately formulated in terms of language: they must be clear, precise, understandable, logical, unambiguous, etc. Amendments to the Constitution may not be incomprehensible in terms of their content. No amendments can be made to the Constitution that would establish an absurd and obviously irrational legal regulation. In addition, amendments to the Constitution must be set out in those articles of the Constitution that regulate the relevant relations, since otherwise the systematicity of the arrangement of the provisions of the Constitution would be impaired.

vested with the powers to conclusively decide on the issues specified in the third paragraph of Article 105 of the Constitution, the Seimas is not permitted to deny or question the conclusions of the Constitutional Court. The conclusions of the Constitutional Court are final and not subject to appeal; the Seimas may not change them. For example, if, in an impeachment case, the Constitutional Court was to find that the President of the Republic has not violated the Constitution and has not breached the oath of office, the Seimas would not be able to continue the impeachment proceedings, and the proceedings would have to be terminated. Likewise, if the Constitutional Court was to find that the President of the Republic being impeached has grossly violated the Constitution and has breached the oath of office, the Seimas, on the basis of the conclusion of the Constitutional Court, would have to decide whether the President of the Republic must be removed from office or not. The President of the Republic would in this case be removed from office by a three-fifths majority vote of all the members of the Seimas (Article 74 of the Constitution). The situation would be the same if the Seimas, based on the conclusions of the Constitutional Court, would have to conclusively decide on other issues specified in Article 105(3) of the Constitution.

The Constitution does not *expressis verbis* provide that the Constitutional Court interprets the Constitution; however, this does not mean that the Constitutional Court, purportedly, has no such powers. The powers of the Constitutional Court to interpret the Constitution, which also entail the formulation of the constitutional doctrine, derive from Articles 102 and 105 of the Constitution, under which the Constitutional Court decides whether laws, as well as the acts of the President of the Republic and the Government, are in conflict with the Constitution. It is obvious that without revealing the content of the provisions of the Constitution, it would be impossible to decide whether the disputed legal act complies with the Constitution. The interpretation of the Constitution is an *inherent feature* of all institutions of constitutional review, including the Constitutional Court of Lithuania, regardless of whether or not it is directly established in the Constitution (Mesonis, G., 2010, pp. 82–83). The text of the Constitution is just a starting point for revealing the true meaning and content of the constitutional regulation; the real center of gravity – once the Constitution is understood as the normative reality – is moved, by means of constitutional justice, from the text of the Constitution to constitutional jurisprudence (Jarašiūnas, E., 2006, p. 24). The real Constitution is what the Constitutional Court says it is. The Constitution may not be interpreted on the basis of laws and other legal acts, because doing so would refute the supremacy of the Constitution in the legal system. The Constitution should be interpreted only on its own grounds, based on its internal logic and connections between its norms and principles. The true content of the Constitution may be revealed only through various methods of interpretation of law (verbal, systemic, logical, teleological, historical, based on the general principles of law, etc.) and in accordance with the provision of Article 6 of the Constitution that the Constitution is an integral act (Ruling of the Constitutional Court of the Republic of Lithuania of 25 May 2004). The Constitution contains both *explicit* and *implicit* legal regulation, and it comprises not only the letter of the law, but also the spirit. In the legal system, the Constitution can be identified not by a horizontal, but rather – by a vertical cross-cutting differentiation of the legal system: only in this respect, the Constitution, as the supreme law, can provide the basis for other branches of law and serve as the benchmark for measuring the legality of all other legal norms (Kūris, E. 2002, p. 5).

Under Article 106 of the Constitution, the right to apply to the Constitutional Court concerning the constitutionality of a legal act is granted to: (1) the Seimas *in corpore* or a group of at least one-fifth of all members of the Seimas, the Government, and the courts for cases concerning the compliance of laws with the Constitution; (2) the Seimas *in corpore* or a group of at least one-fifth of all members of the Seimas, and the courts for cases concerning the compliance of the acts of the President of the Republic; and (3) the Seimas *in corpore* or a group of at least one-fifth of all members of the Seimas, the President of the Republic, and the courts for cases concerning the compliance of the acts of the Government. Thus, the President of the Republic has no power to contest the compliance of laws with the Constitution, whereas the Government may not apply to the Constitutional Court concerning the compliance of the decrees of the President of the Republic with the Constitution. The right to file an application with the Constitutional Court concerning the constitutionality of laws and other legal acts is granted to all courts. An application to the Constitutional Court does not suspend the validity of the given law or legal act. However, in cases where an application concerning the constitutionality of a legal act is filed by the Seimas *in corpore* or the President of the Republic and the Constitutional Court adopts a decision to consider the application, the validity of the contested legal



act is suspended (Article 106(4) of the Constitution). If the Constitutional Court thereafter decides that the contested legal act is not in conflict with the Constitution, the validity of the said act is restored.<sup>17</sup>

