Case No. 09/2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF THE REPUBLIC OF LITHUANIA LAW "ON COMPENSATION FOR THE DAMAGE INFLICTED BY THE USSR OCCUPATION" (WORDING OF 12 MARCH 1998), THE REPUBLIC OF LITHUANIA LAW ON RESTORING THE RIGHTS OF PERSONS REPRESSED FOR RESISTANCE AGAINST THE OCCUPATION REGIMES (WORDING OF 12 MARCH 1998) AND THE REPUBLIC OF LITHUANIA LAW "ON LIABILITY FOR GENOCIDE OF RESIDENTS OF LITHUANIA" (WORDING OF 9 APRIL 1992 WITH SUBSEQUENT AMENDMENTS) WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

29 November 2010

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court Armanas Abramavičius, Toma Birmontienė, Pranas Kuconis, Kęstutis Lapinskas, Zenonas Namavičius, Ramutė Ruškytė, Egidijus Šileikis, Algirdas Taminskas, and Romualdas Kęstutis Urbaitis,

with the secretary—Daiva Pitrėnaitė,

in the presence of the representative of the Seimas of the Republic of Lithuania, the petitioner, who was Saulius Pečeliūnas, a Member of the Seimas,

pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, in its public hearing on 10 November 2010 heard constitutional justice case No. 09/2008 subsequent to the petition of the Supreme Court of Lithuania, the petitioner, requesting to investigate whether:

– the Republic of Lithuania Law "On Compensation for the Damage Inflicted by the USSR Occupation", to the extent that, according to the petitioner, it is not established in this law that the natural persons—the executors of genocide—compensate for the damage inflicted to the Lithuanian people by genocide during the periods of the Soviet occupation, is not in conflict with Paragraph 2 of Article 30 of the Constitution of the Republic of Lithuania, and with the constitutional principles of a state under the rule of law, and justice;

– the Republic of Lithuania Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that, according to the petitioner, it is not established in this law that the violated rights of the persons of

also other categories than those specified in this law are restored, is not in conflict with Article 29 of the Constitution of the Republic of Lithuania and with the constitutional principle of a state under the rule of law.

The Constitutional Court

has established:

I

The Supreme Court of Lithuania, the petitioner, was investigating a civil case. By its ruling the said court suspended the consideration of the case and applied to the Constitutional Court with a petition requesting to investigate whether:

– the Law “On Compensation for the Damage Inflicted by the USSR Occupation” to the extent that, according to the petitioner, it is not established in this law that the natural persons—the executors of genocide—compensate for the damage inflicted to the Lithuanian people by genocide during the periods of the Soviet occupation, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice;

– the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that, according to the petitioner, it is not established in this law that the violated rights of the persons of also other categories than those specified in this law are restored, is not in conflict with Article 29 of the Constitution and with the constitutional principle of a state under the rule of law.

II

The petition of the Supreme Court of Lithuania, the petitioner, is substantiated by the following arguments.

1. By invoking the official constitutional doctrine formed by the Constitutional Court, the petitioner notes that, under Paragraph 2 of Article 30 of the Constitution, the necessity of compensation of material and moral damage inflicted upon a person is a constitutional principle inseparable from the principle of justice entrenched in the Constitution: the laws must create all the necessary preconditions for fair compensation of the inflicted damage. The Constitution imperatively requires establishment by law such legal regulation that the person, upon whom damage was inflicted by unlawful actions, could in all cases demand fair compensation for damage and receive it.

2. The (individual) damage inflicted upon people of Lithuania by crimes of genocide in 1940-1993 by the former USSR, whose successor of international rights and obligations is the Russian Federation, irrespective of the character of such damage, also includes non-property damage and is treated as part of the damage for the Republic of Lithuania, therefore, the persons demanding individual compensation of the damage also demand that part of the damage inflicted upon the Republic of Lithuania be compensated.

3. The Republic of Lithuania Law “On Liability for Genocide of Residents of Lithuania” (wording of 9 April 1992 with subsequent amendments), which, according to the indicated matter of regulation—liability (the notion encompassing all types of liability) for genocide of residents of Lithuania—is designed for regulation of all relations of liability for genocide of residents of Lithuania, entrenches criminal liability of the persons who committed crimes of genocide, however, it does not establish civil (property) liability of these persons for the damage and, in general, it does not regulate the relations of liability of such a type.

Meanwhile, the Law “On Compensation for the Damage Inflicted by the USSR Occupation” has established the legal regulation whereby the subject of liability for the damage inflicted upon people of Lithuania during the periods of the Soviet occupation, *inter alia* the damage inflicted by means of genocide, is only the Russian Federation as the successor of the rights and obligations of the USSR, but not the executors of genocide—natural persons.

4. By invoking the official constitutional doctrine related with the principle of equal rights of persons, the petitioner also requests investigation into whether the legal regulation entrenched in the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that by means of the law the violated rights of persons of some categories are restored, whereas the same rights of persons of other categories have not been restored and are not protected, is in compliance with the principle of equality of rights entrenched in Article 29 of the Constitution and the constitutional principle of a state under the rule of law. According to the petitioner, the legislator began to regulate by special laws the social relations while seeking to restore the rights of persons, which were violated because of the Soviet occupation, however, the case considered by the petitioner gives grounds to state that the process of restoration of the violated rights has not been finished and in reality the violated rights of some categories of persons have not been restored.

III

In the course of the preparation of the case for the Constitutional Court hearing written explanations were received from the representatives of the Seimas, the party concerned, who were Emanuelis Zingeris and Saulius Pečeliūnas, Members of the Seimas, wherein it is maintained that the Law “On Compensation for the Damage Inflicted by the USSR Occupation” and the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent specified by the petitioner, are not in conflict with the Constitution.

1. The position of the Member of the Seimas E. Zingeris, a representative of the Seimas, the party concerned, is substantiated by the following arguments set forth by the Legal Department of the Seimas.

1.1. There are doubts whether the legal regulation whereby the damage inflicted upon persons by repressive structures of the occupant state should be compensated not only by the state that executed the occupation, but also the persons who served in the repressive structures of

that state, and who were convicted for commission of concrete crimes, would be legally grounded, since the same damage would be compensated twice; one would violate one of the main principles of civil liability—the principle of complete compensation of damages—which means that the victim must be compensated as much as he has actually lost, but not more, since civil liability performs only the function of compensation, but not of punishment. Thus, from this principle it also follows that a person, who sustained damage, may not groundlessly enrich himself from compensation of such damage.

1.2. It is doubtful whether such legal regulation where part of the persons who sustained damage would recover it from direct executors of genocide (when they are established) would be fair with regard to those persons who also sustained damage from such crimes, but concrete executors of such crimes have not been established and held criminally liable.

1.3. In its ruling of 19 August 2006, the Constitutional Court noted that if the law established such legal regulation whereby the state would fully or partially avoid the duty to justly compensate for material and/or moral damage inflicted by unlawful actions of institutions or officials of the state itself, it would mean that the constitutional concept of compensation for damage is disregarded, and such legal regulation would be incompatible with Paragraph 2 of Article 30 of the Constitution. The representative of the party concerned E. Zingeris, on the grounds of these doctrinal provisions, drew a conclusion that, under the principle of compensation for damage entrenched in the Constitution, the damage that occurred because of genocide must be compensated by the state.

1.4. The legal regulation established in the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes seeks to restore the rights of those persons who directly themselves sustained repressions for resistance against the occupation, i.e. those residents of Lithuania, who, for their resistance, were convicted by repressive bodies or imprisoned without a court procedure, or exiled from Lithuania. Thus, in the opinion of E. Zingeris, a representative of the party concerned, the purpose of this law is regulation of somewhat different relations from those specified in the petition of the petitioner; the issue of compensation of damage of other persons who suffered losses because of the occupation regimes is not the matter of regulation of this law.

2. The position of the Member of the Seimas S. Pečeliūnas, a representative of the Seimas, the party concerned, is substantiated by the following arguments.

