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THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA RELATED TO FREEDOM OF ECONOMIC ACTIVITY

ABSTRACT. The Constitutional Court is the guardian of human rights and freedoms. There are a lot of constitutional law studies concerned with constitutional personal and political rights, but economic freedom is not often analyzed by constitutional law scholars. However, the situation fundamentally changed when in 2020 after the spread of the COVID-19 virus, state authorities took various measures (*inter alia* measures to limit economic activity) in order to prevent the spread of the virus. All these restrictions on the freedom of economic activity caused large financial losses, which led to an active discussion by society and legal researchers: does the Constitutional Court protect the activities of economic entities? This difficult economic period forced society to remember that economic freedom should be considered a category of exceptional importance because it creates the conditions for the existence of the entire social order. However, in Lithuania, as in other post-soviet states, economic freedom was forgotten for more than 50 years. After the restoration of independence in Lithuania and the adoption of the Constitution, the economic freedom of the private entity again became a constitutional value. Therefore, the Constitutional Court faced a great challenge to develop the concept and the protection mechanism of this freedom. This paper presents the constitutional jurisprudence formed by the Constitutional Court of the Republic of Lithuania over 30 years related to economic freedom. The study of this jurisprudence showed that in the first decade of the independence of the Republic of Lithuania, the freedom of economic activity was particularly encouraged by the Constitutional Court, with the aim of creating the foundations of the market economy as soon as possible. Later, the main aim of the Constitutional Court was to ensure the energy independence of Lithuania and in the third decade of independence, constitutional jurisprudence increasingly analyzed the possibilities of finding a balance between health and environmental protection requirements and economic freedom.

KEYWORDS: Constitutional Court; Constitution of the Republic of Lithuania; freedom of individual economic activity.

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Introduction

Last year, the Republic of Lithuania celebrated the 100th anniversary of the Constitution of the State of Lithuania (adopted in 1922) and the 30th anniversary of the Constitution of the Republic of Lithuania (adopted in 1992). The Lithuanian Nation is proud that after the restoration of independence and the adoption of the Constitution of Lithuania by referendum, guarantors of the highest law were created, nurturing the protection of human rights and freedoms, the principles of democracy, respect for law, and the rule of law. In this year 2023, Lithuania will also celebrate an important anniversary, i. e. 30th anniversary of the activity of the Constitutional Court of the Republic of Lithuania. Through three decades, the Constitutional Court had the mission of conceptualizing the fundamental concepts that changed the concept of Lithuanian constitutionalism that had been valid until then. In the first cases of the Constitutional Court in 1993–1994, the foundations were laid for three characteristics of the concept of the Constitution, which were later developed in constitutional jurisprudence: first, the Constitution is the supreme law. Second, the Constitution is a social contract. Third, the Constitution is an anti-majoritarian act.

The Constitutional Court stated, that the Constitution is an agreement on specific constitutional provisions. It is a set of compromises regarding the powers of the state, legislative procedures, the foundations of the economic system, and the content of specific human rights. The Constitution cannot speak about everything. Therefore, this main legal act consolidates the mechanism that allows to get answers to the questions (that have arisen or are just arising) from the Constitutional Court. Thanks to the Constitutional Court, the Constitution becomes an agreement that is constantly relevant, meets the trends of modern life, and recognizes compromises. The economic path of the Republic of Lithuania is unique in transforming from a planned economy system into a market-based democratic system and in adopting and developing European business standards. However, for nearly fifty years, constitutional law did not recognize private economic initiative. Only in 1992 economic freedom was directly regulated in the Constitution¹. The Constitutional Court, not having the traditions and practice of the economic constitution (like other West European countries, for example, Germany), had quite a difficult challenge to reveal the concept of economic freedom and its protection mechanism. The Constitutional Court of the Republic of Lithuania was often criticized when it spoke negatively about the economic policy implemented by politicians. It was even suggested that this Court should not be allowed to hear

¹ The Constitution of the Republic of Lithuania (in Lithuanian), Official Gazette *Valstybės žinios*, Nos 33–1014 (1992); 64–1501 (1996); 122–2863 (1996); 65–2629 (2002); 14–540 (2003); 32–1315 (2003); 32–1316 (2003); 111–1423 (2004); 111–4124 (2004); 48–1701 (2006). The English translation of the Constitution of the Republic of Lithuania is available at <<http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>> (accessed: 10.05.2023).

cases of an economic nature. However, the Constitutional Court withstood this criticism and formed quite extensive constitutional jurisprudence related to economic freedom.