The Constitution does not provide for the so-called individual complaint, which enables a natural person to directly apply to the Constitutional Court concerning the compliance of a law or another legal act with the Constitution.<sup>18</sup>

Article 107 of the Constitution stipulates that a law (or part thereof) or other act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution. This means that any legal act (or part thereof) passed by the Seimas, the President of the Republic or the Government or adopted by referendum that is ruled to be in conflict with any higher-ranking legal act, *inter alia*, (and primarily) with the Constitution, is removed from the legal system of Lithuania for good and will never be applied (Ruling of the Constitutional Court of the Republic of Lithuania of 28 March 2006). A ruling of the Constitutional Court declaring a law or other legal act (or part thereof) to be unconstitutional may not be surmounted by the Seimas, the Government or the President of the Republic by the repeated enactment of an equivalent law or legal act (or part thereof) (Ruling of the Constitutional Court of the Republic of Lithuania of 24 December 2002). After the Constitutional Court formulates the official concept of a certain constitutional provision, all law-making institutions, i.e. the Seimas, the Government and the President of the Republic, as well as all law-applying institutions, including courts, in adopting their respective legal acts and putting them into practice, must adhere to the concept of the provisions of the Constitution formulated by the Constitutional Court precisely, and may not interpret the provisions of the Constitution differently from the interpretation provided by the Constitutional Court (Ruling of the Constitutional Court of the Republic of Lithuania of 30 May 2003). Thus, acts of the Constitutional Court (rulings, conclusions, decisions) in which an official concept of the provisions of the Constitution is formulated have, in principle, the same force as the Constitution (Stačiokas, S., 2006, p. 317). Rulings, conclusions and decisions of the Constitutional Court that provide an interpretation of the provisions of the Constitution bear not only interpretative weight in relation to the Constitution; they also have reformative weight in relation to the particular legal regulation, as well as law-making weight in relation to law.<sup>19</sup>

The rulings of the Constitutional Court have a prospective effect (*ex nunc*). The Constitutional Court has the power to set the date when its rulings are to be published, i.e. to postpone the official publication of its rulings. Said postponements are meant to avoid certain effects unfavorable to society and the state or to the rights and freedoms of the people which might emerge if the relevant rulings of the Constitutional Court were officially published immediately after their public pronouncement at the hearing of the Constitutional Court and became effective on the day of their official publication (Ruling of the Constitutional Court of the Republic of Lithuania of 23 August 2005).

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<sup>17</sup> Article 26 of the Law on the Constitutional Court of the Republic of Lithuania establishes that if the Constitutional Court adopts a decision to accept an application for consideration, the President of the Constitutional Court must immediately publish an announcement of such on the website of the Constitutional Court and send an announcement to the Manager of the Register of Legal Acts. In this announcement, the President of the Constitutional Court must state the exact title of the act in question and the date of adoption thereof, and that, in accordance with Article 106 of the Constitution of the Republic of Lithuania, *the validity of the act concerned is suspended from the day of the official publication of this announcement in the Register of Legal Acts until the ruling of the Constitution Court concerning this case is published*. The announcement of the President of the Constitutional Court is published in the Register of Legal Acts as soon as it is received by the Manager of the Register of Legal Acts. In cases where, after considering a case, the Constitutional Court issues a ruling that the act is not in conflict with the Constitution, the President of the Constitutional Court must immediately make an official announcement of such, stating that *the validity of the suspended act is restored* from the day that the ruling is published.

<sup>18</sup> A draft law amending the Constitution of the Republic of Lithuania has been drawn up to provide for institution of the individual complaint and to expand the scope of the subjects entitled to apply to the Constitutional Court.

<sup>19</sup> The Constitutional Court of the Republic of Lithuania interprets the provisions of the Constitution only in deciding on the constitutionality of legal acts issued by the Seimas, the President of the Republic and the Government. Issues concerning the constitutionality of other legal acts (e.g. orders of ministers, decisions of municipal councils, etc.) are decided not by the Constitutional Court, but by the Supreme Administrative Court. However, when applying laws and other legal acts, neither the Supreme Administrative Court nor other courts may interpret the provisions of the Constitution in a way that differs from the interpretation provided by the Constitutional Court.