2.1. It is clear from the text of the Law “On Compensation for the Damage Inflicted by the USSR Occupation” that, by following the universally recognised norms of international law (customary norms of general international law), regulating liability of states for violations of international law, this law is designed only to decide the issue of relations between states—to express the demand for responsibility of another state (Russian Federation), which is liable for compensation of damage for the USSR occupation.

The purpose of the Law “On Compensation for the Damage Inflicted by the USSR Occupation” is to ensure the presentation of the international demand of the Republic of Lithuania regarding compensation of damage of the USSR occupation to the liable state, while the matter of regulation of this law is corresponding duties (obligations) of the Government to prepare and present such an international demand and to seek to implement it; this is an act of public, not private law, and only due to this reason alone the absence of the provisions regarding material liability of natural persons in the Law “On Compensation for the Damage Inflicted by the USSR Occupation” may not be treated as legislative omission, therefore, this law is not in conflict with Paragraph 2 of Article 30 of the Constitution.

2.2. This law, first of all, *ipso facto* expresses the international demand of the Republic of Lithuania to repay the damage inflicted by the USSR occupation and it names the liable state—the Russian Federation—to which this demand is presented; secondly, this law particularises this international demand by specifying that the reparation must be in the form of compensation; thirdly, it is shown that this demand was presented duly and in a proper form; fourthly, the consistent and unchanging position of the State of Lithuania is demonstrated to demand that the liable state—the Russian Federation—repay all the damage inflicted by the Soviet occupation. According to S. Pečeliūnas, while bearing in mind such an international legal meaning of the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, it is possible to draw a conclusion that this law, as a state unilateral legal act, by means of which an international demand is expressed and maintained to the state liable for the violation of international law, according to its nature virtually cannot regulate qualitatively different social relations—civil delictual liability for damage inflicted by concrete crimes, where such damage is not of the level of relations between states and the compensation of the latter damage is virtually regulated only by norms of national law. Therefore, the Law “On Compensation for the Damage Inflicted by the USSR Occupation” cannot be in conflict with Paragraph 2 of Article 30 of the Constitution.

2.3. The citizens who sustained the damage are not subjects of relations between states and the international demand of the Republic of Lithuania to repay the damage which its citizens sustained due to the violation of international law is presented to the liable state under procedure of diplomatic defence, may in no way affect the rights of such citizens to demand, under national law, compensation of damage from the natural persons who are also responsible for crimes (which inflicted the damage) of the concrete state, however, it is only an additional form of protection of this right of theirs. In law there exist two different (the subjects and content of liability, functions of liability, standards of establishment of liability and the implementation mechanisms are different) and independent, non-rivalling but supplementing each other and to some degree coinciding (in case of dual liability) regimes for legal liability for violations of international law: international liability of a state and criminal liability of natural persons as well as civil liability related thereto.

The issues of legal liability of executioners of concrete crimes, including the issues of compensation of damage inflicted by crime, must be decided not on the grounds of norms of

international law and the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, but on the grounds of other—penal and civil—national laws; in case compensation of the damage inflicted by concrete crimes related with the occupation were exacted from those persons, it might be taken into consideration in the negotiations between the Republic of Lithuania and the Russian Federation regarding the general amount of compensation for the occupation damage.

2.4. The Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes is clearly designed only for restoration of the civil rights (Article 1), i.e. in order to remove the consequences (for example, criminal record or reputation) of penal sanctions for the civil status of a person; therefore, the law limits itself only to repressed persons, since namely they suffered the penal sanctions, and it is not applied to their close relatives who did not experience such sanctions themselves, although they are to be regarded as victims; meanwhile, the issue of compensation of material and moral damage, including the damage for close relatives of the repressed persons, is to be decided under different—civil—laws.

IV

In the course of the preparation of the case for the Constitutional Court hearing, written explanations were received from Dr. Dainius Žalimas, Head of the Institute for International and European Union Law of the Faculty of Law of Vilnius University.

V

At the Constitutional Court hearing, S. Pečeliūnas, a Member of the Seimas, a representative of the Seimas, a party concerned, virtually reiterated the arguments set forth in his written explanations, presented additional explanations and answered to questions of justices.

The Constitutional Court

holds that:

I

1. It has been mentioned that the Supreme Court of Lithuania, the petitioner, *inter alia* requests investigation into whether the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that, according to the petitioner, it is not established in this law that the violated rights of the persons of also other categories than those specified in this law are restored is not in conflict with Article 29 of the Constitution and with the constitutional principle of a state under the rule of law.

Thus, the petitioner does not dispute the legal regulation established in the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), but it disputes something that is not established in this law, which, however, in the opinion of the petitioner, ought to be established namely in that law; therefore, in this situation virtually the issue of legislative omission is raised, i.e. such a gap in the legal regulation, which is prohibited by the Constitution.

It needs to be noted the Supreme Court of Lithuania, the petitioner, was investigating a civil case subsequent to appeals of cassation of the respondents due to the ruling of the Court of Appeal of Lithuania in a civil case subsequent to the claim of the claimant—a member of the family of an individual who had perished because of genocide—regarding compensation of the damage from natural persons—the respondents who had been convicted for the executed genocide.

2. Article 1 of the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998) prescribes:

"1. To declare that the people of Lithuania who were sentenced or imprisoned out of court by repressive bodies, or their freedom was curtailed under the Criminal Code of the RSFSR (1926), the criminal laws of other USSR republics, as well as other normative acts of the USSR, the RSFSR and other former Soviet republics, Nazi Germany criminal regulations or local laws (1941-1944) for resistance to aggression and occupying regimes, and also were deported from Lithuania in 1940-1953 and sentenced under Articles 62, 63, 66-68, 70, 73, 79-82, 88, 89, 199^{1}, 210, 211 of the Criminal Code of the former Lithuanian SSR, while after 11 March 1990 sentenced under Articles 259, 260, 261, 263 and corresponding articles of the criminal codes of the former USSR republics, both in Lithuania and outside its boundaries, are innocent before the Republic of Lithuania and all their civil rights are hereby restored.

2. The Seimas of the Republic of Lithuania assesses the struggle of the participants in the resistance movement as the expression of the nation's right to self-defence. The participants of the armed resistance shall be proclaimed volunteer servicemen of Lithuania and their military ranks and awards shall be recognised."

It needs to be noted that the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998) provides that the civil rights shall be restored to those residents of Lithuania, who were convicted or imprisoned out of court by repressive bodies, or their freedom was restricted otherwise for resistance against the aggression or the occupation regimes. These civil rights had been limited for such repressed residents; by the said law, these persons were recognised innocent before the Republic of Lithuania.

3. Consequently, the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998) is designed only for regulation of the relations of restoration of civil rights of the persons, who were convicted or imprisoned out of court by repressive bodies, or their freedom was restricted otherwise for resistance against the aggression or the occupation regimes, but it is not designed for regulation of the relations of compensation for damage for *inter alia* the persons who suffered from genocide or their family members. Thus, in the civil case in which the Supreme Court of Lithuania adopted the ruling to apply to the Constitutional Court, could not (and should not) have applied the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes.

4. Taking account of the circumstances set forth, one is to draw a conclusion that the Supreme Court of Lithuania, the petitioner, adopted the ruling in the civil case to suspend the consideration of the case and to apply to the Constitutional Court regarding *inter alia* the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), which should not be applied in this civil case considered by the Supreme Court of Lithuania.

5. Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that the law or other legal act which should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court requesting it to decide whether the law or other legal act in question is in compliance with the Constitution.

Under Paragraph 1 of Article 67 of the Law on the Constitutional Court, a court applies to the Constitutional Court whether a law or other legal act is in compliance with the Constitution in case there are grounds to believe that the law or other legal act which should be applied in a concrete case is in conflict with the Constitution.