The purpose of this chapter is to discuss some aspects of the regulation governing Lithuania's economy in constitutional law during the thirty years of Lithuania's independence, when analysing the constitutional foundations of Lithuania's economic system and the impact of the jurisprudence of the Constitutional Court, in which the aspects of the regulation of the economic relationships of the analysed period are reflected. In order to achieve the above-mentioned purpose, the following two tasks are raised: to reveal in a brief manner the constitutionalization process of the Lithuanian economic system and to analyse the constitutional doctrine that was formulated during the three decades of Independence and had an influence on the formation of the constitutional foundations of the regulation of economic relationships.

The subject-matter of the chapter is the particularities of the constitutional foundations of the state of Lithuania's economy that are entrenched in the Constitution of the Republic of Lithuania, as interpreted in the constitutional doctrine.

'The economic system and economic leeway are considered to be categories of exceptional importance and they create the preconditions for the existence of a whole social system and determine its content'². In view of this, when discussing the most important work of the restoration of the free, democratic, and law-governed state during the thirty years of Lithuania's Independence, it is necessary to analyse the constitutionalised model of the economic system of the State of Lithuania, the principles describing it, and the constitutional jurisprudence explaining them. The research was carried out using the method of an analysis of documents and other sources of research, as well as teleological and critical methods, and those of a systemic analysis and logical analysis.

The Constitutional Foundation for the Economic System

The establishment of the national constitutional foundations is particularly important in order that the state economy could integrate into the global economy and would be open to international competition. Such constitutional safeguards as the protection of property rights, economic freedom, environmental protection and the effective judicial protection of subjective rights provide the preconditions for stable and effective economic development. Hernando de Soto's global bestseller *The Other Path: The Economic Answer to Terrorism*³ provides a very detailed analysis on how legal uncertainty, the impenetrable jungle of economic regulation, as well as inefficient

² Giedrė Lastauskienė, 'Ekonominiai argumentai teisėje: jų vieta ir ribos' (2013) 89 Teisė 25.

³ Hernando de Soto, *The Other Path: The Economic Answer to Terrorism* (Basic Books 1986; reprint edition, 2002).

administration, can lead to economic chaos in a state and induce business initiatives to plunge into the underground economy. The economist points out that the establishment of the constitutional standards that are important for the economy constitutes the essential preconditions for successful economic development. The importance of the constitutional order for a functioning economy and for its ability to integrate into the global economy is also demonstrated by the experience of other European “socialist republics” where, with the help of the provisions of *lex fundamentales* laid down by independent states, a transition was made from the centralised planned economy to the market economy⁴. In the history of Eastern European countries, Lithuania’s economic path is unique in its transformation from a communist system into a market-based democratic order, by adopting and developing European business standards. In 1992, the Constitution of the Republic of Lithuania created the preconditions for the stable and successful economic development of the state and laid down such foundations for regulating economic relationships that ensure the predictability of economic, social and legal relationships of the state. The Constitution contains a separate chapter “The National Economy and Labour” designated for the protection of the social and economic rights of a person, as well as for the economic and environmental interests of the state. Such a separate chapter of the Constitution has deep constitutional traditions in Lithuania. Economic legal relationships were regulated in a separate chapter in all the Constitutions of interwar Lithuania (i. e. 1922, 1928 and 1938 Constitutions)⁵.

Although the Lithuanian Constitution has a separate chapter designated for the national economy, the basic legal act of the state (as most constitutions of other states) does not *expressis verbis* indicate what model of the economic system is adopted in Lithuania. Such a “value-neutral” constitutional text, while not explicitly providing for the economic system, allows the government and the parliament to decide regarding the state of existence of the national economy. The Constitutional Court, though being a very active court, is very moderate in this regard and does not directly name the direction of the Lithuanian economy. It has pointed out that the national economy of Lithuania is based on such values as private ownership, as well as freedom of individual economic activity and economic initiative⁶. Nevertheless, the legal doctrine provides a number of interpretations and considerations in relation to the model of the Lithuanian economic system. By consolidating unambiguously in the text of the Constitution that the fundamental constitutional features of the Lithuanian economy include the protection of the private ownership right, freedom of individual economic activity and economic initiative,

⁴ Alfred Meyer, ‘The Constitutional Development of Eastern Europe: Integration through Reformation’ (1992) 32 Virginia Journal of International Law 431.

⁵ Agnė Juškevičiūtė-Vilienė, ‘Teisinės ūkinės veiklos laisvės ištakos’ (2015) 95 Teisė 84.