### 3. The Status of the Constitutional Court of the Republic of Latvia

As mentioned above, the Constitutional Court of the Republic of Latvia was established in 1996. Article 85 of the Satversme (the Constitution of Latvia) is the basic norm for the legal status of the Constitutional Court. It reads as follows: “In Latvia there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid. The appointment of judges to the Constitutional Court shall be confirmed by Saeima for the term provided for by law, by secret ballot and with a majority of the votes of not less than fifty-one members of the Saeima.”<sup>20</sup>

This article is part of Chapter VI of the Satversme under the title “Courts”. Thus, the Constitutional Court is an institution of the judicial branch, even though it is not included in the legal system of general jurisdiction. The article is very laconic, but it complies with the 1922 style of the Satversme.

The primary legal act that, alongside the above norm of the Satversme, regulates the functioning of the Constitutional Court is the Constitutional Court Law (1996). In turn, the structure and proceedings of the Constitutional Court are established by the “Rules of Procedure of the Constitutional Court” (2016) adopted by majority vote of all court justices. At present, the first part of Article 26 of the Constitutional Court Law establishes that “the procedure for reviewing cases is provided for by this Law and the Rules of Procedure of the Constitutional Court. Envisaging of procedural terms and procedural sanctions – fines – shall be carried out in accordance with the rules of the Civil Procedure. Other procedural issues not regulated in the Constitutional Court Law and the Rules of Procedure of the Constitutional Court shall be determined by the Constitutional Court.”

Article 3 of the Constitutional Court Law provides that the Constitutional Court consists of seven justices. In December 1996, the Constitutional Court commenced its activities without a full bench, i.e. with just six justices (the Constitutional Court has the right to commence activities if at least five justices are confirmed). The Constitutional Court had to wait for the seventh justice for three and a half years.<sup>21</sup> Article 5 establishes that after confirmation by the Saeima, Constitutional Court justices shall be sworn in by the President of Latvia by taking the oath prescribed in the Law on Judicial Power; however, if a judge of another court who has already taken the oath is confirmed as a Constitutional Court justice, he/she shall not take the oath again and shall assume the duties of office immediately after confirmation. The Constitutional Court Law establishes that the term of office for a Constitutional Court justice is 10 years.

Three justices of the Constitutional Court must be confirmed upon the recommendation of at least ten members of the Saeima, two – upon recommendation of the Cabinet of Ministers, and two – upon the recommendation of the Plenum of the Supreme Court from among judges of the Republic of Latvia. A citizens of Latvia who has a university legal education and at least 10 years<sup>22</sup> of experience working in law or in a judicial specialty at an institution of higher educational in the fields of science or education may be confirmed as a justice of the Constitutional Court.

The Chairperson and Deputy Chairperson of the Constitutional Court are elected by secret ballot for a period of three years from among the members of the Constitutional Court by an absolute majority vote of all of the justices. The Chairperson presides over sessions of the Constitutional Court, organizes the work of the Constitutional Court, and

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<sup>20</sup> On 19 September 2013, the Saeima adopted an amendment to this article by which the words “secret ballot and with” were deleted. Amendment to the Satversme (2013).

<sup>21</sup> This situation served as a good lesson, and norms that were intended to ensure the continuity of the activities of the Constitutional Court were added to the Law on Constitutional Court Law (1996) on 30 November 2000. *Inter alia* the amendments envisaged that “if, upon termination of the authority of office of a Constitutional Court justice – or upon his/her reaching the age established in the first part of Article 8 of this Law – the Saeima has not confirmed another justice, the authority of the Constitutional Court justice shall be regarded as prolonged to the moment of confirmation by the Saeima of a new justice and he/she has sworn the oath.” (Article 11(3) of the Constitutional Court Law).

<sup>22</sup> The first version of the Constitutional Court Law only required five year of experience.

represents the Constitutional Court. The Chairperson may only give orders to justices of the Constitutional Court regarding the performance of the organizational duties of office.

The Constitutional Court commenced its activities in December 1996. Looking back at the 20 years of its existence, one might speak about two stages of development of the Constitutional Court, marked by the amendments to the Constitutional Court Law adopted by the Saeima on 30 November 2000.