6. In its decision of 13 November 2007, the Constitutional Court held that the application of a court to the Constitutional Court with a petition requesting to investigate the compliance of a legal act with a legal act of higher power, *inter alia* with the Constitution, and the investigation of that compliance are not an end in itself, and the purpose of the application (as a constitutional institute) of a court to the Constitutional Court is to ensure administration of justice.

The Constitutional Court has held in its acts that, under the Constitution, a court of general jurisdiction or a specialised court established under Paragraph 2 of Article 111 of the Constitution may apply to the Constitutional Court with a petition requesting to investigate and decide whether not any constitutional law (part thereof) is not in conflict with the Constitution, but only such constitutional law, which must be applied in the corresponding case considered by that court, also whether not any law (part thereof) (as well as the Statute of the Seimas (part thereof)) is not in conflict with the Constitution and constitutional laws, but only that which must be applied in the corresponding case considered by that court, also whether not any sub-statutory legal act (part thereof) of the Seimas is not in conflict with the Constitution, constitutional laws and laws as well as the Statute of the Seimas, but only that which must be applied in the corresponding case considered by that court, also whether not any act (part thereof) of the President of the Republic is not in conflict with the Constitution, constitutional laws and laws, but only that which must be applied in the corresponding case considered by that court, as well as whether not any act (part thereof) of the Government is not in conflict with the Constitution, constitutional laws and laws, but only that which must be applied in the corresponding case considered by that court (Constitutional Court ruling of 28 March 2006 and decisions of 5 July 2007 and 29 October 2009).

Therefore, under the Constitution and the Law on the Constitutional Court, a court may apply to the Constitutional Court with a petition requesting to investigate whether not any law (part

thereof) or other legal act (part thereof) is not in conflict with the Constitution, but only such law (part thereof) or other legal act (part thereof), which must be applied in the corresponding case considered by that court.

Under the Constitution and the Law on the Constitutional Court, no court has locus standi to apply to the Constitutional Court with a petition requesting to investigate whether a law (part thereof) or another legal act (part thereof), which should not (could not) be applied in the case considered by the said court, is not in conflict with the Constitution (Constitutional Court decisions of 22 May 2007, 27 June 2007, 5 July 2007, and 29 October 2009 as well as ruling of 24 October 2007).

7. It has been mentioned that the disputed Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998) is designed only for regulation of the relations of restoration of civil rights of the persons, who were convicted or imprisoned out of court by repressive bodies, or their freedom was restricted otherwise for resistance against the aggression or the occupation regimes, but it is not designed for regulation of the relations of compensation for damage for *inter alia* the persons who suffered from genocide or their family members. Thus, the Supreme Court of Lithuania, the petitioner, in the civil case considered by it, does not have *locus standi* to apply to the Constitutional Court with the petition requesting to investigate whether the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998) is not in conflict with the Constitution.

8. Under Item 1 of Paragraph 1 of Article 69 of the Law on the Constitutional Court, by a decision, the Constitutional Court shall refuse to consider petitions to investigate the compliance of a legal act with the Constitution, if the petition was filed by an institution or person who does not have the right to apply to the Constitutional Court, whereas under Paragraph 3 of Article 69 of the Law on the Constitutional Court, in the event that the grounds for refusal to consider a petition have been established after the commencement of the investigation of the case during the hearing of the Constitutional Court, a decision to dismiss the case shall be adopted.

9. Taking account of the arguments set forth, one is to dismiss the part of the constitutional justice case at issue subsequent to the petition of the Supreme Court of Lithuania, the petitioner, requesting to investigate whether the Law on Restoring the Rights of Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that, according to the petitioner, it is not established in this law that the violated rights of the persons of also other categories than those specified in this law are restored, is not in conflict with Article 29 of the Constitution and with the constitutional principle of a state under the rule of law.

10. Conforming to Paragraph 4 of Article 22, Item 1 of Paragraph 1 and Paragraph 3 of Article 69 of the Law on the Constitutional Court, the Constitutional Court has dismissed the part of the constitutional justice case at issue subsequent to the petition of the Supreme Court of Lithuania, the petitioner, requesting to investigate whether the Law on Restoring the Rights of

Persons Repressed for Resistance Against the Occupation Regimes (wording of 12 March 1998), to the extent that, according to the petitioner, it is not established in this law that the violated rights of the persons of also other categories than those specified in this law are restored, is not in conflict with Article 29 of the Constitution and with the constitutional principle of a state under the rule of law.

II

1. The Supreme Court of Lithuania, the petitioner, requests investigation into whether the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, to the extent that, according to the petitioner, it is not established in this law that the natural persons—the executors of genocide—compensate for the damage inflicted to the Lithuanian people by genocide during the periods of the Soviet occupation, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

2. From the arguments of the Supreme Court of Lithuania, the petitioner, and from the material of the civil case considered by it, it is clear that the petitioner had doubts whether the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

Thus, the Constitutional Court will investigate whether the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

3. The legal regulation of the relations of compensation for the damage inflicted upon the Republic of Lithuania and its residents by the USSR occupation began right after the restoration of the independence of the Republic of Lithuania.

3.1. On 4 June 1991, the Supreme Council of the Republic of Lithuania adopted the Resolution “On Compensation for the Damage Inflicted upon the Republic of Lithuania and Its Residents by the USSR in 1940–1990” (it came into force on 20 June 1991), wherein it is established:

“The Supreme Council of the Republic of Lithuania,

seeking to restore the rights of ownership of residents of Lithuania, which were violated in 1940–1991,

noting that the occupation and annexation of Republic of Lithuania carried out by the USSR in 1940, which were renewed in 1944, inflicted enormous damage upon the State of Lithuania and its residents,

having in mind that this damage was inflicted by way of exterminating and imprisoning innocent residents of Lithuania, by unlawfully misappropriating, destroying and taking out the property belonging to the Republic of Lithuania and its people, by destroying the structures of the Lithuanian economy by force and carrying out forced collectivisation and in other ways,

by invoking the universally recognised norms and principles of international and civil law,

by representing the right of citizens of Lithuania and residents of Lithuania, upon whom damage was inflicted, to demand for compensation for it,

has resolved:

1. To commission the Government of the Republic of Lithuania to submit the calculations, which substantiate the amount of the damage inflicted upon the Republic of Lithuania and its residents by the USSR in 1940–1990, to the State Delegation for Inter-State Negotiations with the USSR.

2. To obligate the State Delegation for Inter-State Negotiations with the USSR to raise, on the official level, the issue on compensation for the damage before the Soviet Union."

3.2. On 30 June 1992, the Supreme Council of the Republic of Lithuania adopted the Resolution "On the Decision Adopted by Citizens of the Republic of Lithuania in the 14 June 1992 Referendum" (it came into force on 31 July 1992), wherein it is established:

"The Supreme Council of the Republic of Lithuania, conforming to the Law on Referendum and the Decision 'On Establishing the Results of the Referendum of the Republic of Lithuania "On Unconditional and Immediate Withdrawal of the Troops of the Former USSR, Which at Present Are under the Jurisdiction of Russia, from the Territory of the Republic of Lithuania in 1992 and on Compensation for the Damage Inflicted upon Lithuania" Which Took Place on 14 June 1992' of the Electoral (Referendum) Commission of the Republic of Lithuania adopted at its sitting of 17 June 1992, in which it was confirmed that:

– more than 76% of all citizens of the Republic of Lithuania who have the electoral right took part in the referendum,

– more than 90% of the citizens who took part in the referendum voted in favour of the demand submitted for the referendum, and this constitutes more than 68,95% of all citizens who have the electoral right, has decided to announce:

1. In the 14 June 1992 referendum, by the overall majority of votes, the citizens of the Republic of Lithuania adopted a decision demanding that 'the withdrawal of the troops of the former USSR from the territory of the Republic of Lithuania should be started immediately and finished in 1992 and that the damage inflicted upon the Lithuanian people and the State of Lithuania be compensated'.

2. The decision adopted in the 14 June 1992 referendum of citizens of the Republic of Lithuania came into force on the next day after publishing the official results of the referendum, i.e. as from 18 June 1992."

