

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF
LITHUANIA**

RULING

ON THE COMPLIANCE OF ITEMS 1 AND 3.3 OF THE PROCEDURE OF THE PAYMENT OF ONETIME ALLOWANCES FOR THE PARTICIPANTS OF THE 1940-1990 ARMED RESISTANCE WHO LOST THEIR LIVES OR DIED DURING INTERROGATION OR IMPRISONMENT, VOLUNTEER SOLDIERS, AND PARTICIPANTS OF UNARMED RESISTANCE, PARTICIPANTS OF FREEDOM FIGHTS, TO THEIR FAMILIES AS APPROVED BY GOVERNMENT OF THE REPUBLIC OF LITHUANIA RESOLUTION NO. 128 "ON THE STATE SUPPORT TO THE FAMILIES OF THE PARTICIPANTS OF THE RESISTANCE TO THE 1940-1990 OCCUPATIONS WHO LOST THEIR LIVES" OF 4 FEBRUARY 1999 WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND PARAGRAPH 2 (WORDING OF 6 OCTOBER 1998) OF ARTICLE 2 AND ARTICLE 4 OF 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

30 January 2004
Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court Armanas Abramavičius, Egidijus Jarašiūnas, Egidijus Kūris, Kęstutis Lapinskas, Zenonas Namavičius, Augustinas Normantas, Jonas Prapiestis, Vytautas Sinkevičius, and Stasys Stačiokas,

with the secretary of the hearing-Daiva Pitrenaitė,
in the presence of:

the representatives of the Government of the Republic of Lithuania, the party concerned, who were Irena Šambaraitė, the chief specialist of the Law Department of the Ministry of Social Security and Labour of the Republic of Lithuania, and Danutė Akulavičienė, Deputy Head of the Victims and Social Risk Groups Division of the said ministry,

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, on 27 January 2004 in its public hearing heard Case No. 13/03 which originated in a petition of the Vilnius Regional Administrative Court, the petitioner, requesting to determine as to whether the provisions of Items 1 and 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government of the Republic of Lithuania Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the principles of a just civil society and state under the rule of law which are entrenched in the Preamble to the Constitution of the Republic of Lithuania, as well as with the provisions of Article 29 and Item 7 of Article 94 of the Constitution, and Paragraph 2 of Article 2 and Article 4 of 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.

The Constitutional Court
has established:

I

1. The Vilnius Regional Administrative Court, the petitioner, investigated an administrative case. The court suspended the investigation of the case by its ruling and applied to the Constitutional Court with a petition requesting to investigate as to whether the provisions of Items 1 and 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families (Official Gazette Valstybės žinios, 1999, No. 15-397; hereinafter also referred to as the Procedure) as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the principles of a just civil society and state under the rule of law which are entrenched in the Preamble to the Constitution, as well as with the provisions of Article 29 and Item 7 of Article 94 of the Constitution, and Paragraph 2 (wording of 6 October 1998) of Article 2 and Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives (Official Gazette Valstybės žinios, 1998, No. 92-2543; hereinafter also referred to as the Law).

II

The petition of the petitioner is based on the following arguments.

1. According to Paragraph 2 of Article 2 of the Law, brothers and sisters of those who lost their lives shall be paid a onetime allowance of the corresponding amount 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.

Article 4 of the Law provides that the Government shall prepare the procedure of the payment of onetime allowances to the families of the participants of the resistance to the 1940-1990 occupations who lost their lives.

2. Under Item 1 of the Procedure, a onetime allowance of the corresponding amount shall be paid to brothers and sisters of the participants of the 1940-1990 armed resistance who lost their lives or died during interrogation or imprisonment, volunteer soldiers, and participants of unarmed resistance, participants of freedom fights, 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.

Under Item 3.3 of the Procedure, in order to receive a onetime allowance, brothers and sisters of a participant of the resistance to the 1940-1990 occupations who had lost his life, 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, must submit copies of death certificates of the parents together with the application.

