THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

R U L I N G

On the compliance of Articles 1 and 2, Part 2 of Article 3 of the Republic of Lithuania Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" as well as Parts 1 and 2 of Article 1 of the Republic of Lithuania Law on the Enforcement of the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" with the Constitution of the Republic of Lithuania

Vilnius, 4 March 1999

The Constitutional Court of the Republic of Lithuania, composed of the Judges of the Constitutional Court Egidijus Jarašiūnas, Kęstutis Lapinskas, Zigmas Levickis, Augustinas Normantas, Vladas Pavilonis, Jonas Prapiestis, Pranas Vytautas Rasimavičius, Teodora Staugaitienė, and Juozas Žilys,

with the secretary of the hearing-Daiva Pitrėnaitė,

in the presence of:

the representatives of the petitioner-a group of members of the Seimas of the Republic of Lithuania-Vytenis Povilas Andriukaitis, Algimantas Salamakinas and Gintaras Šileikis, all they are Seimas members,

the representatives of the party concerned-the Seimas of the Republic of Lithuania-Andrius Kubilius, First Deputy Chairman of the Seimas, Antanas Napoleonas Stasiškis, a Seimas member, Gintaras Goda, a senior consultant to the Law Department of the Chancery of the Seimas,

pursuant to Part 1 of Article 102 of the Constitution of the Republic of Lithuania and Part 1 of Article 1 of the Republic of Lithuania Law on the Constitutional Court, on 9 February 1999 in its public hearing conducted the investigation of Case No. 24/98 subsequent to the petition submitted to the Court by the petitioner-a group of Seimas members-requesting to investigate if Article 1 of the Republic of Lithuania Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" was in compliance with Part 2 of Article 5, Article 67, Part 1 of Article 114 of the Constitution; if Article 2 of the said law was in compliance with Article 23, Parts 1 and 2 of Article 31, Part 1 of Article 33, Part 1 of Article 46, Part 1 of Article 48, Part 1 of Article 109 of the Constitution; as well as if Part 2 of Article 3 of the said law was in compliance with Part 2 of Article 5, Part 3 of Article 31, Articles 77 and 84, Part 1 of Article 109 and Part 3 of Article 111 of the Constitution.

Besides, the petitioner requested to investigate whether Parts 1 and 2 of Article 1 of the Republic of Lithuania Law on the Enforcement of the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" were in compliance with Part 3 of Article 31 of the Constitution, and if Part 2 of Article 1 of the said law was in compliance with Part 1 of Article 33 of the Constitution.

The Constitutional Court
has established:

I

On 16 July 1998, the Seimas adopted the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" (Official Gazette Valstybės žinios, 1998, No. 65-1877; hereinafter referred to as the Law) and the Law on the Enforcement of the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" (Official Gazette Valstybės žinios, 1998, No. 65-1878; hereinafter referred to as the Law on the Enforcement of the Law).

The petitioner-a group of Seimas members-requests to investigate if Article 1 of the Law is in compliance with Part 2 of Article 5, Article 67, Part 1 of Article 114 of the Constitution; if Article 2 of the Law was in compliance with Article 23, Parts 1 and 2 of Article 31, Part 1 of Article 33, Part 1 of Article 46, Part 1 of Article 48, Part 1 of Article 109 of the Constitution; as well as if Part 2 of Article 3 of the Law is in compliance with Part 2 of Article 5, Part 3 of Article 31, Articles 77 and 84, Part 1 of Article 109 and Part 3 of Article 111 of the Constitution.

Besides, the petitioner requests to investigate whether Parts 1 and 2 of Article 1 of the Law on the Enforcement of the Law are in compliance with Part 3 of Article 31 of the Constitution, and whether Part 2 of Article 1 of the said law is in compliance with Part 1 of Article 33 of the Constitution.

II

The request of the petitioner is grounded on the following arguments.

By the Law and the Law on the Enforcement of the Law which were adopted on 16 July 1998, the Seimas restricted the right of the former regular employees of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB; hereinafter referred to as the CSS) to freely choose occupation.

Article 22 of the Republic of Lithuania Criminal Code provides for a punishment which is deprivation of the right to hold certain office, to work certain work or occupy oneself with certain activities. Such punishment is given to a guilty person and it may only be given by a court. In the opinion of the petitioner, the provision of Article 2 of the Law whereby the former regular employees of the CSS are prohibited from working in various areas for 10 years, establishes collective responsibility for the said employees and, in fact, provides punishment for them. Meanwhile, Part 1 of Article 31 of the Constitution prescribes that every person shall be presumed innocent until proven guilty according to the procedure established by law and until declared guilty by an effective court sentence, while Part 2 thereof stipulates that every indicted person shall have the right to a fair and public hearing by an independent and impartial court. Part 1 of Article 109 of the Constitution provides that in the Republic of Lithuania, the courts shall have the exclusive right to administer justice. Therefore the petitioner doubts as to whether the aforesaid provision of Article 2 of the Law is in conformity with Parts 1 and 2 of Article 31, and Part 1 of

Article 109 of the Constitution. The petitioner also maintains that the Constitution does not grant the Seimas any powers to implement justice, i.e. by laws to establish people's guilt and give punishments to them. Therefore the adoption of the Law may contradict the provision of Article 5 of the Constitution whereby the scope of powers shall be defined by the Constitution, Article 67 of the Constitution whereby the powers of the Seimas are established, as well as Article 114 of the Constitution whereby institutions of State power (thus, including the Seimas as well) shall be prohibited from interfering with the activities of a judge or the court.

According to the petitioner, the provision of Article 2 of the Law prohibiting the former regular employees of the CSS to work in certain areas for 10 years may also contradict Part 1 of Article 48 of the Constitution whereby every person may freely choose an occupation or business. The fact that Article 2 of the Law contains a prohibition for the former employees of the CSS to work not only in State institutions, offices or organisations but also private enterprises-banks, credit unions, security services, communication enterprises, education establishments-as well as to work as private advocates or notaries and to engage in private practice connected with possession of a weapon may contradict Part 1 of Article 46 and Article 23 of the Constitution as by such a prohibition, in the opinion of the petitioner, individuals' freedom of economic activity and the right of private ownership are restricted.

The petitioner also doubts whether the provisions of Part 2 of Article 3 of the Law are in conformity with the Constitution. Part 2 of Article 3 of the Law provides that, following the joint motivated proposal of the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department, decisions concerning non-application of the restrictions for the former regular employees of the CSS shall be adopted by a 3-person commission formed by the President of the Republic. Decisions by the said commission are to be assessed as acquittals of individuals and this resembles the function of the court. Thus the commission may be considered a special court. Therefore one is to investigate whether the aforesaid provision of Part 2 of Article 3 of the Law is in compliance with Part 1 of Article 109 and Part 3 of Article 111 of the Constitution. The petitioner also doubts whether the provision regarding a 3-person commission formed by the President of the Republic contained in Part 2 of Article 3 of the Law is in conformity with Part 2 of Article 5, and Articles 77 and 84 of the Constitution.