⁶ Constitutional Court ruling of 6 October 1999, Official Gazette *Valstybės žinios*, No 85–2548 (1999).

freedom of fair competition, as well as the prohibition on the monopolisation of production and the market, the *lex fundamentales* lays down the “strong” presumption that it is the market economy that constitutes the model of the Lithuanian economic system⁷.

Under the provisions of the Constitution, the market economy operates in Lithuania not with a full self-regulation mechanism, i.e. it is not based solely on the principle of *laissez faire*, whereas the state does not act as a “night watchman”. The constitutional values upon which the national economy is based are tightly linked to other constitutional values and must be interpreted coherently and in connection with other provisions of the Constitution⁸. The absolute free market economy would not be compatible with the explicit provisions of the Constitution enshrining, for example, that the state takes care of the health of people (Art. 53) and the protection of nature (Art. 54), or that the state regulates economic activity so that it serves the general welfare of the people (Art. 46 (3))⁹. Thus, it can be concluded that the supreme law lays down a mixed economic system in Lithuania, in which free economic activity must be combined with other values of society.

*Economic freedom in the Constitution of the Republic of Lithuania
and in the jurisprudence of the Constitutional Court*

Historically, it is obvious that there is a direct link between the economic growth of a state and freedom of economic activity¹⁰. The economic system and freedom of economic activity should be regarded as categories of exceptional importance because they specifically create the preconditions for the existence of the entire social order and determine what the content of that order will be¹¹. In addition to direct measures (by regulating demand and supply), the economy can also be promoted indirectly – by creating the preconditions for the unrestricted and free development of freedom of individual economic activity. It should be concluded that in an analysis on the aspects of the regulation of the Lithuanian economy in constitutional law, one of the most important conditions alongside the economic system is economic freedom (or “freedom of individual economic activity” as *expressis verbis* consolidated in the Constitution (Art. 46)). Individual economic activity is recognized to be the most important area of human activity; this area of human activity allows preserving and fostering both the self-sufficiency (autonomy) of individuals

⁷ Irmantas Jarukaitis, ‘Europos Sąjungos ekonominė konstitucija kaip papildoma Lietuvos Respublikos Konstitucijos dimensija: tyrimų kontūrai’ [2014] 2 (84) Teisės problemos 38.

⁸ Egidijus Kūris, ‘Ūkinės veiklos laisvė, sąžininga konkurencija ir bendra tautos gerovė (Konstitucijos 46 straipsnio jurisprudencinis komentaras)’ [2005] 64 (56) Jurisprudencija 59.

⁹ “The Constitution of the Republic of Lithuania” (n 1).

¹⁰ Chris Doucouliagos, Mehmet Ali Ulubasoglu, ‘Economic Freedom and Economic Growth: Does Specification Make a Difference?’ (2006) 22 European Journal of Political Economy 60–81.

¹¹ Lastauskienė (n 2) 25.

and their natural sociality – interrelations, cooperation and the coordination of actions, as well as creates human culture¹².

Economic freedom is enshrined in the 1992 Constitution of the Republic of Lithuania in Chapter IV “National Economy and Labour”¹³. This chapter is devoted to the protection of a person’s socio-economic rights as well as the economic and environmental interests of the state. Economic freedom is defined in Article 46 as “freedom of individual economic activity and initiative”. The content of this freedom has often been interpreted by the Constitutional Court of the Republic of Lithuania. In almost thirty years of the validity of the Lithuanian Constitution, the Constitutional Court has adopted 30 rulings dealing with economic freedom. Thus, almost every year, the Constitutional Court developed its doctrine relating to economic freedom¹⁴.

The official constitutional doctrine states that the scope of freedom of economic activity cannot be specifically and precisely defined. Economic freedom is a whole complex of legal possibilities, which creates the preconditions for a person to independently adopt decisions necessary for his/her economic activity¹⁵. The Constitutional Court has held more than once that the notion of economic freedom is abroad one: it implies, *inter alia*, the right of a person to freely choose an occupation or business, the freedom to conclude contracts, freedom of fair competition, etc. Freedom of economic activity is also inseparable from the equality of rights of economic entities¹⁶.