3. In the opinion of the petitioner, the notion "at that time did not have both parents" which is entrenched in the Law is concretised in the formula "at that time did not have both

parents--were orphans" employed in Items 1 and 3.3 of the Procedure. The petitioner maintains that the Law does not indicate that orphans are only the persons who did not have both parents at that time. The petitioner has doubts as to whether Items 1 and 3.3 of the Procedure do not narrow the circle of subjects who, according to the Law, have the right to receive the state support.

III

In the course of the preparation of the case for the Constitutional Court hearing written explanations were received from the representatives of the party concerned, the Government, who were I. Šambaraitė and D. Akulavičienė.

The representatives of the party concerned maintain that the notion "did not have both parents" consolidated in Paragraph 2 of Article 2 of the Law is to be construed referring to corresponding laws which were in force at that time. For instance, Paragraph 2 of Article 2 of the Republic of Lithuania Law on Child Guardianship used to contain the notion "a child deprived of parental care". The child deprived of parental care meant: the orphaned child, whose both parents or the only parent that he had were deceased; the child whose parents were unknown, but were searched; the child who was taken from his parents according to the procedure established by the law; the child whose both parents or the single parent were declared dead or recognised as missing or legally incapable according to the procedure prescribed by law; the child whose both parents were unable to take care of him by reason of illness, arrest, execution of the punishment or because of other important reasons; the child whose parents neglected him, did not take proper care of him, were not bringing him up properly, had a negative influence on the child, or when his physical and mental health was endangered. Paragraph 2 of Article 13 of the Republic of Lithuania Law on the Fundamentals of Protection of the Rights of the Child provides that an orphan is a child whose parents are deceased. In the opinion of the representatives of the party concerned, the notion "did not have both parents" which is consolidated by the legislator in the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives means that parents were deceased. Otherwise, the Law would have employed the notion "the child deprived of parental care".

I. Šambaraitė and D. Akulavičienė maintain that the disputed provisions of Items 1 and 3.3 of the Procedure do not narrow the notion "did not have both parents" of the Law and are not in conflict with the Constitution and Paragraph 2 of Article 2 and Article 4 of the Law.

IV

In the course of the preparation of the case for the Constitutional Court hearing written explanations were received from D. Kuodytė, Director General of the Research Centre of Genocide and Resistance of Lithuanian Population, and Prof. I. Nekrošius, Head of the Labour Law Department of the Faculty of Law of Vilnius University.

V

At the Constitutional Court hearing, the representatives of the Government, the party concerned, I. Šambaraitė and D. Akulavičienė virtually reiterated the arguments set forth in

their written explanations.

The Constitutional Court

holds that:

I

1. On 4 February 1999, the Government adopted Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives", by Item 1 whereof approved the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families.

2. The Vilnius Regional Administrative Court, the petitioner, requests to investigate whether the provisions of Items 1 and 3.3 of the Procedure are not in conflict with the principles of a just civil society and state under the rule of law which are entrenched in the Preamble to the Constitution of the Republic of Lithuania, as well as with the provisions of Article 29 and Item 7 of Article 94 of the Constitution, and Paragraph 2 (wording of 6 October 1998) of Article 2 and Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

3. Item 1 of the Procedure provides:

"As it is provided by Paragraphs 1 and 2 of Article 2 of 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, 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 (hereinafter also referred to as members of the family), for the participants of the 1940-1990 armed resistance who lost their lives or died during interrogation or imprisonment, volunteer soldiers, and participants of unarmed resistance, participants of freedom fights, shall be paid in equal parts a onetime allowance of the following amount:

1.1. members of the family of the participants of armed resistance-volunteer soldiers-who lost their lives on the battlefield or at the moment of arrest, 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;

1.2. 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 at the moment of arrest, 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;

1.3. 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."