The petitioner also points out that Part 2 of Article 3 of the Law provides that a former regular employee of the CSS, in case he reveals knowledge about his former activities in the CSS and existing links with former employees and agents of the CSS, may avoid application of the restrictions in his regard. Parts 1 and 2 of Article 1 of the Law on the Enforcement of the Law provide that the former regular employees of the CSS must report this knowledge concerning themselves to the employer. Sanctions are applied to individuals who hide such knowledge. This is to be assessed as compulsion established by the Law to give evidence against oneself or against one's family members or close relatives who may have worked in the CSS or may have been agents. Therefore the aforesaid provisions of Part 2 of Article 3 of the Law, and those of Parts 1 and 2 of Article 1 of the Law on the Enforcement of the Law may contradict Part 3

of Article 31 of the Constitution prohibiting to compel to give evidence against oneself or against one's family members or close relatives. In the course of the preparation of the case for the Constitutional Court hearing, the Seimas member V. P. Andriukaitis, on behalf of the representatives of the petitioner, presented additional arguments to the Constitutional Court. It is indicated in his paper that Article 33 of the Constitution guarantees the right of citizens to have the equal opportunity to serve in a State office of the Republic of Lithuania. Articles 108 and 115 of the Constitution provide for concrete bases of dismissal of judges which may not be expanded by laws. Therefore doubts arise whether Article 2 of the Law and the provisions of Part 2 of Article 1 of the Law on the Enforcement of the Law which provide restrictions on occupational activities of the former regular employees of the CSS are in conformity with Part 1 of Article 33 of the Constitution.

III

In the course of the preparation of the case for the judicial hearing, along with other material, explanations by V. Staniulis, Secretary of the President's Office, K. Kovarskas, Deputy Prosecutor General, S. Šedbaras, Minister of Internal Affairs, Č. Stankevičius, Minister of Defence, M. Laurinkus, Director General of the State Security Department, V. Kundrotas, State Controller, R. Šatkauskas, Deputy Director of the Customs Department under the Ministry of Finance, V. Vadapalas, Director General of the Department of European Law under the Government of the Republic of Lithuania, J. Jasaitis, a Seimas ombudsman, K. Lipeika, Chairman of the Lithuanian Bar Council, T. Birmontienė, Director of the Lithuanian Centre for Human Rights, D. Kuodytė, Director General of the Centre for the Research into the Genocide and Resistance of Lithuanian People, S. Kaušinis, a responsible secretary of the Committee of the Lithuanian Association for Human Rights, J. Girnienė, President of the House of Lithuanian Notaries, were received.

It is pointed out in the conclusions of the working group, formed by the President of the Republic, for a legal assessment of the acts regulating the status of former regular employees and secret agents of the USSR Committee of State Security in Lithuania: (1) when the status of the former regular employees of the CSS is decided, continuation of State policy is necessary, therefore one has to take account of the 27 March 1990 statement of the Supreme Council-Reconstituent Seimas on the CSS employees, as well as respective Government resolutions adopted in 1991-1992; (2) regulating the present status of the former regular employees of the CSS, one has to pay special attention to the provisions of the Constitution which guarantee the equal opportunity to serve in a State office (Article 33), which consolidate the right to private ownership, freedom of individual economic activity (Article 46), which grant the right to every individual freely to choose an occupation or business (Article 48), which establish that in Lithuania, the courts shall have the exclusive right to administer justice (Article 109); (3) the legal acts regulating the present activity of the former CSS regular employees must be in conformity with the obligations of the Republic of Lithuania under the international agreements of the Republic of Lithuania; (4) adopting the legal acts regulating the status of the former employees of the CSS, one has to coordinate them with other laws, e.g. with the Criminal Code, the Law on the

Labour Agreement, the Code of Criminal Procedure, the Law on the Bar, as well as with the laws providing certain peculiarities of dismissal of individual categories of officials, e.g., the Law on State Control, the Law on the Police, the Law on the Prosecutor's Office; (5) legal acts regulating the present activity of the former employees of the CSS ought to be in line with the principles of proportionality and legal certainty; (6) questions of restriction of the rights to the former employees of the CSS must be decided only by courts; (7) legal acts ought to establish a thorough and final list of positions so that when the former employees of the former repressive structures of the USSR attempt to take them, restrictions may be applied to them.

In his explanation K. Kovarskas pointed out that Article 2 of the Law provides for a sanction whereby the former regular employees of the CSS are deprived of the right to work in certain areas or be in certain office for 10 years. The said sanction may violate the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishing the entitlement for everyone to a fair and public hearing by an independent and impartial tribunal. Certain doubts arise as for the prohibition for such persons to work in private structures.

In his explanation, A. Svetulevičius drew one's attention to the fact that the provision of Article 2 of the Law stipulating that the former regular employees of the CSS may not work in certain indicated institutions for 10 years may be disputed. A recognition by law that an institution is criminal does not provide grounds for application of the principle of collective responsibility. This is also provided for by Part 1 of Article 31 of the Constitution. According to A. Svetulevičius, the fact that by a joint conclusion of the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department questions of occupational restrictions of persons are decided means that the aforesaid institutions are commissioned with the function of implementation of justice, while this is not in line with Part 1 of Article 109 of the Constitution.

Č. Stankevičius is of the opinion that the Law and the provisions of the Law on the Enforcement of the Law are in conformity with the aims of ensuring national security of the Republic of Lithuania and are in compliance with the Constitution. This conclusion is based on an extensive legal argumentation.

It is maintained in the explanation by V. Vadapalas that the provisions of the aforementioned laws, in essence, do not contradict European Union law. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not guarantee the right to work. The established restriction for the former regular employees of the CSS to work in certain areas may not, in itself, be considered criminal punishment, therefore the provisions of the Convention (Articles 6 and 7) are not linked with these restrictions, either.

According to T. Birmontienė, the Lithuanian Centre for Human Rights approved of the conclusions and legal analysis of the working group, formed by the President of the Republic, for a legal assessment of the acts regulating the status of former regular employees and secret agents of the USSR Committee of State Security in Lithuania.

S. Kaušinis points out that the Lithuanian Association for Human Rights approves of the provisions of Article 1 of the Law

which recognise that the USSR Committee of Security is a criminal organisation, however other provisions establish collective responsibility, compulsory registration of persons, and these norms restrict the right to choose occupation. This violates elementary human rights. Restrictions of human rights may only be applied by a court order to concrete individuals for committed crimes.

K. Lipeika explained that the effective Law on the Bar does not provide for removal of persons from the List of Practising Advocates on the grounds which are enumerated in the Law. Nor does the Law on the Bar prohibit recognition as an advocate nor inclusion into the List of Practising Advocates persons who formerly were regular employees of the CSS. Therefore it may be disputed whether it is possible to amend or annul legal provisions without amending effective laws. In the opinion of K. Lipeika, by at once repealing all effective provisions worded in laws, the main principle of the protection of the fundamental human rights is violated whereby the rights of a person which he acquired conforming to the requirements of effective laws may not be deprived or restricted by a newly adopted law.

IV

In the Constitutional Court hearing the representatives of the petitioner virtually reiterated the arguments set forth in the petition.

According to V. P. Andriukaitis, in some states of central and eastern Europe lustration has been applied, and one of the main argument for adoption of such a law in Lithuania was that other post-communist states have applied various restrictions in respect to former security officials. Unlike in other states, Lithuania was not a state relatively independent of the USSR. Thus in these states of central and eastern Europe the restrictions were applied to subjects under jurisdiction of national law. In Lithuania the restrictions are applied to persons who worked in organisations of another state, thereby the limits of the jurisdiction of national law are overstepped. Proclamation that an organisation of another state is criminal falls within the jurisdiction of international but not national law, therefore it is to be disputed whether the Seimas is entitled to pass such a law at all. If the document adopted by the Seimas in essence contradicts the fundamental principles of law-governed State which are established by the Constitution, therefore such an act is not and may not be a law as it in its all scope will contradict the Constitution.