During the first period, which lasted until 2001, only cases concerning abstract control were reviewed. The number of cases reviewed by the Constitutional Court was limited. The scope of persons who had the right to apply to the Constitutional Court was also limited. Until September 1997, only the President of Latvia, the Saeima, no less than one-third of the members of the Saeima, the Cabinet of Ministers, the Plenum of the Supreme Court, the Prosecutor General, city councils, and ministers authorized by the Cabinet of Ministers (only in certain cases) had the right to submit an application. After the amendments, the right to apply to the Constitutional Court was expanded: the Constitutional Court Law was supplemented by the introduction of the constitutional claim, the right of general jurisdiction courts to appeal to the Constitutional Court, and extension of the right of the State Human Rights Bureau to submit an application on initiating a case at the Constitutional Court.

The Constitutional Court has contributed to the advancement of democracy and a legal state, and has also furthered the transition from a socialist legal system to Western law. Of particular note are issues related to the separation of power. The Constitutional Court plays an important role in checks and balance system. Evaluating the rights of the ministries to adopt debatable normative acts, as well as their contents, the Constitutional Court concluded that "...the principle of separation of power, that in itself includes separation of competency between the legislative power and the executive power, shall be taken into consideration. In a democratic country, the legislative power belongs to the people and the legislator. The other state institutions have the right to pass generally binding (external) legally based normative acts only in case, if the above right has been delegated by the law. Consequently, the principle of legality of management envisions that the government institutions shall carry out activities taking the existing laws into consideration." (Judgment of the Constitutional Court of the Republic of Latvia of 11 of March 1998) In examining the compliance of the Saeima decision with the Satversme, the Constitutional Court pointed out that "...the law and rights are binding to every state institution as well as to the legislator himself." (Judgment of the Constitutional Court of the Republic of Latvia of 1 of October 1999) At that time, the majority of cases were related to the division of power, where the Cabinet of Ministers or institutions subordinate to it had reached a decision on issues that were actually supposed to be settled by the legislator.

In accordance with Article 16 of the Constitutional Court Law, the Constitutional Court reviews cases regarding the compliance of laws with the Satversme, compliance of international agreements signed or entered into by Latvia (even before the Saeima has confirmed the agreement) with the Satversme, compliance of other normative acts or parts thereof with legal norms (acts) of higher legal force, compliance of other acts (with the exception of administrative acts) by the Saeima, the Cabinet of Ministers, the President, the Chairperson of the Saeima and the Prime Minister with the law, compliance of regulations by which the minister, authorized by the Cabinet of Ministers, has rescinded binding regulations issued by a city council with the law, and compliance of the national legal norms of Latvia with the international agreements entered into by Latvia which are not contrary to the Satversme.

The Constitutional Court does not have the right to initiate cases on its own accord. The Constitutional Court only reviews cases after receiving claims from the applicants provided for by law.

The history of the Constitutional Court of Latvia changed with the amendments to the Constitutional Court Law. One of the main aims of the amendments of 30 November 2000 was to create a system under which individuals could protect their interests by ordinary legal means, i.e. through courts of general jurisdiction. Thus, if a court, when reviewing a civil or criminal case in the first instance, appeal or cassation, holds that the norm to be applied does not comply with a higher legal norm, the court must submit an application to the Constitutional Court.

The same applies if a judge of the Land Register, when entering real estate or confirming the right to a property in the Land Register, is of the opinion that the norm to be applied does not comply with a legal norm (act) of higher force. A different regulation is provided for administrative cases. A court, when reviewing an administrative case in the first instance, cassation or appeal, holds that the norm, which the institution has applied or which should be applied in the case at the administrative court process does not comply with the Satversme or international legal norm (act) (Article 19.1 of the Law on Constitutional Court).

The individual case is adjudicated only after the Constitutional Court reaches a decision on the validity of the norm in question.

The amendments to the Constitutional Court Law adopted on 30 November 2000 regarding the right to address individual claims directly to the Constitutional Court came into force on 1 July 2001. From this time on, “any person who holds that his/her fundamental rights established by the Satversme have been violated by applying a normative act which is not in compliance with the legal norm of higher legal force may submit a claim (an application) to the Constitutional Court.” (Article 19.2. of the Law on Constitutional Court) The words “any person” mean that the applicant may also be a legal person.<sup>23</sup>

Part two of Article 19.2. stipulates that “the constitutional claim shall be submitted only after exhausting the ordinary legal remedies (a claim to a higher institution or official, a claim or application to a court of general jurisdiction etc.) or if there are no other means.” At the same time, part three of the same article provides that “if the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted.”<sup>24</sup> Initiating a case at the Constitutional Court means that the civil, criminal or administrative case shall not be reviewed at the court of general jurisdiction until the judgment of the Constitutional Court is announced. The Constitutional Court Law also stipulates that “a constitutional claim may be submitted to the Constitutional Court within six months from the date of the decision of the last institution becoming effective.” At the same time, “submitting of the constitutional claim does not suspend the execution of the court decision, with the exception of cases when the Constitutional Court has ruled otherwise.”