Item 3 of the Procedure provides:

"In order to receive a onetime allowance, each member of the family must submit an application indicating his personal code and the place of permanent residence to a city (district) municipality on the territory whereof the participant of the resistance to the 1940-1990 occupations used to live before his death or arrest. The following documents have to be submitted together with the application: <...>

3.3. documents which prove the kinship relation with the person who lost his life (died): copies of marriage, birth certificates, copies of other documents proving the kinship relation which have been certified according to the procedure established by the law, and if such documents do not exist--a court decision concerning the establishment of the legal fact.

The brothers and sisters of the participant of the resistance to the 1940-1990 occupations who lost his life (died), if at the time of death of the participant of the resistance to the occupations they were under the age of 18 and at that time did not have both parents--were orphans, shall submit copies of death certificates of their parents which have been certified according to the procedure established by the laws."

4. It is clear from the arguments of the petitioner set forth in the petition that he has doubts as to the compliance of not whole Item 1 and not whole Item 3.3 of the Procedure with the Constitution and Paragraph 2 (wording 6 October 1998) of Article 2 and Article 4 of the Law, but as to the compliance of the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure are not in conflict with the Constitution and Paragraph 2 (wording 6 October 1998) of Article 2 and Article 4 of the Law.

II

1. On 6 October 1998, the Seimas adopted the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

2. Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law used to provide:

"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 (hereinafter also referred to as members of the family), shall be paid, in equal parts, a onetime allowance of the following amount:

1.1. members of the family of the participants of armed resistance-volunteer soldiers-who lost their lives on the battlefield or at the moment of arrest, 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;

1.2. 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 at the moment of arrest, 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;

1.3. 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."

Article 4 of the Law provides:

"The Government shall prepare the procedure of the payment and granting of onetime allowances for the participants of resistance to the 1940-1990 occupations who lost their lives to their families."

3. It is clear from the motives set forth in the petition of the petitioner that he has doubts as to whether the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure were not in conflict with not all provisions of Paragraph 2 of Article 2 of the Law, but only with the provision "if they <...> at that time did not have both parents" of Paragraph 2 (wording of 6 October 1998) of the same article.

4. Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law inter alia establishes a condition that brothers and sisters of the participants of the armed resistance who lost their lives, as well as of the participants of the unarmed resistance who lost their lives, are paid a onetime allowance of the specified amount if they, at the time of death of the participant of the resistance to the occupations, were under the age of 18 and at that time did not have both parents.

While revealing the content of the formula "did not have both parents" employed in Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law, linguistic and systematic methods, as well as the method of the legislator's intentions should be applied.

The formula "did not have both parents" is to be construed as meaning that both parents were deceased. This formula also includes such a legal situation when the only parent was deceased.

Travaux préparatoires (Law preparation material) confirm precisely this content of the formula employed in Paragraph 2 (wording of 6 October 1998) which indicate the real intention of the legislator.

Such content of this formula is also confirmed by the fact that, when the different interpretation of the content of the formula "did not have both parents" appeared in practice, on 23 December 2003, the Seimas adopted the Republic of Lithuania Law on the Amendment of Article 2 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives, according to Paragraph 1 of Article 1 whereof the words "at that time" were deleted and the words ("both parents or the only parent were deceased") were entered instead of the words "parents" in Paragraph 2 of Article 2 of 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. Having corrected the provision of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law in this way, the legislator once again affirmed that the former formula "did not have both parents" of Paragraph 2 (wording of 6 October 1998)

of Article 2 of the Law meant that both parents were deceased.

5. It needs to be noted in the context of the case at issue that, according to Paragraph 2 of Article 146 of the Constitution, the state shall provide for citizens who lost their health while defending the state, and for the families of citizens who lost their lives or died while defending the state.