V. P. Andriukaitis believes that the deprivation of the right of the former regular employees of the CSS to hold certain positions or work in certain areas is, in essence, criminal punishment. The representative of the petitioner also underlined that such punishment may be given only by a court. This would be in line with the practice of the European Court of Human Rights as the criteria under which a violation of law is considered a crime is the importance of the violated norm of law, as well as nature and severity of possible punishment.

The representative of the petitioner pointed out that restrictions for the former employees of the CSS were already applied by respective Republic of Lithuania legal acts of 1990-1992. Therefore the Law and the Law on the Enforcement of the Law once again establish restrictions for the former regular employees of the CSS to work in some area or hold a certain position. However, adopting laws, one has to follow

fundamental principles of law. For instance, the principle of legal certainty demands that subjects of legal relations feel certain as concerns their legal situation. Adopting the said laws, the complex principle of legal certainty which belongs to the concept of a State under the rule of law is evidently violated. The principle of legal certainty is tightly connected with the legal principle prohibiting retroactive effect of laws. In the opinion of V. P. Andriukaitis, the disputed laws also violate the principle whereby no one is to be punished for the second time for the same deed, and the principle whereby it is prohibited to demand to give evidence against oneself. Along with these principles, in the jurisprudence of the European Court of Human Rights the principle of proportionality has been noted for many a time. According to this principle, every measure applied by a state may not be too severe, nor may it restrict subjects of law more severely than achievement of legitimate interests would demand. In some cases the aforementioned laws violate this principle as well, e.g., prohibition to work as an usher at a bank or occupy himself in a similar job there.

The representative of the petitioner maintains that granting the functions of the court to the commission which is to be formed by the President of the Republic is doubtful. Decisions by the commission not to apply restrictions are to be interpreted as acquittals, i.e. this is accomplishment of judicial functions. Therefore, even though the sanction prohibiting certain work in a certain area for 10 years is assessed as a measure of not criminal nature, doubts are certain to occur as to how this is in line with Paragraph 1 of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is prescribed therein that in the restriction or determination of his individual rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The judicial interpretation of the functions of the commission evidently contradicts the concept of the constitutional power of the President of the Republic as well. The President of the Republic, as, by the way, the Seimas too, may not take the functions of implementation of justice. It must also be noted that neither the President of the Republic nor a commission formed by him have any constitutional grounds to issue acts of application of law.

V. P. Andriukaitis is of the opinion that the application of the restrictions provided for by Article 2 of the Law are also doubtful. During the nine years after the restoration of the independence, the former employees of the CSS might specially acquire certain occupational skills or a certain qualification. Prohibition to occupy in such a job is to be assessed as loss of the right to remuneration. This violates the principle of legitimate expectation of such a person therefore this contradicts Part 3 of Article 23 of the Constitution. The representative of the petitioner maintains that the establishment of restrictions for former regular employees of the CSS concerning their occupational activities may also be not in line with the principle of the equality of citizens before the law. V. P. Andriukaitis cannot understand why the former employees of the CSS are held less loyal than the leaders of the Communist Party of Lithuania (Communist Party of the Soviet Union).

The representative of the petitioner A. Salamakinas

explained that in the context of the case at issue Article 33 of the Constitution establishing the equal rights for citizens of Lithuania to serve in a State office is of much importance. The former employees of the CSS are also citizens of the Republic of Lithuania. The representative of the petitioner G. Šileikis also approved of the arguments of the petition.

V

In the opinion of the representative of the party concerned A. Kubilius, the Law has been reviewed from every legal and political aspect. Article 1 of the Law does not lead to any legal consequences. This is not a judgement by a court, this is a statement of the fact but not establishment of guilt. According to him, doubts whether the CSS committed war crimes and whether the Seimas may name an institution of another state a criminal one, are not the object of the dispute. All the remaining articles have individual legal meaning. Analogous laws were adopted in most of the states which became free of totalitarian or occupation regimes and began democratic lives. Such laws were passed in Greece, Portugal, Spain, some countries of Latin America, central and eastern Europe, as well as in the South African Republic and South Korea. All new democracies must solve the same problem: what should be done with the former ones? Two ways are known: either to apply certain restrictions to the former ones, while prosecute them under legal procedure for committed crimes, or pardon them by naming their guilt. Up to now, this has been in Lithuania as well. One of the most important reproaches to the Law is that it kind of establishes punishment to the former employees of the CSS, even though to do so may only the court. The restriction of the right for former employees of the CSS to occupy themselves in certain areas is linked with exceptional requirements for certain positions because of their importance to the State and society. In its ruling of 11 November 1998, the Constitutional Court held that in State institutions only such persons may work who are loyal to that State and fidelity of whom is not doubted. The fact that the persons who do not conform to such requirements are prohibited to hold concrete positions may not be held a punishment. The Law does not decide any question of guilt of the former employees of the CSS nor that of application of such punishment. The representative of the party concerned maintains that the commission formed by the President of the Republic does not decide the question of guilt of the former employees of the CSS while decisions of the commission concerning non-application of the restrictions against the said employees may not be held acquittals, therefore the commission may not be compared to a special court. The assertion of the petitioners that by the Law the Seimas interferes with the activities of judges or courts is groundless, too, as the Seimas does not establish any guilt of persons nor does it give any punishment by the Law.

According to A. Kubilius, the State may establish special requirements for work in the most important areas of economy and private sector in like manner as requirements are established for work in a State service. The purpose of such requirements may be safeguarding of national prosperity and security. It is evident that there are such areas and positions in the private sector the work in which is of crucial importance to society, therefore society may establish special requirements for those who intend to occupy themselves in such jobs or to render such services to society. Part 3 of Article

47 of the Constitution provides that the State shall regulate economic activity so that it serves the general welfare of the people.

A. Kubilius pointed out that the purpose of Article 31 of the Constitution is to establish guarantees for persons in criminal procedure. The discussed Law is not linked with questions of criminal procedure therefore the arguments of the petitioner that the constitutional rights of participants to criminal procedure will be violated are unmotivated.

The representative of the party concerned noted that Part 2 of Article 77 of the Constitution provides that the President of the Republic shall perform all the duties which he or she is charged with by the Constitution and laws. Item 10 of Article 84 of the Constitution provides that the President of the Republic shall appoint or dismiss, according to the established procedure, State officers provided by law. Therefore the fact that the President of the Republic, implementing his obligations by the law, appoints three members of the commission and confirms the regulations for the activities of the commission may not contradict the Constitution.

The representative of the party concerned A. N. Stasiškis explained that the Law concerns the former employees of such an organisation which implemented the occupation regime in Lithuania. It persecuted any movement, any expression of democratic thought and any attempt to protect the freedoms of individuals and citizens or any attempt to raise such issues.

Assessing the adopted laws, a question is solved whether society has the right not to trust some of its members who took part in certain activities. One has in mind only the question of confidence.

The representative of the party concerned G. Goda maintained that there is one principal question, whether the restrictions of occupational activities of the regular employees of the CSS as provided by Article 2 of the Law constitute criminal punishment or not. The answers to the other questions depend on this answer. Perhaps there appears an impression that the aforesaid restriction is a punishment due to the fact that Article 1 of the Law states that the CSS is a criminal organisation while the Criminal Code provides for a criminal punishment, i.e. prohibition to work in certain field is associated with these restrictions. However, the Law does not provide for any criminal punishment. Article 1 of the Law presents only a political assessment of the CSS. It needs to be noted that Article 1 does not overstep the limits of national jurisdiction as the criminal nature of the CSS is recognised only in the scope wherein the said organisation acted in the Republic of Lithuania.