A specific model of constitutional claim exists in Latvia, i.e. the “pseudo” or “false” constitutional claim. This model is narrower than the constitutional claim in the Federal Constitutional Court of Germany. The Constitutional Court Law establishes that in addition to the contents specified in the first part of Article 18 of the law, the constitutional claim (application) must substantiate that the fundamental constitutional rights of the applicant have been violated and that all the other legal means of protection have been exhausted or do not exist.

Anita Rodiņa and Jānis Pleps (2013) stress that:

The right of individuals to submit a constitutional complaint should be considered a cornerstone in the development of constitutionalism in Latvia. This is because the constitutional complaint, as a remedy against the public power, emphasizes the importance of the person in the state and also allows rights to be developed based on constitutionalism. Within that state to recognize basic rights as natural rights against the state power and also stresses importance of such rights. Besides this direction of constitutionalism is based on main value (or reason) of the state to the person, accenting the necessity to protect his/her rights. <...> if a person is allowed to stand before the Constitutional Court, then people will feel that the constitution is not a ‘distant or untouchable’ instrument, but a real one that can be used

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<sup>23</sup> One of the first cases was “On Compliance of the Cabinet of Ministers 27 February 2001 Regulation No. 92 ‘Procedure for Stating the Amount of Sugar-Beet Supply for Sugar-Beet Growers’ with Article 91 of the Satversme”. The constitutional claim was submitted by the owners of the Kantuļi farm (Judgments of the Constitutional Court of the Republic of Latvia 2001, 2003, p. 319–327).

<sup>24</sup> For examples, see the judgements in the cases: “On Compliance of Paragraph 26 of the State Pension Law Transitional Provisions with Articles 91 and 109 of the Satversme” (Judgments of the Constitutional Court of the Republic of Latvia 2001, 2003, p. 402–420); “On Compliance the Condition Stipulated in Section 7, Paragraph 1, Clause 1 of the State Social Allowances Law ‘if this person is not employed (not deemed to be an employee or a self-employed person in accordance with the Law on State Social Insurance) or is employed and is on parental leave’ with Articles 91, 106 and 110 of the Satversme” (Judgments of the Constitutional Court of the Republic of Latvia, 2007, p. 57-71).

to benefit something. It is also very important to stress the importance of the constitution as a living and real document not just for constitutional institutions, but for everybody in the State.<sup>25</sup>

The examination of claims is an essential part of the functions of the Constitutional Court. The Constitutional Court Law stipulates that “a panel, consisting of three justices, examines the application and takes the decision to initiate a case or refuse to initiate it. The panel is elected for a year by absolute majority vote of all of the justices.” There are four panels in total. The Chairperson and Deputy Chairperson of the Constitutional Court preside over the body of their respective panels. The Rules of Procedure of the Constitutional Court determine the procedure for appointing a panel to review a case. The panels review cases in closed sessions, with only the members of the panel taking part, but the applicant, employees of the Constitutional Court or other persons may also be invited to attend the session if necessary.

After a case is initiated, the Chairperson of the Constitutional Court asks one of the justices to prepare it for review. The case must be prepared within five months. In complicated cases, the Constitutional Court in the body of three justices may adopt a decision at the organizational session to extend this term by a maximum of two months. The justice completes preparation of the case by a decision. If the justice holds that the case may be reviewed in a written process, this viewpoint is included in the decision.

Preparation of a case is completed by a decision of the Chairperson of the Constitutional Court to forward the case for review, appointing the body of the court session and setting the time and place for the organizational session. At the organizational session, the justices must reach a decision on establishing the court proceedings in written form if the justice who prepared the case for review expresses a motion thereon, and must also agree on the time and place of the court session. The court session must be scheduled at least 15 days, and no more than three months, after the adoption of the decision on the time and place thereof. Part 1 of Article 25 of the Constitutional Court Law establishes which cases must be reviewed by the entire body of the Constitutional Court. All other cases are reviewed by three justices of the Constitutional Court if the Constitutional Court has not ruled otherwise.