This freedom is individual and can be defended in court to protect it from the unlawful actions of individuals and of public authorities. An entity of economic freedom may demand that the state take active actions to protect the economic freedom of this entity from illegal actions of other persons (*status positivus*). According to the official doctrine of the Constitutional Court, economic freedom guarantees the right to require of the state institutions and their officials, not to hinder, by any their decisions or actions, any expression or development of the initiative of persons and not to disrupt or preclude their economic efforts, provided that their initiative or economic activities are not harmful to society, even if the usefulness of such initiative or economic efforts to society is not evident. Any decision or actions of state institutions and their officials, as well as municipal institutions and their officials, that do not permit the expression or development of the initiative of persons and that

¹² Agnė Juškevičiūtė-Vilienė, *Asmens ūkinės veiklos laisvės konstituciniai pagrindai Lietuvoje: ekonominės, istorinės ir lyginamosios įžvalgos* (Vilnius University 2017) 16.

¹³ The Constitution of the Republic of Lithuania, Official Gazette *Valstybės žinios*, 1992, No 33–1014.

¹⁴ Agnė Juškevičiūtė-Vilienė, ‘Some Aspects of Economic Regulation in Lithuanian Constitutional Law: From Planned Economy to the Fourth Industrial Revolution’ w *Legal Developments During 30 Years of Lithuanian Independence. Overview of Legal Accomplishments and Challenges in Lithuania* (G Švedas, D Murauskas red, Springer 2020) 61.

¹⁵ The Constitutional Court of the Republic of Lithuania, the ruling of 13 May 2005.

¹⁶ The Constitutional Court of the Republic of Lithuania, the ruling of 9 May 2014.

preclude certain economic efforts must be determined by the harmfulness of a particular initiative or economic efforts to society¹⁷ (*status negativus*).

Conditions for Restriction of Freedom of Economic Activity

Paragraph 3 of Article 46 of the Constitution of the Republic of Lithuania provides that the state shall regulate economic activity so that it serves the general welfare of the Nation. So the Constitution tells us that economic freedom is not absolute and public authorities have the right to regulate economic relations in such a way that they serve the public interest. The Constitutional Court of the Republic of Lithuania says: regulation of economic activity is the establishment of conditions for economic activity, regulation of certain procedures, control of economic activity, restrictions or prohibitions of certain such activity¹⁸.

Implementation of this freedom overlaps with various economic and non-economic interests of society, the implementation of the rights and freedoms of others. To restrict economic freedom, it is necessary to take into account the formal and material conditions¹⁹. In Lithuania, the formal condition of restriction of the freedom of economic activity is not enshrined directly in the Constitution but is named in the jurisprudence of the Constitutional Court. Already in 1994, the Lithuanian constitutional doctrine established that the restriction of the freedom of economic activity is possible only by law²⁰. In 2006, the Constitutional Court stated that only by law it is possible to establish essential conditions, prohibitions, and restrictions of economic activity that have a significant impact on economic activity, as well as by imposing various sanctions for relevant violations of law. In other cases, economic freedom may be restricted by other lower-level by-laws²¹.

The material condition for the restriction of the freedom of economic activity is directly named in the Constitution of the Republic of Lithuania: this is a public interest – “welfare of the Nation” (Paragraph 3 of Article 46 of the Constitution). According to the constitutional doctrine, this material condition is recognized as a constitutional principle establishing the directions, methods, and limits of economic activity regulation²². The content of the term “general welfare of the Nation” is disclosed in each specific case taking into account economic, social and other relevant factors. The constitutional doctrine says that by regulating economic activity, the state must strive not for the well-being of individuals, but the well-being of the entire nation. Thus, to limit economic activity, it is necessary to prove the general need of the Nation. But in the interests of the welfare of the Nation, the rights and legitimate interests

¹⁷ The Constitutional Court of the Republic of Lithuania, the ruling of 13 May 2005.

¹⁸ The Constitutional Court of the Republic of Lithuania, the ruling of 6 October 1999.

¹⁹ Kūris (n 8) 63.

²⁰ Juškevičiūtė-Vilienė (n 12) 204.

²¹ The Constitutional Court of the Republic of Lithuania, the ruling of 13 May 2005.

²² The Constitutional Court of the Republic of Lithuania, the ruling of 26 January 2004.

of an economic entity may not be restricted more than to ensure the public interest, unequal conditions of economic activity may not be established²³.