According to G. Goda, the Law does not deprive the courts of their right and obligation to implement justice. It is impossible to notice any interference with the activities of the courts as in such a case the courts do not investigate any particular cases. The law recognises no one guilty, while criminal punishment would necessarily encompass the element of guilt. Thus this law establishes special requirements for holding respective office to the former employees of the CSS but not criminal punishment for them.

VI

In the Constitutional Court hearing the specialists-A. Anušauskas, Director of the Centre for the Research into the Genocide and Resistance of Lithuanian People, and A.

Starkauskas, a programmes co-ordinator of the Centre for the Research into the Genocide and Resistance of Lithuanian People, spoke.

A. Anušauskas explained that the CSS was an absolutely centralised organisation. Its territorial structures operated by the regulations unified for all Soviet Union republics. A person who wanted to work at the CSS was, first of all, admitted into the military forces of the USSR, swore loyalty to the USSR and only after that he would become a regular employee of the CSS. In the office instructions it was pointed out that a regular employee of the CSS must, along with criminal cases, investigate anti-Soviet actions, sabotage, and implement political persecution. The territorial organisation of the CSS which operated in Lithuania virtually controlled the life in Lithuania. Under instructions, practically all the territory of Lithuania was off-limits for foreigners, they could visit only 400 objects. The main object of persecution, as it was indicated in all CSS reports, were the people who previously had taken part in anti-Soviet actions, had been imprisoned, subjected to repression, exiled, subjected to preventive dealing with, or warned because of their anti-Soviet activities. There were around 100,000 of such people in Lithuania.

A. Anušauskas noted that all divisions of the CSS were closely interlinked, while, in case of need, their employees were used for accomplishing political persecution as well as counter-espionage. The service sub-divisions, e.g., economic division, operational-technical division, had to ensure the implementation of all said operations as well as instructions given from Moscow. In the main instructions of the CSS it was indicated that, fulfilling its tasks, the CSS shall resort to all measures. In other instructions it was indicated that it shall be permitted to use radioactive and other substances harmful to human health, while in 1980s narcotic substances were used as well. Thus, the activities of the CSS were criminal from this aspect too.

According to A. Anušauskas, the Law has come into force. The Centre for the Research into the Genocide and Resistance of Lithuanian People was successful in obtaining part of 1990-1991 secret service files which were held by the former employees of the CSS. Thus the Law is useful with respect to the national security too, as, it is possible to presume, it diminishes possibilities to blackmail individual persons. It is also necessary so that the former employees of the CSS might resolve to cut their links with the past.

J. A. Starkauskas drew one's attention to the repressive nature of the CSS and motivated the reason of the application of restrictions to the former employees of the CSS.

The Constitutional Court
holds that:

On 16 July 1998 the Seimas passed the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation". The Law provides for restrictions for present activities of employees of the CSS. The Law also provides for cases when the restrictions are not applied to the former employees of the CSS. The procedure for the enforcement of provisions of the Law was established by the Republic of Lithuania Law on the Enforcement of the Law "On the Assessment

of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" which was adopted on the same day.

A group of Seimas members appealed to the Constitutional Court with a petition requesting to investigate the compliance of certain norms of the said laws with the Constitution.

1. Upon restoration of the independence of the Republic of Lithuania, already in the first acts of the State it was attempted legally to assess the activities of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) in Lithuania as a repressive institution of the occupation government and decide the problem of confidence and loyalty of regular employees and secret agents of the CSS to the State of Lithuania.

In its 27 March 1990 statement, "in order to consolidate peace and accord," the Supreme Council-Reconstituent Seimas appealed to the persons collaborating with the CSS and suggested that they resolve and not render help to the bodies of the CSS. It was guaranteed that persons who decided to do so until 28 March 1990 and who had not committed grave crimes against the people of Lithuania and who refused from then on to maintain ties with the CSS would not experience any moral nor legal nor any other persecutions from the side of the authorities of the Republic.

It was noted in the 1 August 1991 "Persuasion of the persons who are still serving the CSS of the USSR" adopted by the Supreme Council-Reconstituent Seimas of the Republic of Lithuania that the division of the CSS took part in the 1940 annexation of the State of Lithuania, killing of the members of its government and subjection to repression hundreds of thousands of innocent people. It is also emphasised in the persuasion that a special unit (the Alpha group) as the main shock force killing civilians directly participated in the 13 January 1991 assault on the buildings of Lithuanian television. It was held therein that this department of the USSR was continuing its anti-State activities in Lithuania.

In its 23 August 1991 Resolution No. 351, the Government underlined that the USSR Committee of State Security was conducting activities hostile to the Republic of Lithuania, that it had taken part in implementation of the orders of the anti-constitutional USSR State Committee of Emergency Situation in Lithuania and in an attempt to overturn the authorities of the State of the Republic of Lithuania.

On 26 August 1991, the Government adopted Resolution No. 360 wherein it established guarantees for social rehabilitation for the employees of the USSR Ministry of Defence, USSR Interior Ministry, and the USSR Committee of State Security which were being liquidated who wished to work for the Republic of Lithuania and who had not committed crimes against it as well as social guaranties for the members of their families. Implementing this resolution, by its 26 August 1991 Resolution No. 361 the Government decided to register the employees of the USSR Ministry of Defence, USSR Interior Ministry, and the USSR Committee of State Security at the State Security Department under the Government of the Republic of Lithuania.

In its 12 October 1991 Resolution No. 418, the Government defined the activities of the USSR Committee of State Security as directed against the State and established that the employees as well as informers (agents) of the CSS may not, for five years, hold positions at Republic of Lithuania ministries, departments and other State services of inspectorates, and that

they may not work as officers in charge (heads and their deputies) at the main structural subdivisions (departments) of ministries, boards of towns and districts for the same period. It was pointed out to the said persons who were holding the listed positions to resign until 1 January 1992. By its 6 April 1992 Order No. 418 the Government established that the persons who were holding the listed positions would have to fill in a special form of personal data of officials of State institutions of the Republic of Lithuania. By the Government order, such forms were to be filled in for five years.

Generalising the aforesaid legal acts of the Sate of Lithuania, one is able to present certain conclusions.

Already in the first legal acts of Lithuania which had restored its independence there were elements of the assessment of the activities of the USSR CSS in our state. Alongside, it needs to be noted that the CSS did not cease its hostile activities even after 11 March 1990. Meanwhile, respective social guarantees were established for the employees of the CSS who wished to work for the Republic of Lithuania and who had not committed crimes against it. It goes without saying, certain restrictions were established for the employees of the CSS: they had to register, they might not hold any high and leading positions at State institutions for 5 years. These measures, however, were not a type of legal responsibility. It should also be noted that the restrictions were not of universal character: they were only applied to part of the former employees of the CSS. It means that the problem of the verification of reliability and loyalty of the former employees of the CSS was not completely solved by the legal acts of that time.

2. In 1990 and later in the states of central and eastern Europe, where essential political changes were taking place too, it was started to clarify by means of legal procedure whether persons who hold influential positions in the areas of economy and politics or attempting to hold such positions (had) had no ties with secret services of former communist regimes. Alongside, it was attempted to be sure about the loyalty of regular employees of security services (including secret services) to the State and establish their opportunities to hold important and responsible positions from the standpoint of the security of each State. Upon establishment of the character and degree of collaboration of present or future State officials or employees with the said secret services, the right freely to choose occupation, as a rule in State services, was either restricted for a certain time or this right was deprived. Quite often this process is referred to as lustration (from Latin lustratio-purification, sacrifice of something for atonement), while the laws regulating it-lustration laws.