Following the session of the Constitutional Court, the justices convene to reach a decision in the name of the Republic of Latvia. The decision must be made within 30 days of the Constitutional Court session by a majority vote; the justices may only vote “for” or “against”. Any justice who votes against the opinion given in the judgment must present his/her individual opinion in writing; said is attached to the case file, but is not announced at the court session. Article 31 of the Constitutional Court Law establishes the contents of the judgment of the Constitutional Court. With regard to the effective disputable legal norm (act), the judgment must also indicate “the time by which the disputable legal norm (act) is no longer in effect, if the Constitutional Court has declared that the norm (act) does not comply with the legal norm of higher force.”<sup>26</sup> Judgments of the Constitutional Court are final and come into legal effect at the moment of their official announcement. Article 32 of the Constitutional Court Law states that judgments of the Constitutional Court and the interpretation of the relevant legal norms provided therein shall be obligatory for all state and local government authorities (including courts) and officials, as well as for natural and legal persons. Article 29

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<sup>25</sup> See also: Rodiņa A., 2009, p. 208.

<sup>26</sup> For example, in its judgment of 14 January 2014, the Constitutional Court ruled “to declare the fourth part of Article 31 (in the wording which was in effect up to January 1, 2003) and Item 2, Sub-item 4 of the Transitional Provisions of the Law on Maternity and Sickness Insurance as being unconfordable with Article 91 of the Republic of Latvia Satversme and – as concerns the submitters of the constitutional claim Irīna Pīgozne and Baiba Strupiņa – null and void as of the moment when the right to the sickness and maternity benefits arose.” Available online at: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/07/2003-19-0103\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/07/2003-19-0103_Spriedums_ENG.pdf). In the concluding part of the judgment of 24 June 2003, the Constitutional Court pointed out that “When reaching the decision on the moment of the challenged norm losing effect, the Court takes into consideration the fact that the procedure under which the right of the defendant to be heard out shall be determined by the Law. However, up to the time of passing the particular legal norm at the Saeima, the Senate, when taking the decision on the extension of the term of the arrest, shall ensure realization of the right of the defendant to be heard out, which is guaranteed by Article 92 of the Satversme.” This is why the Constitutional Court ruled “to declare Article 77 (the third sentence of the seventh part) of the Criminal Procedure Code as unconfordable with Article 92 of the Satversme and null and void as of October 1, 2003 if the procedure for insurance of realization of the right of the defendant to be heard out is not determined by the law.” Available online at: < [http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-03-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-03-01_Spriedums_ENG.pdf)>

(“Closing of Proceedings”) establishes that the interpretation of the legal norm provided in the decision of the Constitutional Court to terminate judicial proceedings shall be equally obligatory.

Any legal norm (act) which the Constitutional Court has deemed as incompatible with a higher legal norm is considered invalid from the date that the judgment of the Constitutional Court is published, unless the Constitutional Court has ruled otherwise.

Judgments of the Constitutional Court must be published in the official government gazette (*Latvijas Vēstnesis*) within five days of being rendered, and must be sent or issued to the participants in the case in accordance with the regulations of the Constitutional Court. If a dissenting opinion is appended to the case, said must be published in the official government gazette within two months of the Constitutional Court judgment. The Constitutional Court Law also establishes that once per year, the Constitutional Court must publish the full collection of Constitutional Court judgments, including all judgments and dissenting opinions appended to the cases in their entirety.

The Constitutional Court of the Republic of Latvia is an institution of judicial power. As opposed to courts of the general court system, the Constitutional Court carries out the specific function of a “watchdog” of the Satversme, democracy and rule of law, and must resolve disputes regarding the compatibility of legal provisions with those of higher legal force.

#### **4. Similarities and differences between the Lithuanian and Latvian models: a comparative analysis**

Recognizing it as an essential component of the emerging European democratic tradition and the concept of a state ruled by law, both Lithuania and Latvia had played with the idea of a special institution for constitutional review in the beginning of the 20<sup>th</sup> century, but the Soviet occupation meant that they had to wait until the end of the century for this institution to actually be founded. It was only in the early 1990s that Latvia and Lithuania regained their independence and adopted new constitutions, thus paving the way for constitutional review.

There is slight chronological disparity regarding the establishment of the constitutional court in the constitutions of Latvia and Lithuania. In Lithuania, the institution of a specialized constitutional court was included in the original text of the Constitution of the Republic of Lithuania, which was adopted by referendum on 25 October 1992. Meanwhile in Latvia, despite unanimous political determination to introduce constitutional control, this required an amendment to the original text of the Constitution of Latvia (the Satversme), which was adopted by the Saeima on 5 June 1996.