Thus, Paragraph 2 of Article 146 of the Constitution *inter alia* provides for the duty of the legislator to establish the persons whom the state provides for as members of the family of citizens who lost their lives or died while defending the state, to establish conditions under which the state provides for the said persons, as well as to establish the amount, procedure of this provision and to regulate other essential issues of the provision for the said persons.

It also needs to be noted that, according to Article 52 of the Constitution, the state shall guarantee the right of citizens to receive old age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, loss of breadwinner, and other cases provided for in laws.

The formula "the State shall guarantee" employed in Article 52 of the Constitution means that the (old age and disability) pensions and types of social assistance (in the event of unemployment, sickness, widowhood, loss of breadwinner) enumerated in the same article have to be provided for by the law, i.e. the legislator must establish them by the law; other pensions and types of social assistance (not indicated in Article 52 of the Constitution) may be provided for by the law as well (Constitutional Court rulings of 25 November 2002, 4 July 2003, 3 December 2003). The provision of Article 52 of the Constitution that the law may establish other types of social assistance also means that the legislator has the powers to establish by the law the persons who are rendered social assistance, conditions, amounts and procedure of the rendering of this assistance, as well as to regulate other essential relations of the rendering of social assistance.

Within the context of the case under consideration, it needs to be noted that the Seimas, having passed the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives and having established therein that brothers and sisters of the participants of the armed resistance who lost their lives, as well as of the participants of the unarmed resistance who lost their lives, are paid a onetime allowance of the specified amount if they, at the time of death of the participant of the resistance to the occupations, were under the age of 18 and at that time did not have both parents, implemented the powers established to it by the Constitution.

III

On the compliance of the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government of Resolution No. 128 "On the State Support to the Families of

the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 with the provision "if they <...> at that time did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 and Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

1. It has been mentioned that the formula "did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law is to be construed as meaning that both parents were deceased.

2. The formula "did not have both parents--were orphans" of Item 1 and the formula "did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure mean that both parents were deceased.

3. Thus the content of the formula "did not have both parents--were orphans" of Item 1, the formula "did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure and the formula "did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law coincide.

4. Taking account of the arguments set forth one is to conclude that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the provision "if they <...> at that time did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

5. It has been mentioned that, according to Article 4 of the Law, the Government shall prepare the procedure of the payment and granting of onetime allowances to their families of participants of the resistance to the 1940-1990 occupations who lost their lives.

6. The Government approved the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families by Article 1 of Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999.

7. Having held that that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government

Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the provision "if they <...> at that time did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives, one is also to hold that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 are not in conflict with Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

IV

On the compliance of the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 with Article 29, Item 7 of Article 94 of the Constitution, as well as with the constitutional principles of a just civil society and state under the rule of law.

1. The petitioner has doubts as to whether the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure are not in conflict with Article 29 of the Constitution.

2. Article 29 of the Constitution provides:

"All persons shall be equal before the law, the court, and other State institutions and officials.

The human being may not have his rights restricted, nor may he be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, beliefs, convictions, or views."

3. The Constitutional Court has held more than once in its rulings that these provisions of the Constitution consolidate the principle of equality of all persons. It must be observed while passing and applying laws, as well as administering justice. This principle obligates to apply uniform legal assessment to homogeneous facts and prohibits to arbitrarily assess essentially homogeneous facts in a varied manner. The principle of equality of all persons which is entrenched in Article 29 of the Constitution means the inborn human right to

be treated equally with the others, this principle sets the formal equality of all persons, as well as the fact that persons may not be discriminated nor that they may be granted privileges.

4. It has been mentioned that the Seimas, having passed the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives and having established therein that brothers and sisters of the participants of the armed resistance who lost their lives, as well as of the participants of the unarmed resistance who lost their lives, are paid a onetime allowance of the specified amount if they, at the time of death of the participant of the resistance to the occupations, were under the age of 18 and at that time did not have both parents, implemented the powers established to it by the Constitution.

It has also been mentioned that the formula "did not have both parents--were orphans" of Item 1, the formula "did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure and the formula "did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law mean that both parents were deceased.