Summing it up, it needs to be held that the aforesaid legal acts indicated that the subject that had to compensate the Republic of Lithuania and its people for the damage of the USSR occupation was a state—the USSR, but later—the Russian Federation, the successor of the rights and obligations of the USSR.

3.3. On 13 June 2000, the Seimas adopted the Republic of Lithuania Law “On Compensation for the Damage Inflicted by the USSR Occupation”, which came into force on 28 June 2000. This law has not been amended or supplemented. It was adopted *inter alia* in line with the universally recognised norms and principles of international law as well as the international practice of compensation of damage caused by occupations, including the damage caused by the German occupations to other countries and the citizens thereof, during the World War II period, the 4 June 1991 Republic of Lithuania Supreme Council-Reconstituent Seimas Resolution “On Compensation for the Damage Inflicted upon the Republic of Lithuania and Its Residents by the USSR in 1940–1990”, the 29 July 1991 Treaty between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the Basis for Relations between States, in which the Parties declared to be “convinced that once the Union of Soviet Socialist Republics annuls the consequences of the 1940 annexation violating Lithuania’s sovereignty, there will be additional conditions for mutual trust between the High Contracting Parties and their peoples”, the will of the Nation expressed in the 14 June 1992 referendum of citizens of the Republic of Lithuania and the demand that “the damage inflicted upon the Lithuanian people and the State of Lithuania be compensated,” which was approved by the 30 June 1992 Resolution of the Supreme Council-Reconstituent Seimas, and the fact that, according to international law, the Russian Federation is the state continuing the rights and obligations of the USSR (the aforesaid provisions are established in the preamble to the said law). The Law “On Compensation for the Damage Inflicted by the USSR Occupation” *inter alia* provides:

“The periods of damage inflicted by the USSR occupation on Lithuania shall be as follows:

1) the USSR occupation and damage during 1940-1990, including the damage caused to the Lithuanian people deported and forcibly detained in the USSR territory during 1941-1945, as well as the damage inflicted by the USSR Army and repression structures during that period” (Item 1 of Article 1);

“The Government of the Republic of Lithuania shall:

1) prior to 1 September 2000, form a delegation for negotiations of the Republic of Lithuania with the Russian Federation concerning the compensation of the USSR occupation damage to the Republic of Lithuania;

2) prior to 1 October 2000, in accordance with the work programme approved by Government Resolution No. 242 “On the Work Programme on the Evaluation of the Damage Inflicted on the Republic of Lithuania by the Army of the former USSR during 1940-1991 and the Army of the Russian Federation during 1991-1993” of 13 February 1996, specify more accurately and finish calculations of the damage caused by the USSR occupation, including payments to the

Lithuanian citizens for the damage caused during the USSR occupation and its consequences, as well as expenses related to the homecoming of the deportees and their descendants;

3) prior to 1 November 2000, address the Russian Federation for the compensation of the damage caused during the period of the USSR occupation, submitting the calculations of damage, also inform the United Nations Organisation, the Council of Europe and the European Union about this, and constantly seek the support of these Organisations and the Member States thereof when solving the issues of the compensation of the USSR occupation damage to Lithuania;

4) initiate negotiations and constantly seek that the Russian Federation compensate to the Lithuanian people and the State of Lithuania for the damage caused by the USSR occupation;

5) accumulate funds received from the Russian Federation as the compensation of the damage caused by the USSR occupation, in the separate occupation damage compensation account in the State Treasury, and primarily allocate such funds to compensate for the damage caused to the Lithuanian people due to deportations, forced labour, occupation regime repression and lost property" (Article 2).

3.4. Summing up the aforesaid legal regulation, it needs to be held that it is clear from the provisions of the Preamble to the Law "On Compensation for the Damage Inflicted by the USSR Occupation" that this law was adopted by invoking previously adopted acts of the State of Lithuania: the 4 June 1991 Resolution of the Supreme Council "On Compensation for the Damage Inflicted upon the Republic of Lithuania and Its Residents by the USSR in 1940–1990", the 30 June 1992 Resolution of the Supreme Council "On the Decision Adopted by Citizens of the Republic of Lithuania in the 14 June 1992 Referendum", and, *inter alia* the 29 July 1991 Treaty between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the Basis for Relations between States is invoked. By Article 2 of this law, the Government is *inter alia* obligated to form a delegation for negotiations of the Republic of Lithuania with the Russian Federation (Item 1) and to initiate negotiations and constantly seek that the Russian Federation compensate to the Lithuanian people and the State of Lithuania for the damage caused by the USSR occupation (Item 4). Thus, relations between states are regulated by this law.

In this context it needs to be noted that the liability of natural persons for genocide perpetrated by them is established neither in the 4 June 1991 Resolution of the Supreme Council "On Compensation for the Damage Inflicted upon the Republic of Lithuania and Its Residents by the USSR in 1940–1990", nor in the 30 June 1992 Resolution of the Supreme Council "On the Decision Adopted by Citizens of the Republic of Lithuania in the 14 June 1992 Referendum", nor in the Law "On Compensation for the Damage Inflicted by the USSR Occupation".

4. It needs to be noted that, in cases provided for in the law, the persons (as well as their family members) who suffered from the occupation regimes, *inter alia* from genocide, are supported by the state to some extent. In this context *inter alia* the following laws should be mentioned:

4.1. the Republic of Lithuania Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives, which was adopted by the Seimas on 6 October 1998 (it came into force on 1 January 1999), Paragraph 2 (wording of 20 December 2005) of Article 2 whereof prescribed:

“2. Parents (adoptive parents), spouses who had not concluded another marriage before the death of the volunteer soldier or the participant of freedom fights, children (adopted children), as well as brothers and sisters if at the time of death of the participant of the resistance to the occupations they were under the age of 18 and did not have both parents—were orphans (both parents or the single parent had been deceased) (hereinafter also referred to as members of the family), shall be paid, in equal parts, a onetime allowance of the following amount:

1) members of the family of the participants of armed resistance—volunteer soldiers—who lost their lives during an armed engagement, at the moment of apprehension, arrest, during secret operations or punitive actions carried out by the occupation government, provided the perishing or death of the person was related with his resistance activity, those who were killed or died during the interrogation before coming into effect of a court judgement, or who were sentenced to death and to whom the sentence was executed, shall be paid LTL 20 000;

2) members of the family of the participants of armed resistance—volunteer soldiers—who died during imprisonment after coming into force of a court judgement, as well as members of the family of the participants of unarmed resistance—participants of freedom fights— who lost their lives during an armed engagement, at the moment of apprehension, arrest, during secret operations or punitive actions carried out by the occupation government, provided the perishing or death of the person was related with his resistance activity, those who were killed or died during the interrogation before coming into effect of a court judgement, or who were sentenced to death and to whom the sentence was executed, shall be paid LTL 15 000;

3) members of the family of the participants of unarmed resistance—participants of freedom fights—who were killed or died during the imprisonment after the coming into effect of a court judgement, shall be paid LTL 12 000.”

4.2. Paragraph 2 (wording of 10 December 1998) of Article 11 of the Republic of Lithuania Law on State Pensions, which was adopted by the Seimas on 22 December 1994, (it came into force on 1 January 1995) *inter alia* provides:

“ Also entitled to state pensions for victims, in accordance with conditions provided for by this Law, shall be the parents, spouses and children of:

<…>

2) persons who lost their lives in the course of actions of resistance to the occupations of 1940-1990, and also those who were killed or who died in the course of unlawful imprisonment or exile; <…>.”

5. Under Paragraph 1 of Article 135 of the Constitution, in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, *inter alia* it shall seek to ensure the welfare of the citizens and their basic rights and freedoms.

It was held in the Constitutional Court ruling of 14 March 2006 that the adherence of the State of Lithuania to universally recognised principles of international law was declared in the Act "On the Restoration of the Independent State of Lithuania" of the Supreme Council of the Republic of Lithuania, which was adopted on 11 March 1990; consequently, the observance of international obligations undertaken on its own free will, respect to the universally recognised principles of international law (as well as the principle *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.