The impact of the Constitutional Court on economic regulation

During the thirty years of the validity of the Constitution, the Constitutional Court has adopted more than 30 rulings formulating the constitutional foundations for freedom of individual economic activity. Further, the article will present an overview of the jurisprudence of the Constitutional Court interpreting freedom of economic activity and will reveal the relevant consistent patterns in the regulation of the Lithuanian economy in constitutional law. The study has looked into the selected constitutional justice cases adjudicated in the period from 1993²⁴ to 2022²⁵, in which the Constitutional Court spoke out on the constitutional foundations for freedom of economic activity. The selected doctrine of the Constitutional Court was analysed by dividing the examined cases into three chronological stages (conditionally, for the convenience of the reader of this article), based on the three decades of the validity of the Constitution (1993–1999, 2000–2010, 2011–2022), which allowed revealing certain consistent patterns in the regulation of the Lithuanian economy in constitutional law, i. e.:

1. Following the entry into force of the Constitution and the beginning of Constitutional Court's activity, the Court examined a number of cases that were necessary to draw a "constitutional divide" between the planned economy and the market economy, to allow freedom for the development of private ownership and economic initiative and to outline the boundaries of reviving Lithuanian business²⁶. This first constitutional jurisprudence interpreting the regulation of economic relationships at the constitutional level was very important for economic relationships in Lithuania, since Lithuanian society had lived in totalitarian order for half a century and had been socialistically indoctrinated by being told that the public interest prevailed over the private interest and that private ownership was the cause of nearly all troubles in society.

²³ The Constitutional Court of the Republic of Lithuania, the ruling of 15 January 2015.

²⁴ The Constitution of the Republic of Lithuania was adopted in 1992, but the Constitutional Court of the Republic of Lithuania, the only official interpreter of this Constitution, started its work in 1993; therefore, the study covers the period beginning not from 1992, but from 1993.

²⁵ The cases were selected in accordance with the official report of the Constitutional Court on the rulings issued in 1993-2020 (see more: *Oficialioji konstitucinė doktrina: svarbiausios nuostatos (1993–2020)* (Vilnius, 2020, p. 330-331)) and information published on the website of the Constitutional Court (<https://lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2022>).

²⁶ For example, Constitutional Court ruling of 18 April 1996 (Official Gazette *Valstybės žinios*, No 36-915 (1996)) on commercial banks, in which the Court expressed its position regarding the concept of individual economic activity and the possibilities of restricting it; Constitutional Court ruling of 20 November 1996 (Official Gazette *Valstybės žinios*, No 114-2643 (1996)) on the privatisation of apartments, which refers, *inter alia*, to the principle of freedom of contract; Constitutional Court ruling of 13 February 1997 (Official Gazette *Valstybės žinios*, No 15-314 (1997)) on alcohol and tobacco advertising, which speaks about the obligations of the state to support business initiatives that are useful to society.

2. During the second decade of the validity of the Constitution, i. e. from 2000 to 2010, both the courts and the authorities entitled by the Constitution often applied to the Constitutional Court concerning the legal regulation relating to energy. Within this period, the Court examined on merits even seven cases²⁷ related to the state of the economy in the field of energy and the management of companies in this field, whose shareholder was often also the Republic of Lithuania. In these cases, the Court spoke out for the need to ensure Lithuania's energy security and independence from other states.

Another tendency in the constitutional doctrine of this decade is that the Constitutional Court often spoke out in various constitutional justice cases on the development and liberalisation of economic activity and the promotion of the private sector²⁸.

3. In the third decade of the Constitution, the topic of energy and the economy remained relevant in the constitutional jurisprudence. During this period, the Court dealt with a case of particular importance for the economy of Lithuania, i.e. regarding the compliance of certain provisions of the Law on the Liquefied Natural Gas Terminal with the Constitution²⁹. In that case, the Court expressed its position on the security and reliability of the energy system of the Republic of Lithuania and the possibility of receiving energy resources from different suppliers under non-discriminatory terms and prices. The Constitutional Court held that, in certain cases, in order to ensure the welfare of the Lithuanian people in the field of energy (i. e. to ensure the security and independence of the state energy system, as well as to timely fulfil the obligations that arise from membership of the Republic of Lithuania in the EU and are aimed to guarantee the security of natural gas supply), business freedom of a private economic operator can be restricted by allowing the Government to conduct economic activity through state-controlled public economic entities.

Another issue that is related to the economic regulation and is of particular relevance in constitutional law in the analysed third decade is resolving the growing conflict between the possibilities of economic activity and

²⁷ For example, Constitutional Court ruling of 16 March 2005 (Official Gazette *Valstybės žinios*, No 36-1184 (2005)) on the reorganisation of the special purpose joint-stock company Lietuvos energija, which was responsible for the production of electricity and heat energy for Lithuanian population; Constitutional Court ruling of 2 March 2009 (Official Gazette *Valstybės žinios*, No 25-988 (2009)) on a national investor, in which the Court examined the legality of establishing a private legal person registered in the Republic of Lithuania who, on the basis of private initiative, wished to participate in the implementation of the construction project of a new nuclear power plant in Lithuania.