Let’s take a brief look at the basic features of the competence and powers of the two courts that are the focus of this article. In Lithuania, the special chapter of the 1992 Constitution together with the 1993 Law on the Constitutional Court both establish, in detail, the status of, and procedures for appointment to, the Constitutional Court. Interestingly, Chapter IX of the Constitution of the Republic of Lithuania (“Courts”) does not include any provisions regarding the status of the Constitutional Court. In Latvia, the Satversme only has one rather concise article defining the status of the Constitutional Court – this is Article 85, which is part of Chapter VI (“Courts”). Without a doubt, the constitutional courts are judicial institutions in both countries, even though this court is not included in the system of general jurisdiction in Lithuania.

In both countries, the constitutional courts belong to the judicial power, even though they are not included in the national legal systems of general jurisdiction. Of crucial importance is the fact that both are independent institutions of judicial power. The first part of the Constitutional Court Law of Latvia (1996) establishes that “the Constitutional Court is an independent institution of judicial power...” Article 1(3) of the Law on the Constitutional Court of the Republic of Lithuania (1993) stipulates that “The Constitutional Court shall be an independent court which executes judicial power according to the procedure established by the Constitution of the Republic of Lithuania and this Law.” Special procedures for the appointment of justices and other warranties for their independent functioning form the basis for truly independent constitutional courts in Latvia and Lithuania: in Lithuania, the Seimas confirms nine

justices (for a term of nine years) nominated by specific institutions (the system is reinforced by a rule for the rotation of three justices every three years); in Latvia, seven justices (for a term of ten years) are confirmed by the Saeima (with no rule of rotation). As a prerequisite for being appointed, candidates have to meet similar requirements in both countries (at least 10 years of legal or academic practice; a university degree; an impeccable reputation, etc.).

In both Lithuania and Latvia, constitutional court justices are appointed for a similar term (nine years in Lithuania and 10 in Latvia). However, the Law on the Constitutional Court of the Republic of Lithuania stipulates that every three years, one-third of the Constitutional Court shall be reconstituted. This means that justices who were nominated for a three- or six-year term may, after three years, be nominated for a new and final term – nine years. In Latvia, the Constitutional Court Law establishes that a single person may not be a justice of the Constitutional Court for more than 10 years. Both the Lithuanian law and the Latvian law prohibit a Constitutional Court justice from holding another office or other paid employment. However, both laws permit justices to combine their court duties with work in an educational or creative capacity (Lithuania) or a scientific, creative or educational capacity (Latvia).

In both Lithuania and in Latvia, the laws establish restrictions for constitutional court justices concerning membership in political organizations. Both laws also provide a wide range of guarantees for justices in terms of immunity. Lithuanian Constitutional Court justices may not be arrested and may not be subjected to any other restriction of personal freedom without the consent of the Seimas; in Latvia, this requires the consent of the Constitutional Court. The procedure for electing the President of the Constitutional Court is quite different in the two countries. In Lithuania, the Seimas appoints the President of the Constitutional Court from among its justices upon recommendation of the President of the Republic. In Latvia, the Chairperson and Deputy Chairperson of the Constitutional Court are elected by secret ballot for a period of three years from among the members of the Constitutional Court by an absolute majority vote of all of the justices.

The authority (competence) of the Lithuanian and Latvian Constitutional Courts have both similarities and differences. Like the Lithuanian Constitutional Court, the Latvian Constitutional Court adjudicates on compliance of laws and other parliamentary acts with the Constitution, on the compliance of acts of the President and the Government with the Constitution and other laws, and on the compliance of international agreements with the Constitution.

The Constitutional Court of Latvia enjoys more extensive powers regarding the hierarchy of normative acts, as it is authorized to review:

- the compliance of other normative acts or parts thereof with the legal norms (acts) of higher legal force;
- the compliance of regulations by which a minister, authorized by the Cabinet of Ministers, has rescinded binding regulations issued by a city council with the law;
- the compliance of the national legal norms of Latvia with the international agreements entered into by Latvia which are not contrary to the Satversme.

Differently from the Latvian Constitutional Court, it is in the competence of the Lithuanian Constitutional Court to review cases related to:

- the violation of election laws during presidential elections or elections to the Seimas;
- whether the health of the President of the Republic of Lithuania is limiting his/her capacity to continue in office,
- compliance with the Constitution of concrete actions of members of the Seimas or other state officials against whom impeachment proceedings have been instituted.

In general, both constitutional courts have a lot in common. Yet they also have plenty of differences. One of the main differences in the functioning of the courts in these two countries is that in Lithuania, the court works with a full bench (*in corpore*) and there are no panels, whereas in Latvia, the court mainly works in panels made up of three justices, only hearing cases *in corpore* in exceptional situations determined by law. There is an opportunity of separate opinion of justice in both countries.