In the context of the constitutional justice case at issue it needs to be noted that the relations linked to compensation for damage for those who suffered from genocide are regulated *inter alia* in these international documents:

5.1. the Rome Statute (hereinafter referred to as the Statute) of the International Criminal Court (hereinafter referred to as the Court), which was adopted on 17 July 1998 at the diplomatic conference of the authorised representatives of the United Nations, designed for establishing the Court. The Seimas ratified the Statute by Article 1 of the Republic of Lithuania Law "On the Ratification of the Rome Statute of the International Criminal Court" which was adopted on 1 April 2003. This Statute came into force for Lithuania on 1 August 2003. Article 1 of the Statute prescribes:

"An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute."

Paragraph 1 of Article 5 of the Statute prescribes that "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression."

Article 25 of the Statute *inter alia* prescribes:

"1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

<...>

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law."

Article 29 of the Statute prescribes: "The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations."

Article 75 of the Statute *inter alia* prescribes:

“1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79. <...>.”

Article 79 of the Statute prescribes:

“1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.”

In the context of the constitutional justice case at issue, while summing up the legal regulation of this Statute, it needs to be held that for the most serious crimes of international concern, *inter alia* for genocide, not only individual criminal liability, but also a duty of the convicted person to compensate the damage inflicted upon the victims, is established. Under this legal regulation, the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

In addition, under this legal regulation, the Court has been granted the powers to establish principles relating to reparations to, or in respect of, victims, *inter alia* due to perpetrated genocide, including restitution, compensation and rehabilitation; the Court is also empowered to make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims. These empowerments of the Court, while taking account of the fact that the liability for the aforesaid crimes, *inter alia* for perpetrated genocide, is not subject to any statute of limitations, imply that the Court, while deciding on the reparations that a convicted person must pay to a victim of genocide, is not bound by statutes of limitation, either.

5.2. On 16 December 2005, the General Assembly of the United Nations adopted Resolution No. 60/147 whereby it approved the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, under Item 7 whereof, domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive; under Item 8, victims are persons who individually or collectively suffered harm, including physical

or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law; where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation; under Item 11, remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; (c) access to relevant information concerning violations and reparation mechanisms; under Item 15, in cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim; under Item 17, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements; under Item 18, in accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, which can include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition; under Item 20, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earnings, including loss of earning potential; (d) moral damage; (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Thus, by means of the principles and guidelines approved by this resolution one seeks to ensure *inter alia* the right of victims of gross violations of international human rights law and serious violations of international humanitarian law, *inter alia* genocide, to adequate, effective and prompt reparation for sustained property and moral damage, which is adjudged from guilty persons, whereas states are obligated to provide for effective domestic law mechanisms for the enforcement of judgements regarding the entire damage reparation (including the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition).

6. In the context of the constitutional justice case at issue it also needs to be mentioned that, on 9 December 1948, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide, and, on 26 November 1968, it adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

6.1. The 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide *inter alia* prescribes: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (Article 1); “Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals” (Article 4); “The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3” (Article 5).

6.2. It needs to be noted that in the Preamble to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide it is held that “genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world”, that “at all periods of history genocide has inflicted great losses on humanity”, that “in order to liberate mankind from such an odious scourge, international co-operation is required”.

Under the 26 November 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, genocide is among the gravest crimes in international law and punishment for it is an important element in the prevention of such a crime (as it is established in the preamble to this convention). It is *inter alia* established in this convention that no statutory limitation shall apply to genocide, irrespective of the date of its commission.

7. On 9 April 1992, the Supreme Council adopted Resolution “On the Accession of the Republic of Lithuania to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide and to the 26 November 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity”. By the said resolution the Republic of Lithuania acceded to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide and to the 26 November 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.

In this context it needs to be noted that, on 9 April 1992, the Supreme Council adopted the Law “On Liability for Genocide of Residents of Lithuania”, which came into force on 15 April 1992. This law *inter alia* prescribed:

“The Supreme Council of the Republic of Lithuania, while acceding to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide and to the 26 November 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, while recognising the 8 August 1945 Charter of the Nuremberg International Military Tribunal, while taking account of the fact that the said treaties create an obligation to adopt national laws providing for liability for genocide, crimes against humanity, crimes against peace and war crimes, while holding that the policy of genocide and crimes against humanity which was carried out against the residents of Lithuania was accomplished at the time of occupation and annexation by the Nazi Germany or the USSR, while following the provision, which is universally

recognised by the international community, that extermination of people for any purpose is regarded as crime, has adopted this Law" (Preamble); "The actions committed with intent to physically destroy, in whole or in part, residents belonging to a national, ethnical, racial or religious group, such as killing members of the group, cruel torture, severe bodily harm, disturbance of mental development; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; forcibly transferring children of the group to another group or imposing measures intended to prevent births within the group (genocide)—shall be punished by deprivation of freedom from five to fifteen years with confiscation of property or by the death penalty with confiscation of property" (Article 1); "Killing or torturing of people of Lithuania, deportation of its residents, which were carried out in Lithuania during the years of occupation and annexation by the Nazi Germany or the USSR, correspond to the features of genocide provided for in the norms of international law" (Article 2); "The Law 'On Liability for Genocide of Residents of Lithuania' shall be retroactively valid, whereas as regards the criminal liability, no statutory limitations shall be applied to the persons who committed the actions provided for in this Law prior to its entry into force" (Article 3).

It needs to be held that this law regulated the relations of criminal liability of natural persons who committed the crime of genocide; even though the Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992) regulates the relations of the liability of persons for the genocide perpetrated against residents of Lithuania during the years of occupation and annexation by the Nazi Germany or the USSR, it does not regulate the relations of compensation for damage, i.e. as the relations of civil liability for perpetrated genocide, *inter alia* it did not establish that no statutory limitations should be applied to the claims for compensation of damage to be paid by the natural persons who committed the crime of genocide.

8. It needs to be emphasised that the necessity to compensate material and moral damage inflicted upon a person was established in the Constitution of the Republic of Lithuania, which was adopted in the 25 October 1992 referendum of the Lithuanian Nation and which came into force on 2 November 1992.

According to the provisions of Article 150 of the Constitution 150, the Law "On the Procedure for Entry into Force of the Constitution of the Republic of Lithuania" of 25 October 1992 shall be a constituent part of the Constitution. Article 2 of this law provides: "Laws, other legal acts or parts thereof, which were in force on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania, shall be effective inasmuch as they are not in conflict with the Constitution and this Law, and shall remain in force until they are either declared null and void or brought in line with the provisions of the Constitution."

9. The Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992) has been amended.

9.1. On 21 April 1998, the Seimas adopted the Republic of Lithuania Law on Supplementing the Criminal Code with Articles 62^1, 71 and Amending and Supplementing Articles 8^1, 24, 25, 26,

35, 49, 54[1], 89 Thereof, which came into force on 6 May 1998. By means of Paragraph 3 of Article 11 of this law, Articles 1, 3, 4, 5 of the Law “On Liability for Genocide of Residents of Lithuania” (wording of 9 April 1992) were recognised as no longer valid, whereas by Article 9 of this law the Criminal Code was supplemented with Article 71 titled “Genocide”:

“The actions committed with intent to physically destroy, in whole or in part, residents belonging to a national, ethnical, racial, religious, social or political group, such as cruel torture, severe bodily harm, disturbance of mental development of members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; forcibly transferring children of the group to another group or imposing measures intended to prevent births within the group—

shall be punished by deprivation of freedom from five to twenty years.

The actions provided for in Paragraph 1 of this Article, during which people were killed, as well as organising or supervising the actions provided for in Paragraphs 1 and 2 of this Article—

shall be punished by deprivation of freedom from ten to twenty years, or by life imprisonment, or by the death penalty.”