On 22 March 1990 in Czechoslovakia the names of deputies of the Federal Assembly included in registers of the communist security service were made known. On 4 October 1991 the Lustration Law came into force. After Czechoslovakia had split into the Czech Republic and Slovakia in 1993, the Lustration Law became effective on the territories of both states. It provided as to what restrictions were to be applied for persons to hold elective or designated positions in a State service, in establishments of higher education or mass media provided they, from 25 February 1948 to 17 November 1989 were: members of the secret service, residents, agents, tenants or owners of secret flats, informers, co-workers of the security service on ideological grounds; members and secretaries of regional or

higher communist party committees (with the exception of persons who held such positions from 1 January 1968 until 1 May 1969); representatives of people's militia; students of higher officer's schools of the USSR CSS or the Ministry of Interior, as well as post-graduate students or students of longer than 3-month courses at these schools etc. The listed persons may not work in: State institutions, the army (at the rank of colonel or higher); security information service; offices of the President and the Parliament; the Government; registry of the Constitutional Court; Presidium of the Academy of Sciences; State radio and television, office of the press; State enterprises and organisations; joint-stock companies the main shareholder of which is the State; organisations of foreign trade, State banks, etc. Under the said law, opportunities are also restricted to work as a judge, public prosecutor, public notary, and State arbiter.

The agreement on unification of Germany signed on 31 August 1990 provided for an opportunity to dismiss the former senior party functionaries of the German Democratic Republic who were in State offices, as well as heads of trade unions and the persons who co-operated with the GDR security service. On 20 December 1991, the Federal Republic of Germany adopted the law on the documents of the former German Democratic Republic security service. By this law, a wide circle of persons (by prior informing them) is checked in connection with their possible links with the GDR secret service: members of the government of the State and those of the lands, as well as other persons who are linked by State legal labour relations; deputies and representatives of institutions of local authorities; members of advisory bodies; persons who work or continue to hold office in the institutions of the State and federal lands, as well as institutions of local authorities or intergovernmental and international organisations a member of which is the Federal Republic of Germany, as well as church institutions; notaries or lawyers; members, managers, heads or persons in charge of enterprises enjoying the status of the legal person; managers, heads of enterprises or other persons whom the law, a statute or an agreement of a joint-stock enterprise commissions to represent the majority in the joint-stock enterprise. In addition, reliability of persons is checked who are entrusted with facts, objects or discoveries related to the State secret, or when they have access to them; as well as that of persons who work or will work in the institutions important in connection with security, or objects important for or in connection with defence. Possible links of the persons holding listed positions or aspiring to hold them with the former GDR security service are checked. In addition, reliability of persons may be checked (with their agreement) who work: in the boards of political parties; as judges of honour; in public church organisations etc.

In May 1992 the Sejm of the Republic of Poland adopted a law which obligated the Ministry of Interior to prepare lists of collaborators with communist special services and present them to the parliament. On 11 April 1997 it passed the Law "On Disclosure of the Work or Collaboration of Persons Accomplishing Public Functions in Services of State Security Services or Collaboration with Them in 1944-1990". By the said law, public functions are accomplished by: the President of the Republic of Poland, a Sejm member, senator, or a person summoned, elected or appointed by the President of the Republic of Poland, or the Sejm, Presidium of the Sejm or the chairman

of either the Senate of the Council of Ministers; heads of the civil service, ministers, directors general of central institutions, as well as judges and public prosecutors. These persons must fill in special statements wherein it is recognised or denied that they worked or collaborated with security services. The aforementioned law is also applied to the members of observers' councils of the joint-stock companies "Polish Television", "Polish Radio", as well as members of the boards, programme directors, directors or regional centres and agencies of the said companies, as well as the Director General of the Polish Press Agency, etc.

Other states have also adopted legal acts deciding the problems of collaboration with secret services of the communist regimes: Hungary (8 March 1994; new wording of 3 July 1996), Estonia (20 February 1995), Bulgaria (30 July 1997).

An analysis of the norms of said laws of the Czech Republic, Germany, and Poland, as well as that of similar laws of other states, permits to draw some conclusions which may be linked with respective legal acts of Lithuania.

In 1990-1992 in the Czech Republic, Poland, Hungary and the other states which had been under communist regimes the problems of checking the employees of secret services of these regimes and their collaborators were only at initial phase of their solution. It needs to be noted that changing limits of legal regulation and dynamism is characteristic of the lustration process. Lustration laws present wide but most often particular lists of posts in order to occupy which a special check-up is necessary. As a rule, these posts are in a State office and are linked with wide and responsible powers. It is also noteworthy that the lustration laws provide in detail for the procedure of investigation of the information about the checked persons and that of applying restrictions to these persons. The information is checked and conclusions are drawn by either a judicial institution or specially formed, independent commission representing various institutions. In the lustration process the rights and duties of the participating subjects are defined, while to the person concerned (checked) broad rights are granted actively to participate in this process, e.g. on his own initiative to present certain data, to become familiar with the conclusion of the check-up and the documents confirming it. Quite often such a person may use services of the lawyer (advocate) even still at the phase of the check-up. In the lustration laws of most states the right to appeal to court is established for persons undergoing the lustration process.

3. On the compliance of Article 1 of the Law with Part 2 of Article 5, Article 67 and Part 1 of Article 114 of the Constitution.

Article 1 of the Law provides: the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) is recognised a criminal organisation, which committed war crimes, carried out genocide, repression, terror and political persecution in the Republic of Lithuania which was occupied by the USSR.

The petitioner maintains that recognition of an organisation of another state as criminal is within the competence of an international tribunal but not the Seimas. Besides, the petitioner asserts that Article 1 of the Law determines the purpose and content of the rest of the norms of the law. Therefore the Seimas, having declared the CSS a criminal organisation by Article 1 of the Law, in the other articles of the Law states that the persons who worked at the

CSS are guilty and gives them punishments. Thus by means of this Law, the Seimas is implementing justice, i.e. a function which it has not been entitled by the Constitution. In the opinion of the petitioner, doubts arise whether by Article 1 of the Law and by the entire Law the Seimas did not contradict the provision of the Constitution stipulating that the scope of powers shall be defined by the Constitution (Part 2 of Article 5), as it overstepped its competence (Article 67 of the Constitution), and interfered with court activities (Part 1 of Article 114 of the Constitution).

As mentioned above, upon restoration of the independence of the Republic of Lithuania, the activities of the CSS as a repressive institution of the occupation authorities were assessed and the problem of regular employees and secret agents of the CSS was attempted to decide. In some legal acts a political definition of the activities of the repressive structures of the USSR which operated in Lithuania during its occupation was presented. For example, it is pointed out in the preamble of the Government Resolution No. 418 of 12 October 1991, that the activities of the CSS in the Republic of Lithuania are criminal and anti-State. The Law "On Verification of the Mandates of the Deputies Suspected of Conscious Collaboration with Special Services of Other States" reads that the institutions of Soviet security organised destructive activities against the State of Lithuania and its institutions. The preamble of the Law "On Responsibility for the Genocide of the People of Lithuania", with reference to the documents of international law, holds that "the policy of genocide and crimes against humanity which was carried out against the people of Lithuania was accomplished at the time of occupation and annexation by the Nazi Germany and the USSR". Such a definition of the activities of the CSS in Lithuania was determined by the political-repressive character of the activities of this structure. The designation, content of the activities of the CSS, along with its other functions, are revealed by its purpose: with the help of the CSS, to ensure the political basis of the USSR, take measures "against destructive and anti-Soviet activities", to suppress the resistance against the occupation. For example, on 1 December 1989 the panel of the USSR CSS urged that the chiefs of CSS subdivisions in "Soviet Union republics" take on all leading and operative employees of the CSS for the struggle against the persons and movements seeking to liquidate the Soviet State and social system, disseminating the ideas of cessation of the Soviet republics and, on the whole, distrust in the national policy of the CPSU and the Soviet State. It is also pointed out in the instructions of the CSS that the CSS, implementing its tasks, must resort to all possible measures. It needs to be noted that the CSS acted in the Republic of Lithuania against the State of Lithuania also after the restoration of independence until September 1991.