²⁸ For example, in its ruling of 14 March 2002, the Constitutional Court considered whether pharmacies could be owned only by natural persons with higher pharmaceutical education. The Constitutional Court held that the state has the duty to ensure that pharmaceutical activities are carried out in the interests of human health and public health promotion. However, the Constitution does not allow the right of a person to property to be restricted on the basis of the education of the person. The requirements to have pharmaceutical education and the required qualifications must be imposed on persons carrying out pharmaceutical activities in pharmacies. The Court, therefore, held that the requirements of pharmaceutical education cannot be imposed on persons who seek to own pharmacies by right of ownership (Constitutional Court ruling of 14 March 2002, Official Gazette *Valstybės žinios*, No 28-1003 (2002)).

²⁹ Constitutional Court ruling of 3 April 2015, Register of Legal Acts, No 3412 (2015-03-05).

environmental requirements³⁰. Carrying out economic activity inevitably involves the use of natural resources, which may cause damage to the environment due to the imperfection of production or other economic activity processes. In this context, the constitutional jurisprudence analysing the possibilities of the Lithuanian economy in the light of environmental requirements has recently been growing. For example, in the last ten years, the Constitutional Court examined more than 4 cases related to the legal regulation of waste management, in which the Court analysed a balance between freedom of individual economic activity and environmental protection requirements³¹.

In the light of the above discussion of the constitutional jurisprudence, the conclusion should be drawn that the 1992 Constitution lays down the foundations for the market economy, by creating the respective stability of these relationships and ensuring the predictability of the regulation of economic relationships. In accordance with these constitutional guarantees of the economic system and in view of the modern challenges arising to economic relationships, the Constitutional Court on a case-by-case basis renewed and consolidated these guarantees, promoted freedom and initiative of private business, ensured the independence and security of the Lithuanian economy from external factors, as well as sought to find a balance between the values enshrined in the Constitution, by taking into account the constitutional imperative of social harmony.

The constitutional case concerning COVID-19 measures for economic freedom

Economic rights, social and cultural rights are often referred to as second-generation human rights, while personal and political rights are classified as first-generation rights. Political and civil rights were often called fundamental, natural, directly applicable, while economic rights were seen as “secondary”, more programmatic rights. Therefore, the scholars of constitutional law often paid less attention to these rights than to political and personal rights. However, the situation has fundamentally changed when in 2020 after the spread of the COVID-19 virus, the state authorities took various measures to prevent the spread of the virus. The most important factor for economic freedom was the quarantine, when the activities of some sectors of the country’s economy were actually banned. Certain areas of the economy, such as international tourism,

³⁰ It can be mentioned that environmental protection cases were rarely heard by the Constitutional Court in the first (only 2 cases) and in the second (5 cases) decade of the Constitution. During these two decades, the Court did not resolve the conflict between freedom of economic activity and environmental protection requirements, with the exception of one case in which the court examined the compliance of the provisions of the law regulating hunting activities with the Constitution. More information available at: <https://lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2022>.

³¹ For example, Constitutional Court ruling of 9 May 2014, Register of Legal Acts, No 5321 (2014-05-12); Constitutional Court ruling of 3 April 2015, Register of Legal Acts, No 3412 (2015-03-05); Constitutional Court ruling of 30 May 2017, Register of Legal Acts, No 9149 (2017-05-30); Constitutional Court ruling of 18 February 2020, Register of Legal Acts, No 3538 (2020-02-18).

beauty services, and restaurants had to stop their activities. All these restrictions on the freedom of economic activity caused large financial losses, which led to an active discussion by the public and legal scholars: do the Constitution and the Constitutional Court protect the activities of economic entities, or do the actions of the Government not contradict the guarantees of economic freedom³²? The pandemic influenced one constitutional case, the results of which were awaited by all economic entities. The decision of this case depended on whether economic entities would be able to claim compensation from the state for banning businesses during the quarantine. The facts of this case are as follows:

During the First quarantine³³ in Lithuania, one Ltd. company, which provided dental implant services, filed a complaint accusing the Lithuanian state of illegally restricting the company's economic freedom. After the First quarantine was announced by the Lithuanian Government in March 2020, many restrictions and bans on economic activities were imposed, which caused financial losses to Lithuanian businesses. The company complained that, the Government resolution of 14 March 2020 on the introduction of quarantine was adopted in violation of the Constitution of Republic of Lithuania, laws, and the hierarchy of law. The Government did not have the power to impose restrictions on economic activity and the restrictions of economic freedom were disproportionate. The applicant asked the state to award almost 70 000 Euro damages incurred (loss of income, wage costs, other necessary operating expenses). The company also asked the court to refer the matter to the Constitutional Court asking whether the Government's resolution on the introduction of quarantine conflicted with the provisions of the Lithuanian Constitution³⁴.