The definition of genocide entrenched in this article of the Criminal Code, if compared with the one established in Article 1 of the Law “On Liability for Genocide of Residents of Lithuania” (wording of 9 April 1992), was expanded—also residents belonging to a social or political group were ascribed to the persons against whom genocide was perpetrated; imposition of confiscation of property was no longer provided for genocide.

It also needs to be noted that by Article 6 of the aforesaid law the Criminal Code was supplemented with Paragraph 5 of Article 49:

“No statutory limitations shall be for genocide. Amnesty shall not be applied to persons convicted for genocide.”

This amendment and supplement of the Criminal Code meant that one began to regulate the relations of criminal liability for genocide not by means of the Law “On Liability for Genocide of Residents of Lithuania”, but by the Criminal Code.

9.2. By Article 1 of the Republic of Lithuania Law on Amending the Preamble to the Law “On Liability for Genocide of Residents of Lithuania”, which was adopted by the Seimas on 3 April 2003, in the fourth section of the preamble, instead of the words “crimes against peace and war crimes” the following words were entered: “war crimes”. Article 2 of the Law “On Liability for Genocide of Residents of Lithuania” (wording of 9 April 1992) has remained unchanged.

10. On 26 September 2000, the Seimas adopted the Republic of Lithuania Law on the Confirmation and Entry into Force of the Criminal Code, by Article 1 of which it approved the Criminal Code, and under Article 2 of which, the date of coming into force of the Criminal Code had to be established by a separate law. On 29 October 2002, the Seimas adopted the Republic of Lithuania Law on the Procedure of Entry into Effect and Implementation of the Criminal Code as Confirmed by Law No. VIII-1968 of 26 September 2000, the Code of Criminal Procedure, as

Confirmed by Law No. IX- 785 of 14 March 2002, and the Code of Execution of Punishments as Confirmed by Law No. IX-994 of 27 June 2002. Article 1 of this law established that the new Criminal Code shall become effective as of 1 May 2003, whereas under Paragraph 1 of Article 47 of the same law, upon coming into effect of the new Criminal Code, the Criminal Code which had been valid until then became no longer valid.

Article 99 “Genocide” (wording of 26 September 2000) of the Criminal Code prescribes:

“A person who, seeking to physically destroy, in whole or in part, the persons belonging to any national, ethnic, racial, religious, social or political group, organised, was in charge of or participated in their killing, in torturing, in causing bodily harm to them, in hindering their mental development, in their deportation or otherwise inflicted on them the conditions of life bringing about the death of all or a part of them, restricted the birth of the persons belonging to those groups or forcibly transferred their children to other groups,

shall be punished by deprivation of freedom from five to twenty years, or by life imprisonment.”

The definition of genocide set forth in Article 99 (wording of 26 September 2000) of the Criminal Code, if compared with the one established in Article 71 (wording of 21 April 1998) of the Criminal Code, was expanded (deportation was attributed to actions constituting genocide).

It needs to be noted that, under Item 1 (wording of 26 September 2000) of Paragraph 5 of Article 95 and Item 1 (wording of 15 June 2010) of Paragraph 8 of Article 95 of the Criminal Code, statute of limitations for a judgement of conviction is not applied to genocide.

It needs to be emphasised that the definition of genocide entrenched *inter alia* in the Criminal Code is not a matter of investigation in the constitutional justice case at issue.

11. In the context of the constitutional justice case at issue it needs to be noted that, on 18 July 2000, the Seimas adopted the Republic of Lithuania Law on the Approval, Entry into Force and Implementation of the Civil Code, by Article 1 whereof the Civil Code was approved. Article 2 of this law provides that “the Civil Code shall come into force as from 1 July 2001, save the norms of the Code with regard of which this Law provides other time limits of entry into force”.

11.1. Article 6.250 of the Civil Code (wording of 18 July 2000) prescribes:

“Article 6.250. Non-property damage

1. Non-property damage shall be deemed to be a person’s suffering, emotional experiences, inconveniences, mental shock, emotional depression, humiliation, deterioration of reputation, diminution of possibilities to associate with others, etc., evaluated by a court in terms of money.

2. Non-property damage shall be compensated only in cases provided for by laws. Non-property damage shall be compensated in all cases where it is incurred due to crime, health impairment or deprivation of life, as well as in other cases provided for by laws. The court in assessing the amount of non-property damage shall take into consideration the consequences of such damage sustained, the gravity of the fault of the person by whom the damage is caused, his financial status, the amount of property damage sustained by the aggrieved person, also any other

circumstances of importance for the case, likewise to the criteria of good faith, justice and reasonableness.”

Thus, under this legal regulation, if a natural person has committed a crime, another person, who has sustained non-property damage due to this, may demand in all cases that that this non-property damage be compensated.

11.2. Under Article 11 of the Law on the Approval, Entry into Force and Implementation of the Civil Code (wording of 18 July 2000), the rules for compensation of non-property damage shall be applied to those civil legal relations, the factual grounds of which come into being upon the entry of this code into force.

Provisions of the Law on the Approval, Entry into Force and Implementation of the Civil Code (wording of 18 July 2000) have not been amended or supplemented.

11.3. Under Paragraph 1 of Article 1.125 of the Civil Code (wording of 18 July 2000), general prescription of claims comprises a period of ten years, whereas, under Paragraph 8 of this article, abridged three-year prescription shall be applied with respect to claims for the compensation of damage.

11.4. Article 1.134 of the Civil Code (wording of 18 July 2000) prescribes:

“Article 1.134. Claims not subject to prescription

The following claims shall not be prescribed:

1) claims arising from the violation of personal non-property rights, except in cases established by laws;

2) claims of depositors for repayment of their accounts deposited in a bank or any other credit institution;

3) other claims in cases established by other laws.”

11.5. The aforesaid provisions of the Civil Code (wording of 18 July 2000), *inter alia* the provision that claims shall not be prescribed in cases established by laws, have not been amended or supplemented.

III

1. It has been mentioned that the Supreme Court of Lithuania, the petitioner, requests investigation into whether the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

Thus, the petitioner disputes the legislative omission which, in its opinion, exists in this law, i.e. it disputes something, which has not been established in this law, even though, in the opinion of the petitioner, under the Constitution, it should have been established by the legislator, thus, the petition disputes such a gap in the legal regulation, which, in the opinion of the petitioner, is prohibited by the Constitution.

2. The Constitutional Court has held that a legal gap, *inter alia* legislative omission, always means that the legal regulation of corresponding social relations is established neither explicitly, nor implicitly, neither in the said legal act (part thereof), nor any other legal acts at all, even though there exists a need for legal regulation of these social relations, while the said legal regulation, in case of legislative omission, must be established precisely in that legal act (precisely in that part thereof), since this is required by a certain legal act of higher power, *inter alia* the Constitution itself (Constitutional Court decisions of 8 August 2006, 5 November 2008, rulings of 2 March 2009, 22 June 2009, 11 December 2009, and 29 September 2010).

3. In its 8 August 2006 decision, the Constitutional Court held that the elimination of legal gaps (without excluding legislative omission) is a matter of competence of respective (competent) law-making subject. In addition, in its 8 August 2006 decision and its 7 June 2007 ruling, the Constitutional Court held: it is possible to completely remove legal gaps only when the law-making institutions issue respective legal acts.

However, the mere fact that the corresponding subject of law-making has not legally regulated certain relations, or if it has not regulated them sufficiently enough, does not mean that courts are not allowed or do not have to administer justice. In such cases courts are not denied an opportunity to fill the legal gaps to a certain extent *ad hoc* and to apply law (*inter alia* by making use of legal analogy, by applying general principles of law, as well as legal acts of higher power, first of all the Constitution).

On the other hand, the said possibility of the courts to *ad hoc* fill in the legal gaps does not mean that the legislator does not have the duty, while paying heed to the Constitution and within a reasonable time period, to establish by the law the proper legal regulation of the corresponding relations (Constitutional Court ruling of 7 June 2007).