On the grounds of the arguments set forth, a conclusion is to be drawn that the definition of the activities of the CSS in Lithuania as given by Article 1 of the Law is of general character. It reflects the political, historical, and legal assessment of the occupation and its effects which, since 1990, has been stated in Lithuanian legal acts for many a time. This is a statement of a historical fact but not the grounds formulated by the legislator for criminal responsibility of all employees of the CSS. The liability for genocide, war crimes, acts of terror and other crimes committed by concrete persons

is provided for by the Criminal Code. Thus, if any of the employees of the CSS have committed the crimes provided for by the said code, they may be brought to criminal responsibility under its corresponding articles and punished as established by the sanctions of these articles. It is also noteworthy that the Criminal Code does not provide for criminal responsibility of legal persons. Thus Article 1 of the Law does not presuppose any collective responsibility for the criminal deeds accomplished by the CSS, nor is it linked with the questions of criminal law or those of criminal procedure law. Such a content of Article 1 of the Law indicates that the restrictions established by Article 2 are not criminal sanctions. Such restrictions are not any form of responsibility at all. They are restrictions of the right freely to choose occupation which are determined by the area, nature or specific character of the occupation.

Taking account of the arguments set forth it is to be concluded that Article 1 of the Law is in compliance with Part 2 of Article 5, Article 67 and Part 1 of Article 114 of the Constitution.

4. On the compliance of Article 2 of the Law with Parts 1 and 2 of Article 31, Part 1 of Article 109 of the Constitution and that of Part 2 of Article 3 of the Law and Parts 1 and 2 of Article 1 of the Law on the Enforcement of the Law with Part 3 of Article 31 of the Constitution.

The petitioner maintains that the provision of Article 2 of the Law which prohibits the former regular employees of the CSS to work as officers or officials in the institutions of State power and government, courts and other areas for 10 years, provides for a responsibility of these persons and establishes a criminal punishment for them, therefore the petitioner doubts whether the aforesaid provision is in compliance with Parts 1 and 2 of Article 31 and Part 1 of Article 109 of the Constitution.

The petitioner also doubts as to whether, first, the provision of Part 2 of Article 3 of the Law under which former regular employee of the CSS may be pardoned from the restrictions of job activities provided he himself reveals everything about his former activities at the CSS and his present links with the former employees and agents of the CSS to the State Security Department, and, second, whether the requirement established by Parts 1 and 2 of Article 1 of the Law on the Enforcement of the Law whereby the former regular employees of the CSS must notify about this fact the employer are in compliance with Part 3 of Article 31 of the Constitution.

The Constitutional Court underlines that the norms of Article 31 of the Constitution are linked, first of all, with consolidation of the constitutional principles of justice. For example, the norms of this article are designated: to consolidate the presumption of innocence; to particularise the right to defence at court in criminal cases; to consolidate the fundamental principles of implementation of justice in criminal procedure; to establish principles of giving criminal punishments; to create guarantees for immunity of the person and his honour, as well as protection of the private life in the procedure of criminal cases etc.

As mentioned above, the measures provided for by Article 2 of the Law are not criminal sanctions, therefore their application is linked with neither the penal-procedural relations nor with implementation of justice. In the course of

the enforcement of the Law the former regular employees of the CSS are not recognised as suspects, nor are they arrested nor detained, while the investigation of their case is not criminal prosecution, therefore the application of the restrictions provided for by Article 2 of the Law is not the matter of criminal procedure. Also the notification of the employee of the CSS about his former activities is not to be assessed as bringing an accusation against oneself.

Thus Article 2 of the Law is in compliance with Parts 1 and 2 of Article 31 and Part 1 of Article 109 of the Constitution, while Part 2 of Article 3 of the Law and Parts 1 and 2 of the Law on the Enforcement of the Law are in compliance with Part 3 of Article 31 of the Constitution.

5. On the compliance of Article 2 of the Law with Article 23, Part 1 of Article 33, Part 1 of Article 46, Part 1 of Article 48 of the Constitution and that of Part 2 of Article 1 of the Law on the Enforcement of the Law with Part 1 of Article 33 of the Constitution.

5.1. The petitioner doubts whether the norm of Article 2 of the Law whereby the former regular employees of the CSS are prohibited to work in a State office as officers or officials of the State of Lithuania, and whether the norm of Part 2 of Article 1 of the Law on the Enforcement of the Law whereby the former regular employees may not be admitted to work as officers or officials in a State office, while those who already serve as officers or officials in a State office must be dismissed do not contradict the provision of Part 1 of Article 33 of the Constitution whereby citizens "shall have the equal opportunity to serve in a State office of the Republic of Lithuania".

Part 1 of Article 33 of the Constitution provides for the right of citizens to have the equal opportunity to serve in a State office of the Republic of Lithuania is not absolute. The State cannot and does not burden itself with the obligation to admit every person to serve in a State office. Taking account of the nature of a State office and its importance in the life of every individual, that of society and the State, as well as in an attempt to ensure a potent and effective work of institutions of State power and government as well as other institutions, respective requirements are established for State officers and officials. Laws provide for special procedure for admitting to work (e.g. acquiring a post by way of competition), however those who wish to become State officers or officials must also have corresponding education, professional experience and certain personal characteristics. The higher position, or the more important area of activities, the higher requirements are raised before the person holding such a position. In its 11 November 1998, the Constitutional Court held that "in State institutions only the persons who are loyal to that State and regarding their loyalty or credibility no doubts arise may work in its institutions". The European Court of Human Rights in the case Vogt vs. Germany confirmed that a democratic state is entitled to demand that its officials be loyal to the constitution. Thus the requirement for loyalty and credibility in connection with service in a State office is common and understandable.

It needs to be noted that neither the European Convention for the Protection of Human Rights and Fundamental Freedoms nor its additional protocols provide guarantees for the right to work in a State office. In the case Glasenapp vs. Germany the European Court of Human Rights held that the right to be

admitted to a State office is recognised neither by the Convention nor its protocols, therefore it belongs to the right to be admitted to a State office but this right is not covered by the Convention. The Court held, however, that this does not mean that in all other respects the Convention is not to be applied to officials. Thus the states are granted greater freedom in domestic law to decide the questions of regulation of service in a State office, and to establish greater requirements and restrictions in cases of adoption of persons to State institutions. On the other hand, the character of the said restrictions must be in line with the objectives because of which they are established. This principle of proportionality in restriction of rights and freedoms has been noted for many a time in the cases investigated by the European Court of Human Rights (e.g., the case Vogt vs. Germany).