Both courts have the pan-European set-up of the usual competences for a guardian of the constitution, but they also have notable differences. Thus, both courts decide on the compliance of laws and other parliamentary acts with the Constitution, but the Constitutional Court of Latvia, in a sense, enjoys more extensive powers (e.g. deciding on the conformance of certain regulations issued by a minister (member of the government)). In addition, as a result of the amendments in the 2000s, the Constitutional Court of Latvia has the competence to adjudicate individual complaints (applications) where the constitutional rights of legal or natural persons are concerned, whereas in Lithuania, there is only a broad political consensus about this competence, but both the Constitution and the laws must still be amended for that purpose. However, the Lithuanian Constitutional Court also has other competences, such as reviewing cases on the violation of election laws during presidential elections or elections to the Seimas, or deciding on the constitutional compliance of concrete actions of members of the Seimas or other state officials (such as the President of the Republic) against whom impeachment proceedings have been instituted.

Regarding the right to submit an application to the constitutional court, one might say that in Lithuania, the scope of persons enjoying this right is rather narrow: the President of the Republic, the Seimas *in corpore* or a group of at least one-fifth of the 141 members of the Seimas, the Government, and all of the general jurisdiction and administrative courts. In Latvia the same right is enjoyed by a somewhat more extensive group of institutions and officers of the state: the President of Latvia, the Saeima, no less than twenty members of the Saeima, the Cabinet of Ministers, the Prosecutor General, the Council of the State Audit Office, local government councils, the Ombudsman, the courts adjudicating civil, criminal or administrative cases, Land Register Office judges, and persons whose fundamental rights are being infringed.

In concluding the comparison of the constitutional review models of Lithuania and Latvia, there is one interesting observation regarding decision-making in a constitutional case: unlike in Lithuania, where in the event of a tie, the vote of the Chairperson of the hearing is decisive, in the event of a tie in Latvia, the court must make a judgment that the disputed legal norm (act) conforms to the norm of higher legal force.

## **Conclusions**

The Latvian Constitutional Court has a lot in common with the Constitutional Court of Lithuania in terms of its establishment, its activities, the status of its justices, and the procedure applied in the courts. However, there are still several differences that might be of interest from the point of view of a constitutional justice researcher.

The idea of the review of the constitutionality of laws and other legal acts was raised in Lithuania and Latvia as far back at the early 20<sup>th</sup> century. However, no special institution for constitutional review was founded in pre-war Latvia or Lithuania.

After the collapse of the Soviet regime and the restoration of independence in both countries, the idea of the necessity to establish a body for constitutional review was raised. This idea came to fruition in Lithuania first. The Constitution of the Republic of Lithuania, which was adopted in 1992, clearly provided for the establishment of the Constitutional Court as the institution responsible for constitutional review. Meanwhile, rather extensive discussions ensued in Latvia, and it was only six years after the restoration of independence that the legal foundation for the establishment of the Constitutional Court was created.

In both countries, the constitutions are quite laconic regarding constitutional courts. Although the Lithuanian Constitution is more concrete, there was an obvious need in both countries to pass special laws regulating the status of the constitutional court.

Both constitutional courts are small in terms of their members (nine justices in Lithuania and seven justices in Latvia). The procedure for the appointment of justices is also very similar, with the parliament confirming justices upon the recommendation of certain institutions. Also similar are the general requirements for justices, their guarantees, and



their terms of office. It should be mentioned that in Lithuania, one-third of the justices are replaced every three years. In Latvia, there is no such rotation – all justices complete their term on the same day.

The main differences appear in analyzing the competence of the two constitutional courts. Firstly, the citizens of the Republic of Lithuania do not have the right to file an individual claim to the Constitutional Court. Latvia citizens do. Secondly, the Constitutional Court of Latvia enjoys more extensive powers in terms of the issues that it is authorized to review. However, the Lithuanian Constitutional Court has some additional competences, such as investigating violations of election laws during presidential elections or elections to the Seimas, evaluating whether the health of the President of the Republic of Lithuania is limiting his/her capacity to continue in office, or examining the constitutional compliance of concrete actions of members of the Seimas or other State officials against whom impeachment proceedings have been instituted.

The abovementioned similarities and differences do not, of course, diminish the legal and political authority of both constitutional review institutions, which have been developing, step by step, from the first days of restored independence to today, when some European countries are facing a constitutional crisis. It also verifies the fact that an effectively operating institution of constitutional review is an irreplaceable instrument for ensuring the supremacy of the constitution and the rule of law.

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