4. As it has been held by the Constitutional Court more than once, the principle of the superiority of the Constitution implies the duty of the legislator, other law-making subjects to revise legal acts, which were issued before coming into effect of the Constitution, while taking account of norms and principles of the Constitution, to ensure a harmonious hierarchical system of legal acts, which regulate the same relationships (Constitutional Court rulings of 29 October 2003, 5 March 2004, 13 November 2006, decision of 17 January 2007, rulings of 20 March 2007, 28 May 2008, and 7 September 2010).

The Constitutional Court has noted that the process of revision and assessment of legal acts as to their conformity with the Constitution, which were adopted before the entry into force of the Constitution, is not a onetime act, however, this process may not last for a groundlessly long time (Constitutional Court rulings of 29 October 2003, 20 March 2007, 28 May 2008, and 7 September 2010).

5. The necessity to compensate material and moral damage inflicted upon a person was established in the Constitution of the Republic of Lithuania, which was adopted in the 25 October 1992 referendum of the Lithuanian Nation and which came into force on 2 November 1992; from

then on the Lithuanian national legal system was to be created and developed only on the grounds of the Constitution.

Paragraph 2 of Article 30 of the Constitution provides that compensation for material and moral damage inflicted upon a person shall be established by law; thus, the necessity to compensate material and moral damage inflicted upon a person is a constitutional principle (Constitutional Court rulings of 20 January 1997, 13 December 2004, 19 August 2006, 3 February 2010, and 13 May 2010); the Constitution imperatively requires to establish by law such legal regulation that a person, who was inflicted damage by unlawful actions, would be able in all cases to claim for just compensation for that damage and to receive that compensation (Constitutional Court rulings of 19 August 2006, 27 March 2009, and 13 May 2010).

6. The general constitutional principles of recovery of damage to the victim originate *inter alia* from the constitutional principles of justice and the state under the rule of law. While construing the content of the constitutional principle of a state under the rule of law, in its rulings the Constitutional Court has held more than once that the constitutional principle of a state under the rule of law is a universal principle upon which the entire legal system of Lithuania and the Constitution of the Republic of Lithuania itself are based. It needs to be emphasised that the content of the constitutional principle of a state under the rule of law is to be disclosed by taking account of various provisions of the Constitution and by assessing all the values entrenched in and defended and protected by the Constitution, and by taking account of the content of various other constitutional principles.

In its acts the Constitutional Court has also held more than once that the constitutional principle of a state under the rule of law is inseparable from the principle of justice, and *vice versa (inter alia* Constitutional Court rulings of 17 March 2003, 3 December 2003, 24 December 2008, 8 October 2009, and 28 May 2010). Thus, the constitutional principle of justice is an inseparable element of the constitutional principle of a state under the rule of law.

In its acts the Constitutional Court has also held more than once that justice is one of the basic objectives of law, as the means of regulation of social relations; it is one of basic moral values and one of basic foundations of a state under the rule of law; it may be implemented by ensuring certain equilibrium of interests and by escaping fortuity and arbitrariness, instability of social life, and conflict of interests (Constitutional Court rulings of 22 December 1995, 6 December 2000, 17 March 2003, 17 November 2003, 3 December 2003, 24 December 2008, decision of 20 April 2010, and ruling of 29 June 2010).

Under the Constitution, the recovery of damage inflicted upon a person must be real and fair (Constitutional Court ruling of 3 February 2010). The constitutional principle of the necessity to compensate the material and moral damage inflicted upon a person is inseparable from the principle of justice entrenched in the Constitution: the laws must create all the necessary preconditions for fair compensation of the inflicted damage (Constitutional Court ruling of 19 August 2006).

It needs to be noted that the legislator may not establish any such legal regulation, which would create preconditions for a situation, where the person who suffered damage, *inter alia* moral damage, would not be able to get fair compensation for damages (Constitutional Court ruling of 3 February 2010).

7. The constitutional right of a person to demand real and fair compensation of material and moral damage does not mean that the law may not define various conditions and grounds for appearance of damage, whereas, while taking account of this, proper time limits for demand for such compensation are established.

In this context it needs to be noted that damage may appear on various grounds and under various circumstances, *inter alia* also due to commission of a crime, as well as due to such crimes as genocide, for liability of which no statutory limitations are applied under international documents.

During the occupations of Lithuania carried out both by the USSR and by the Nazi Germany, not only democracy was denied, but also crimes against the residents of the occupied state were committed, *inter alia* genocide was perpetrated. It is obvious that, during the years of the occupation, the persons who had suffered from crimes of genocide perpetrated by the natural persons who were serving the occupation regimes were unable to implement their right to demand that the natural persons who had perpetrated the crimes of genocide compensate the damage.

8. The Constitutional Court has held that the consolidation of human rights and freedoms in the Constitution implies the duty of the legislator and other law-making subjects, when issuing legal acts, which regulate the relations of an individual and the state, to follow the priority of human rights and freedoms, to establish sufficient measures of protecting and defending human rights and freedoms (Constitutional Court ruling of 29 December 2004).

Under Paragraph 2 of Article 30 of the Constitution and under the constitutional principle of justice, there may not be any such legal regulation, which would create preconditions for such situations to appear, where damage sustained by persons, *inter alia* damage due to genocide, could not be compensated in a fair manner.

In the context of the constitutional justice case at issue it needs to be noted that such legal regulation, whereby persons who sustained damaged due to genocide would not be allowed to receive fair compensation of the damage due to the fact that they do not have the right to demand such damages from the natural persons with regard of whom an effective court judgment has been adopted, would be in conflict with the Constitution, *inter alia* with Paragraph 2 of Article 30 thereof and with the constitutional principle of justice.

Thus, from the Constitution, *inter alia* Paragraph 2 of Article 30 thereof, from the constitutional principle of justice, a duty arises for the legislator to regulate the relations of compensation of the damage (which has not been compensated yet) that occurred due to perpetration of genocide so that the persons who sustained damage due to genocide would have the right to demand, without limitations of any time periods, fair compensation of the damage from the natural persons who committed crimes of genocide.

IV

On the compliance of the Law "On Compensation for the Damage Inflicted by the USSR Occupation", to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

1. It has been mentioned that the Supreme Court of Lithuania, the petitioner, requests investigation into whether the Law "On Compensation for the Damage Inflicted by the USSR Occupation", to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

The petitioner, while substantiating the conflict of the said law with the Constitution, maintains that the Law "On Compensation for the Damage Inflicted by the USSR Occupation" has established the legal regulation, whereby it is only the Russian Federation as the successor of the rights and obligations of the USSR (but not the natural persons who committed the crime of genocide) that has to compensate the damage *(inter alia* the damage due to genocide) inflicted upon people of Lithuania during the periods of the Soviet occupation.

Thus, the petitioner disputes the legislative omission which, in its opinion, exists in this law, i.e. it disputes something, which has not been established in this law, i.e. that also the natural persons who committed the crime of genocide must compensate the damage that occurred due to the genocide, even though, in the opinion of the petitioner, under the Constitution, it should have been established by the legislator. Consequently, the petition of the petitioner disputes the gap in the legal regulation which, in the opinion of the petitioner, is prohibited by the Constitution.

2. As mentioned, the Law "On Compensation for the Damage Inflicted by the USSR Occupation" defined the periods of damage inflicted by the USSR occupation; obligations for the Government of the Republic of Lithuania were established to calculate the general (entire) amount inflicted by the USSR occupation and to submit a corresponding demand to the liable state; it was provided to create a Fund for the Return to the Homeland of the Persons Deported by the USSR.

The Law "On Compensation for the Damage Inflicted by the USSR Occupation" regulates neither the relations of establishment of criminal liability of concrete natural persons for genocide, nor the relations of compensation for the property and non-property damage inflicted upon concrete persons and their family members during the years of the occupation and annexation by the USSR.