Taking account of the character of the purpose and activities of the USSR CSS in the occupied Republic of Lithuania, the requirements determining the loyalty and credibility of former regular employees of the CSS who work or wish to work in a State service are urgent, indeed. These persons consciously and of their own free will went to work as regular employees of the CSS. Adoption to the structures of the CSS showed big confidence of the occupation government in them. By their activities, these persons carried out political persecution of persons and organisations that promoted the ideas and aspirations of Lithuanian independence, or contributed to such persecution. Thus the Republic of Lithuania has reason to doubt the former regular employees of the CSS and must make sure that they are loyal and could be trusted, therefore the effort of the State to restrict the opportunities for the former regular employees of the CSS to serve in a State service is understandable and justified.

The arguments and motives set forth permit to draw a conclusion that Article 2 of the Law and Part 2 of Article 1 of the Law on the Enforcement of the Law are in compliance with Part 1 of Article 33 of the Constitution.

5.2. The petitioner doubts whether the stipulation established by Part 2 of the Law whereby the former regular employees of the CSS are prohibited from working not only in State institutions but also in private enterprises-banks, credit unions, security services, communications, etc., to practise as a private lawyer, notary or be engaged in other private occupation is in compliance with Part 1 of Article 48, Part 1 of Article 46 and Article 23 of the Constitution.

Article 48 of the Constitution is contained in its chapter entitled National Economy and Labour. The provision "every person may freely choose an occupation or business" of Part 1 of the aforesaid article is a norm of common nature based on universally recognised concept of human freedom. Thus the aforesaid provision of Part 1 of Article 48 guarantees, first of all, that every individual has an opportunity freely to choose an occupation or business in the area of private enterprise. This is linked with the provision of Part 1 of Article 46 of the Constitution which reads that "Lithuania's economy shall be based on the right to private ownership, freedom of individual economic activity, and initiative". Assessing the conformity of Article 2 of the Law with the said constitutional provisions, one has to take account of the fact that Part 3 of Article 46 of the Constitution provides that the State shall regulate economic activity so that it serves the general welfare of the people.

The duty of the State in the relations of labour market in the area of private enterprise is to ensure by legal means the balance of interests of employers and those of persons proposing their labour force and skills and harmonise them with those of society. Pre-conditions for the Sate implementing this function to interfere with these labour market relations which may be established by partnership or labour contracts or by collective agreements are limited. In this area the State must respect the freedom of economic activity which is understood as the freedom of contracts, freedom of fair competition, and equal rights of entities of economic activity. In other words, freedom of individual economic activity and initiative is the whole complex of legal opportunities which creates pre-conditions for an individual to adopt decisions necessary for his economic activity by himself (Constitutional Court ruling of 18 April 1996).

Part 1 of Article 48 of the Constitution consolidates the right of individuals to choose an occupation or business. This is one of the necessary conditions to satisfy the vital needs and secure a proper position in society for the human being and personality. On the other hand, such a constitutional right of every person determines an obligation for the State to create corresponding legal, social and organisational pre-conditions for implementation of this right.

The content of Part 1 of Article 48 of the Constitution must be linked with the provisions of Parts 1 and 3 of Article 46 of the Constitution. All these constitutional provisions, conditioning each other, create prerequisites to pass laws reacting not only to the activity of national economy but also the variety and change of economic and social life, evolution of the forms of property as well as other circumstances. Implementing its obligation to ensure national security and proper guidance of young people, to secure education, credible financial system, protection of State secrets etc., the State is entitled to establish additional, special requirements for those who wish to work in the main areas of economy and business. In private enterprise there are also such areas and posts which are of crucial importance to society and the State, therefore the State may set special requirements to those who want to work in such jobs. Such regulation may be linked with the needs of the State too, as well as the necessity to take into consideration the characteristics of persons who aspire for respective jobs.

However, the influence of the State on private sphere is limited, and its opportunities to control this sphere are smaller. Such a restriction in this area may be justified only in such cases when this is linked with essential interests of society and the State. Finally, the scale of the retractions may not negate the restricted rights in general. Thus the nature, scale and criteria of the restrictions must be clear and be in line with objectives sought.

The restrictions established by Article 2 of the Law virtually do not negate the right freely to choose occupation or business which is established by Part 1 of Article 48. The Law indicates only certain positions or enterprises, institutions, organisations and particular areas of business which, in the opinion of the legislator, are exclusively important to society, the State and their security, therefore there must be no doubts concerning the credibility and loyalty of people working there. Besides, Article 3 of the Law provides for cases when the restrictions may also not be applied to the

former regular employees of the CSS when they choose occupation.

Constituting the whole-complex, the norms entrenched in Article 23 of the Constitution reveal the essence of the protection of property and emphasise constitutional protection of property. In its ruling of 18 April 1996, the Constitutional Court held that "subjective property right may be defined as the law protected opportunity of the owner to manage the possessions which belong to him, to utilise and dispose of them at his discretion and in his interests, not overstepping, however, the limits imposed by the law, and not impairing the rights and freedoms of other people". The restrictions established by Article 2 of the Law restrict the right of former regular employees of the CSS freely to choose occupation in certain private enterprises or offices as well, however nothing is spoken of the rights of ownership therein. The nature, objective and area of effect of the restrictions established by the said article are not regulation of ownership relations nor are they impairment of the right of the owner freely to use, manage and dispose of his property but certain restriction of the right freely to choose occupation.

Taking account of the arguments set forth, a conclusion is to be drawn that Article 2 of the Law is in compliance with Article 23, Part 1 of Article 46 and Part 1 of Article 48 of the Constitution.

5.3. It needs to be noted that in the legal regulation established by Article 2 of the Law there exists certain vagueness, which is incompatible with other laws. For instance, in some cases the Law prohibits the former regular employees of the CSS to work in any jobs in certain areas, as banks, credit unions, strategic objects of economy, security services (structures), other services (structures) rendering detective services, as well as in communications. Meanwhile, in other cases the Law, listing institutions and organisations, indicates concrete, as a rule, key positions, e.g. in the system of education, to which restrictions may be applied. Establishing a restriction for the former regular employees of the CSS, one has not taken into consideration the fact that no labour contract is concluded with an advocate. The Law on the Bar does not provide for the bases under which one is removed from the list of practising advocates, which, however, is provided by Article 2 of the Law. Due to such inconsistency and incompatibility of legal regulation, problems may arise in the course of implementation of the norms of the disputed Law.

6. On the compliance of Part 2 of Article 3 of the Law with Part 2 of Article 5, Articles 77 and 84, Part 1 of Article 109 and Part 3 of Article 111 of the Constitution.

In the opinion of the petitioner, doubts arise whether the provision of Part 2 of Article 3 of the Law whereby a decision concerning non-application of the activity restrictions to the former regular employees of the CSS is adopted by a 3-person commission formed by the President of the Republic and regulation of which are confirmed by the latter are in compliance with Part 2 of Article 5, Articles 77 and 84, Part 1 of Article 109 and Part 3 of Article 111 of the Constitution.

6.1. Article 5 of the Constitution consolidates the principle of separation of powers, and provides that in Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic and the Government, and the Judiciary. This principle is developed and particularised in individual chapters and articles of the Constitution.

The status of the President of the Republic is defined by Articles 77 and 84 of the Constitution. They establish the essence of this State institution, the powers of the President of the Republic, the main functions and directions of his activities revealing the place of the President of the Republic in the system of power, as well as his relations with the other institutions implementing State power. Direct establishment of powers by the Constitution means that one State power institution neither may take over the powers of another one nor hand over its powers to another institution nor refuse its powers. Thus the constitutional powers of institutions implementing State power may not be amended nor restricted by law. Taking account of this, the compliance of the disputed norms of Part 2 of Article 3 of the Law will be assessed.