Vilnius Regional Administrative Court ruled, that the Government had not exceeded its powers and had taken proportionate measures to restrict economic freedom in Lithuania. The Court found that the Lithuanian Nation

³² Agnė Juškevičiūtė-Vilienė, 'The impact of the Covid-19 pandemic on economic freedom in Lithuania' [2022] 2 (66) *Przegląd prawa konstytucyjnego* 353–63.

³³ The virus was confirmed to have reached Lithuania in February 2020. Because of the situation and the legal framework enshrined in national law, Lithuania has immediately introduced special legal regimes. The 1992 Constitution of the Republic of Lithuania *expressis verbis* provides for only one special legal regime – a state of emergency (Article 144 of the Constitution). To establish a state of emergency, a certain legal fact must occur: a "threat for the constitutional system or social peace" must arise in the state. Therefore, a state of emergency in Lithuania cannot be imposed when there is an outbreak of a contagious disease. However, the Constitution does not prohibit the legislator from providing for *other* special legal regimes in *other extreme cases* (Article 48 of the Constitution). So the Lithuanian government has introduced two other special regimes – the disaster management regime (even on February 26, 2021) and quarantine (on March 14, 2020). Two special regimes were introduced in Lithuania, because only in this way, at that time, was it possible, according to the Lithuanian law in force, to introduce extensive restrictions on human rights during the pandemic. The declaration of quarantine by the government was accompanied by complete restrictions on economic activity. This period lasted three months and is usually called the First quarantine in Lithuania. See more: Government Resolution No. 152 of 26 February 2020, "Dėl valstybės lygio ekstremaliosios situacijos paskelbimo" <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/8feb1a7658a111eaac56f6e40072e018>> (accessed: 26.04.2023); Government Resolution No. 207 of 14 March 2020, "Dėl karantino Lietuvos Respublikos teritorijoje paskelbimo" <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/deaf8694663011eaa02cacf2a861120c?jfwid=18vo9gnxug>> (accessed: 26.04.2023).

³⁴ See more: Teismai.lt, 'Teismas atmetė skundą dėl žalos priteisimo pernai Vyriausybei paskelbus karantiną' <<https://www.teismai.lt/lt/teismu-pranesimai-spaudai/teismas-atmete-skunda-del-zalos-priteisimo-pernai-vyriausybei-paskelbus-karantina/8481>> (accessed: 26.04.2023).

was confronted with an unprecedented spread of a deadly disease and thus an emergency situation arose in the country. Therefore, the Government had to take known measures to stop the spread of the disease. It was decided to apply the measures known at the time and applied worldwide – isolation and contact restriction. The suspension of economic activity for three months met the proportionality criterion. In the Court’s view, there was no unlawful conduct on the part of the Government and no damages were awarded to the applicants. Thus, the court held that the restrictions on economic freedom during the First quarantine were lawful and proportionate. Otherwise, the court did not grant the company’s request and did not apply to the Constitutional Court to find out whether the Government’s resolution was unconstitutional³⁵.

The decision of the Vilnius Regional Administrative Court didn’t satisfy the applicant and was appealed to the Supreme Administrative Court. The applicant repeatedly requested the court to appeal to the Constitutional Court. The Supreme Administrative Court satisfied the applicant’s request and appealed to the Constitutional Court, which in 2023 January 24 made the final ruling. In this ruling, the Constitutional Court noted that freedom of economic activity is not absolute, it may be subject to limitation where it is necessary to defend the values consolidated in the Constitution. Even though certain relations of economic activity may only be regulated by means of a law, whereas other relations of economic activity may be regulated by means of Government resolutions, and some of them may be regulated by means of lower-ranking substatutory legal acts. Under the Constitution, the essential conditions for economic activity, as well as prohibitions and limitations that have an essential impact on the said activity, and various sanctions for certain violations of law may only be established by means of a law. As noted in the jurisprudence of the Constitutional Court, the protection of the health of people is a constitutionally important objective, a public interest, and looking after the health of people is a state function. Such a limitation on economic activity that aims at protecting the health of people as such should not be regarded as violating the Constitution. The purpose of preventing the spread of human communicable diseases in society may determine the necessity of urgent and effective decisions. Such a legal regulation that imposes limiting measures or prohibitions on economic activities may be laid down where, there are grounds to believe that a situation threatening the health and life of many people is inevitable and will cause irreparable damage to human health and life. The Constitutional Court noted, that there were grounds to believe that a situation could arise where the failure to take effective measures in time would have caused irreparable damage to the values enshrined in the Constitution, including human health and life³⁶.