Thus, this law was designated for regulation of the international relations regarding the compensation of the damage inflicted by the USSR occupation.

3. Thus, there are not any grounds to assert that, under the Constitution, namely the Law “On Compensation for the Damage Inflicted by the USSR Occupation” should have established the liability of natural persons, who committed crimes of genocide, for the damage inflicted upon the people of Lithuania during the years of the 1940–1990 occupation and annexation by the USSR. Consequently, in the Law “On Compensation for the Damage Inflicted by the USSR Occupation” there is no legislative omission, i.e. a legal gap prohibited by the Constitution.

4. Taking account of the arguments set forth, one is to draw a conclusion that the Law “On Compensation for the Damage Inflicted by the USSR Occupation”, to the extent that it is not established in this law that the persons who sustained damage due to genocide have the right to demand that *inter alia* the natural persons who committed the crime of genocide compensate for the damage, is not in conflict with Paragraph 2 of Article 30 of the Constitution, and with the constitutional principles of a state under the rule of law, and justice.

5. The Constitutional Court has held more than once that, having established the fact that provisions of a law, the compliance of which with the Constitution is not disputed by the petitioner, are in conflict with the Constitution, where such provisions interfere in the relations regulated by the disputed law, the Constitutional Court must state this fact.

In this context it needs to be noted that, as mentioned, on 9 April 1992, the Supreme Council adopted the Law “On Liability for Genocide of Residents of Lithuania”, which came into force on 15 April 1992. In the preamble to this law it is noted that the Supreme Council, while acceding to the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide and to the 26 November 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, while recognising the 8 August 1945 Charter of the Nuremberg International Military Tribunal, took account of the fact that said treaties create an obligation to adopt national laws providing for liability *inter alia* for genocide. This law regulated the relations of criminal liability of natural persons who committed the crime of genocide. In the context of the constitutional justice case at issue it needs to be noted that the notion “liability” employed in the title of this law encompasses not only criminal liability, but also other types of legal liability, *inter alia* civil liability. However, this law did not and does not regulate the relations of compensation for damage as civil liability for perpetrated genocide.

6. Upon adoption of the Constitution, the legal regulation of the relations linked with liability of a person for genocide should have been brought in line with the Constitution.

7. It has been mentioned that, under Paragraph 2 of Article 6.250 of the Civil Code (wording of 18 July 2000), if a natural person has committed a crime, another person, who has sustained damage due to this, may demand in all cases that that the non-property damage be compensated; under Paragraph 8 of Article 1.125 of the Civil Code (wording of 18 July 2000), abridged three-year prescription shall be applied with respect to claims for the compensation of damage; Article 1.134 of the Civil Code (wording of 18 July 2000) prescribes: “The following claims shall not be prescribed: 1) claims arising from the violation of personal non-property rights, except in cases

established by laws; 2) claims of depositors for repayment of their accounts deposited in a bank or any other credit institution; 3) other claims in cases established by other laws."

Thus, under this legal regulation, the legislator can establish the cases and grounds in other laws, when no prescription is applied also with respect to other claims, *inter alia* the claims demanding that damage that occurred due to certain exceptional grounds be compensated.

8. It has also been mentioned that the Law "On Liability for Genocide of Residents of Lithuania" (with subsequent amendments) adopted on 9 April 1992 is also valid at present. It has also been mentioned that the notion "liability" employed in the title of this law encompasses not only criminal liability, but also other types of legal liability, *inter alia* civil liability. The Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992 with subsequent amendments) has never regulated the relations of compensation for damage, i.e. the relations of civil liability for perpetrated genocide, *inter alia* it did not establish that no statutory limitations should be applied to the claims for compensation of damage to be paid by the natural persons who committed the crime of genocide.

It needs to be held that the Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992 with subsequent amendments) does not establish that the persons who sustained damage due to genocide have the right to demand, without limitations of any time periods, fair compensation of the damage from the natural persons who committed crimes of genocide.

In the context of the constitutional justice case at issue it needs to be noted that such a gap in the legal regulation which is in the said law creates preconditions also for such legal situations to appear, where the persons who sustained damage due to genocide during the periods of the occupations, cannot demand that the natural persons who committed the crime of genocide compensate the damage in a fair manner.

9. It has been mentioned that, under the Constitution, recovery of damage inflicted upon a person must be real and fair. The constitutional principle of the necessity to compensate the material and moral damage inflicted upon a person is inseparable from the principle of justice entrenched in the Constitution: the laws must create all the necessary preconditions for fair compensation of the inflicted damage.

It has also been mentioned that the legislator may not establish any such legal regulation, which would create preconditions for a situation, where the person who suffered damage, *inter alia* moral damage, would not be able to get fair compensation for damages.

It has also been mentioned that such legal regulation, whereby persons who sustained damaged due to genocide would not be allowed to receive fair compensation of the damage due to the fact that they do not have the right to demand such damages from the natural persons with regard of whom an effective court judgment has been adopted, would be in conflict with the Constitution, *inter alia* with Paragraph 2 of Article 30 thereof and with the constitutional principle of justice.

It has also been mentioned that from the Constitution, *inter alia* Paragraph 2 of Article 30 thereof, from the constitutional principle of justice, a duty arises for the legislator to regulate the relations of compensation of the damage (which has not been compensated yet) that occurred due to perpetration of genocide so that the persons who sustained damage due to genocide would have the right to demand, without limitations of any time periods, fair compensation of the damage from the natural persons who committed crimes of genocide.

10. As mentioned, the Constitutional Court has held that a legal gap, *inter alia* legislative omission, always means that the legal regulation of corresponding social relations is established neither explicitly, nor implicitly, neither in the said legal act (part thereof), nor any other legal acts, even though there exists a need for legal regulation of these social relations, while the said legal regulation, in the case of legislative omission, must be established precisely in that legal act (precisely in that part thereof), since this is required by a certain legal act of higher power, *inter alia* the Constitution itself.

11. In the context of the constitutional justice case at issue it needs to be held that, after the Constitution had been adopted, the legislator, having failed to establish in the Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992 with subsequent amendments) that the persons who sustained damage due to genocide have the right to demand, without limitations of any time periods, compensation of the damage from the natural persons who committed this crime, did not pay heed to the imperatives arising from the Constitution, *inter alia* Paragraph 2 of Article 30 thereof, from the constitutional principles of justice and a state under the rule of law.

12. Taking account of the arguments set forth, one is to draw a conclusion that the Law "On Liability for Genocide of Residents of Lithuania" (wording of 9 April 1992 with subsequent amendments), to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand, without limitations of any time periods, compensation of the damage from the natural persons who committed this crime, is in conflict with Paragraph 2 of Article 30 of the Constitution, and the constitutional principles of a state under the rule of law and justice.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 54, 55, and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania has passed the following

ruling:

1. To recognise that the Republic of Lithuania Law "On Compensation for the Damage Inflicted by the USSR Occupation" (Official Gazette *Valstybės žinios,* 2000, No. 52-1486), to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand compensation of the damage from the natural persons who committed this crime, is not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that the Republic of Lithuania Law “On Liability for Genocide of Residents of Lithuania” (wording of 9 April 1992 with subsequent amendments; Official Gazette *Valstybės žinios,* 1992, No. 13-342; 1998, No. 42-1140; 2003, No. 38-1700), to the extent that it does not establish that the persons who sustained damage due to genocide have the right to demand, without limitations of any time periods, compensation of the damage from the natural persons who committed this crime, is in conflict with Paragraph 2 of Article 30 of the Constitution of the Republic of Lithuania, and the constitutional principles of a state under the rule of law and justice.

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

The ruling is promulgated in the name of the Republic of Lithuania.

Justices of the Constitutional Court: Armanas Abramavičius

Toma Birmontienė

Pranas Kuconis

Kęstutis Lapinskas

Zenonas Namavičius

Ramutė Ruškytė

Egidijus Šileikis

Algirdas Taminskas

Romualdas Kęstutis Urbaitis