5. Upon establishment in Item 1 of the Procedure that brothers and sisters of the participants of the armed resistance who lost their lives, as well as of the participants of the unarmed resistance who lost their lives, are paid a onetime allowance if they, at the time of death of the participant of the resistance to the occupations, were under the age of 18 and at that time did not have both parents--were orphans, as well as upon establishment of the provision "if they <...> did not have both parents--were orphans" in Section 2 of Item 3.3 of the Procedure, brothers and sisters of the participants of the resistance to the occupations who lost their lives, who, at the time of death of the participant of the resistance to the occupations, were under the age of 18 and at that time did not have both parents are treated equally; no group of the specified persons is granted privileges, nor any specified persons are discriminated.

6. Taking account of the arguments set forth one is to conclude that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 are not in conflict with Article 29 of the Constitution.

7. The petitioner has doubts as to whether the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure are not in conflict with Item 7 of Article 94 of the Constitution.

According to Item 7 of Article 94 of the Constitution, the Government shall discharge duties prescribed to the Government by the Constitution and other laws.

8. It has been mentioned that, under Article 4 of the Law,

the Government shall prepare the procedure of the payment and granting of onetime allowances for the participants of the resistance to the 1940-1990 occupations who lost their lives to their families.

It has also been mentioned that the Government approved the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families by Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999.

It has also been mentioned that the contents of the formula "did not have both parents--were orphans" of Item 1, the formula "did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure and the formula "did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law coincide.

9. Having held this, one is to conclude that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 are not in conflict with Item 7 of Article 94 of the Constitution.

10. The petitioner has doubts as to whether the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure are not in conflict with the constitutional principles of a just civil society and state under the rule of law.

11. The Preamble to the Constitution proclaims the striving for an open, just, harmonious civil society and a state under the rule of law. The values and strivings enshrined in the Constitution are expressed in the constitutional norms and principles. The striving for an open, just, harmonious civil society and a state under the rule of law is to be construed inseparably from the norms and principles of the Constitution, including the principle of a state under the rule of law which embodies the strivings entrenched in the Preamble to the Constitution (Constitutional Court rulings of 23 February 2000, 18 October 2000, 12 July 2001, 4 March 2003 and 4 July 2003).

12. Having held that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the

Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the provision "if they <...> at that time did not have both parents" of Paragraph 2 (wording of 6 October 1998) of Article 2 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives, and are not in conflict with Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives, as well as that they are not in conflict with Article 29 of the Constitution and Item 7 of Article 94 of the Constitution, one is to hold that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 are not in conflict with the constitutional principle of a state under the rule of law.

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 provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government of the Republic of Lithuania Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 is not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government of the Republic of Lithuania Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 were not in conflict with the provision "if they <...> at that time did not have both parents" of Paragraph 2

(wording of 6 October 1998) of Article 2 of 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.

3. To recognise that the provision "if they <...> at that time did not have both parents--were orphans" of Item 1 and the provision "if they <...> at that time did not have both parents--were orphans" of Section 2 of Item 3.3 of the Procedure of the Payment of Onetime Allowances for the Participants of the 1940-1990 Armed Resistance Who Lost Their Lives or Died During Interrogation or Imprisonment, Volunteer Soldiers, and Participants of Unarmed Resistance, Participants of Freedom Fights, to Their Families as approved by Government of the Republic of Lithuania Resolution No. 128 "On the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives" of 4 February 1999 are not in conflict with Article 4 of the Law on the State Support to the Families of the Participants of the Resistance to the 1940-1990 Occupations Who Lost Their Lives.

This Constitutional Court ruling 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
Egidijus Jarašiūnas
Egidijus Kūris
Kęstutis Lapinskas
Zenonas Namavičius
Augustinas Normantas
Jonas Prapiestis
Vytautas Sinkevičius
Stasys Stačiokas