Part 2 of Article 3 of the Law provides that the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department may adopt a joint motivated proposal recommending that the restrictions established by the Law for the former regular employees of the CSS may be suspended. Such a proposal may be adopted in case the said persons register themselves at the State Security Department and reveal all their knowledge about their former work at the CSS and their present links with the former employees and agents of the CSS. Decisions concerning non-application of the restrictions for the former regular employees of the CSS shall be adopted by a 3-person commission which is formed by the President of the Republic. The Law also provides that the regulations of this commission shall be confirmed by the President of the Republic.

The President of the Republic forms commissions when this is necessary for implementation of his constitutional powers. For example, the established Citizenship Commission and Clemency Commission perform preparatory actions necessary for the powers of the President of Republic as provided for by Items 21 and 23 of Article 84 of the Constitution, which are granting citizenship of the Republic of Lithuania and clemency for convicted persons. The disputed provision of Part 2 of Article 3 of the Law commission the President of the Republic to form a commission which could decide whether to apply the restrictions to the right to choose occupation. The Constitution, however, does not provide that the President of the Republic may decide the questions of restriction of human rights and freedoms, therefore there exist no constitutional pre-conditions to commission, by law, the President of the Republic to form a commission which could decide questions of this nature.

It also needs to be noted that a respective legal regulation is necessary for guaranteeing the activity of such a commission. Neither the Law nor the Law on the Enforcement of the Law regulates the relations between the commission and the President of the Republic, nor is it established as to what criteria the commission must follow adopting a decision concerning non-application of the restrictions for the former regular employees of the CSS nor other issues are solved, however, by the provision "the regulations for the activities of this commission shall be confirmed by the President of the Republic" of Article 3 of the Law virtually the right is delegated to the President of the Republic to issue a normative legal act deciding questions of human rights and freedoms. Taking account of the fact that additional powers of the President of the Republic may be established by laws, the

Constitutional Court also notes that the nature of new functions must not cause dissonance nor oppose the constitutional powers of the President of the Republic, nor contradict the constitutional status of Head of State of Lithuania.

Taking account of the arguments and motives set forth, it is to be concluded that Part 2 of Article 3 of the Law providing that decisions concerning non-application of the restrictions for the former regular employees of the CSS shall be adopted by a 3-person commission which is formed by and the regulations of activity whereof is confirmed by the President of the Republic contradict Part 2 of Article 5 and Articles 77 and 84 of the Constitution.

6.2. Under the Law, the aforesaid commission is granted wide powers: it adopts decisions concerning non-application of the restrictions to the former employees of the CSS to work in a State office and other areas for 10 years. Thus decisions of the commission are linked with implementation of the right freely to choose occupation or business which is entrenched in the Constitution. Assuming that the commission has the right not to approve the non-application of the restrictions which is recommended by a joint proposal of the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department, such a decision of the commission may have negative effects in the course of implementation of the rights of concrete individuals. Following the analysis of the content of the norms of the Law and those of the Law on the Enforcement of the Law, a conclusion is to be draw that decisions of the commission are not subject to appeal against in court. In addition, no right is provided to lodge an appeal to court against decisions of the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department concerning application of the restrictions. Thus such a position when there exist no opportunities to dispute a decision in court is not in line with the concept of the State under the rule of law or the doctrine of constitutional protection of the rights of an individual.

On the other hand, in the sphere of the application of the Law, the powers of the commission are limited: the question concerning non-application of the restrictions are decided by the commission only in cases when there is a joint and motivated proposal of the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department recommending not to apply the restrictions. It needs to be noted that the persons with respect to whom the restrictions are applied may not, on their own initiative, appeal to the commission.

The Constitutional Court notes that even though the restrictions established by Article 2 of the Law are not any type of punishment, still by them certain human rights and freedoms are restricted. Assessing this, one is to conclude that in the course of application of these restrictions, a procedure must be created which would include judicial review as well. However, enforcing the measures provided for by Article 2 of the Law, judicial institutions take part neither in the ascertainment process of the character of activities of the former employees of the CSS nor in the process of application of the restrictions provided for by the Law. No opportunity to appeal to court is provided for the persons against whom the restrictions are applied. Meanwhile, under the universally recognised doctrine of protection of human rights

and freedoms it is possible to restrict the rights and freedoms only by law and by necessarily providing a guarantee for an opportunity to appeal to court on the grounds of the violated rights.

Paragraph 1 of Article 6 of the European Court of Human Rights provides that "in the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The European Court of Human Rights is of the opinion that the institutions, adopting initial decisions, must conform to procedural requirements set down by Paragraph 1 of Article 6 of the Convention, or that decisions of such institutions must be reviewed by a judicial body which follows the said requirements (case Albert and Le Compte vs. Belgium). The European Court of Human Rights has also noted that an opportunity to appeal to judicial institutions must be real and not merely formal.

Thus, the fact that in Part 2 of Article 3 of the Law (as in the Law and the Law on the Enforcement of the Law in general) no individuals' right to appeal to court against the adopted decisions concerning them and against whom the occupation restrictions are applied is provided for is to be assessed as contradiction to Part 1 of Article 30 of the Constitution.

The petitioner maintains that there are grounds to doubt as to whether the disputed provision of Part 2 of Article 3 of the Law is in compliance with Part 1 of Article 109 and Part 3 of Article 111 of the Constitution as well.

Part 1 of Article 109 of the Constitution stipulates that "in the Republic of Lithuania, the courts shall have the exclusive right to administer justice", while Part 3 of Article 111 provides that "courts with special powers may not be established in the Republic of Lithuania in times of peace". As held above, the commission formed by the President of the Republic is not a judicial institution, therefore the disputed norms of Part 2 of Article 3 are not linked with either Part 1 of Article 109 or Part 3 of Article 111 of the Constitution, and, consequently, do not contradict them.

Conforming to Article 102 of the Constitution of the Republic of Lithuania and Articles 53, 54, 55 and 56 of the Republic of Lithuania Law on the Constitutional Court, the Constitutional Court has passed the following

ruling:

1. To recognise that Articles 1 and 2 of the Republic of Lithuania Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" are in compliance with the Constitution of the Republic of Lithuania.

2. To recognise that the provisions of Part 2 of Article 3 of the Republic of Lithuania Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" whereby decisions concerning non-application of the restrictions for the former regular employees of the CSS shall be adopted by a 3-person commission which is formed by and the regulations of activity whereof is confirmed by the President of the Republic contradict Part 2 of Article 5 and Articles 77 and 84 of the Constitution of the Republic of Lithuania.

3. To recognise that the legal regulation established by

Part 2 of Article 3 of the Republic of Lithuania Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" which in reality does not guarantee an opportunity for an individual to appeal to court against decisions, which concern him, and which are adopted by the Centre for Research into People's Genocide and Resistance of Lithuania and the State Security Department as well as those by the commission formed by the President of the Republic, contradict Part 1 of Article 30 of the Constitution of the Republic of Lithuania.

4. To recognise that Parts 1 and 2 of Article 1 of the Republic of Lithuania Law on the Enforcement of the Law "On the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of This Organisation" are in compliance with the Constitution of the Republic of Lithuania.

This Constitutional Court ruling is final and not subject to appeal.

The ruling is promulgated on behalf of the Republic of Lithuania.