³⁵ Teismai (n 34).

³⁶ The Constitutional Court of the Republic of Lithuania, the ruling of 24 January 2023.

With such an interpretation, the Court allowed the restriction of economic activity based on the precautionary principle. The precautionary principle, formed by German law and mostly applied in environmental protection cases, has not been used in Lithuanian constitutional law until now. This principle allows the economic freedom of activity to be limited in the presence of not only a real but also a potential threat.

The Constitutional Court has held that, the Government, which had declared quarantine, was granted the powers, with a view to limiting the spread of communicable diseases, to establish specific preventive and control measures applied during quarantine (inter alia temporarily limiting economic activity). So there was no reason to claim that the law did not lay down the essential conditions for economic activity during the quarantine declared by the Government. The Constitutional Court also stated that the Government could not delay and had to act accordingly. In deciding on proportionality, the Constitutional Court noted that the Government had no reason to believe that protecting human and public health would have been possible, at that time, by less limiting measures³⁷.

Conclusions

The Constitutional Court of the Republic of Lithuania during its 30 years of activity has developed the foundations of freedom of economic activity established in the Constitution adopted in 1992. Lithuania, after 50 years of planned economy, had to create the constitutional foundations of the national market economy in order to integrate into the global economy and open it to international competition. The Constitution of the Republic of Lithuania and the doctrine of the Constitutional Court interpreting it not only established the foundations of the market economy and economic freedom but also found ways to constructively ensure effective economic development. The conducted research showed that the Constitutional Court developed the constitutional foundations of freedom of economic activity quite widely, revealing its concept and the conditions for its limitation. The doctrine of the Constitutional Court became important not only in ensuring the guarantors of Lithuanian business, but also Lithuania's energy independence from Russian gas, solving environmental protection problems, and economic problems during the pandemic as well.

³⁷ The Constitutional Court of the Republic of Lithuania, the ruling of 24 January 2023 (n 36).

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Агне Юшкявічюте-Вілієн СУДОВА ПРАКТИКА КОНСТИТУЦІЙНОГО СУДУ ЛИТОВСЬКОЇ РЕСПУБЛІКИ ЩОДО СВОБОДИ ЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ

АНОТАЦІЯ. Конституційний Суд є охоронцем прав і свобод людини. Існує багато досліджень конституційного права, присвячених конституційним особистим і політичним правам, але економічна свобода не часто аналізується дослідниками конституційного права. Однак ситуація докорінно змінилася, коли у 2020 р. після поширення вірусу COVID-19 державні органи вжили різноманітних заходів (зокрема заходи щодо обмеження економічної діяльності) з метою запобігання поширенню вірусу. Усі ці обмеження свободи господарської діяльності завдали великих фінансових втрат, що призвело до активної дискусії суспільства та правознавців:

чи захищає Конституційний Суд діяльність суб'єктів господарювання? Цей важкий економічний період змусив суспільство згадати про те, що економічна свобода має бути категорією виняткової важливості, оскільки вона створює умови для існування всього суспільного ладу. Однак у Литві, як і в інших пострадянських державах, про економічну свободу забули понад 50 років. Після відновлення незалежності Литви та прийняття Конституції економічна свобода приватної особи знову стала конституційною цінністю. Тому перед Конституційним Судом постало серйозне завдання щодо розробки концепції та механізму захисту цієї свободи. У цьому документі представлено конституційну юриспруденцію, сформовану Конституційним Судом Литовської Республіки протягом 30 років у сфері економічної свободи. Дослідження цієї судової практики показало, що в перше десятиліття незалежності Литовської Республіки свобода економічної діяльності особливо заохочувалась Конституційним Судом з метою якнайшвидшого створення основ ринкової економіки. Пізніше основною метою Конституційного Суду було забезпечення енергетичної незалежності Литви, а в третє десятиліття незалежності конституційна юриспруденція все більше аналізувала можливості пошуку балансу між вимогами охорони здоров'я та навколишнього середовища та економічною свободою.

Ключові слова: Конституційний Суд; Конституція Литовської Республіки; свобода індивідуальної економічної діяльності.