

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

RULING

ON THE COMPLIANCE OF ARTICLE 14 OF THE REPUBLIC OF LITHUANIA LAW "ON THE PROCEDURE AND CONDITIONS OF RESTORATION OF THE RIGHTS OF OWNERSHIP OF CITIZENS TO THE EXISTING REAL PROPERTY" (WORDING OF 12 JANUARY 1993), PARAGRAPH 1 OF ARTICLE 2 AND ITEM 5 OF THE SAME PARAGRAPH, ARTICLES 15, 20, AND 21 OF THE REPUBLIC OF LITHUANIA LAW ON THE RESTORATION OF THE RIGHTS OF OWNERSHIP OF CITIZENS TO THE EXISTING REAL PROPERTY (WORDING OF 15 JANUARY 2002), ITEMS 2, 4, 5, AND 6 OF PARAGRAPH 1 OF ARTICLE 15, AS WELL AS PARAGRAPHS 2 AND 4 OF THE SAME ARTICLE, PARAGRAPH 10 OF ARTICLE 16 AND ARTICLE 20 OF THE REPUBLIC OF LITHUANIA LAW ON THE RESTORATION OF THE RIGHTS OF OWNERSHIP OF CITIZENS TO THE EXISTING REAL PROPERTY WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA, AND ON THE COMPLIANCE OF GOVERNMENT OF THE REPUBLIC OF LITHUANIA RESOLUTION NO. 27 "ON THE BUYING OUT OF THE RESIDENTIAL HOUSES WHICH ARE INDISPENSABLE FOR STATE NECESSITIES" OF 17 JANUARY 1994 WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AND ARTICLE 14 OF THE REPUBLIC OF LITHUANIA LAW "ON THE PROCEDURE AND CONDITIONS OF RESTORATION OF THE RIGHTS OF OWNERSHIP OF CITIZENS TO THE EXISTING REAL PROPERTY" (WORDING OF 12 JANUARY 1993)

4 March 2003

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 groups of members of the Seimas of the Republic of Lithuania, petitioners, who were Andrius Kubilius and Raimondas Šukys, both members of the Seimas,

the representatives of the Seimas of the Republic of Lithuania, the party concerned, who were Petras Papovas, a member of the Seimas, Daina Petrauskaitė, senior consultant to the Legal Department of the Office of the Seimas, Darius Karvelis, chief specialist of the Legal Department of the Office of the Seimas, and the representative of the Government of the Republic of Lithuania, the party concerned, who was Irena Sabaliūtė, Head of the Legal Division of the Legal and Personnel Department of the Ministry of Environment of the Republic of Lithuania,

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 31 January 2003 in its public hearing heard Case No. 27/01-5/02-01/03 which originated in the following petitions:

1) the petition of the Kaunas Regional Court, a

petitioner, requesting to investigate as to whether the provision of Article 14 of the Republic of Lithuania Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the same law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution of the Republic of Lithuania; whether the part of Government of the Republic of Lithuania Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 whereby it was confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out was not in conflict with Article 23 of the Constitution of the Republic of Lithuania and the provision of Article 14 of the Republic of Lithuania Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities;

2) the petition of 24 January 2002 of a group of members of the Seimas, a petitioner, requesting to investigate as to whether Paragraph 1 of Article 1, Articles 4 and 7, and Paragraph 2 of Article 8 of the Republic of Lithuania Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was adopted by the Seimas on 20 December 2001, are not in conflict with Articles 23, 29 and 30 of the Constitution of the Republic of Lithuania;

3) the petition of 6 January 2003 of a group of members of the Seimas, a petitioner, requesting to investigate as to whether the Preamble to as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the Republic of Lithuania Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted by the Seimas on 29 October 2002, are not in conflict with Articles 23, 29 and 30 of the Constitution of the Republic of Lithuania.

The aforesaid petitions were joined into one case by the Constitutional Court decisions of 11 July 2002 and 24 January 2003.

The Constitutional Court
has established:

I

1. The Kaunas Regional Court, the petitioner, was investigating an administrative case. The said court suspended the investigation of the case by its ruling and applied to the Constitutional Court with a petition requesting to investigate:

1) whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993; Official Gazette Valstybės žinios, 1993, No. 5-83) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the same law provided they are indispensable for state necessities, was not in conflict with Article 23 of the

Constitution;

2) whether Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out, was not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities.

2. On 24 January 2002, a group of members of the Seimas, the petitioner, applied to the Constitutional Court with a petition (hereinafter referred to as the petition of 24 January 2002) requesting to investigate as to whether Paragraph 1 of Article 1, Articles 4 and 7, and Paragraph 2 of Article 8 of the 20 December 2001 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, are not in conflict with Articles 23, 29 and 30 of the Constitution.

3. On 6 January 2003, a group of members of the Seimas, the petitioner, applied to the Constitutional Court with the petition (hereinafter referred to as the petition of 6 January 2003) requesting to investigate as to whether the Preamble as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted by the Seimas on 29 October 2002, are not in conflict with Articles 23, 29 and 30 of the Constitution.

II

1. The request of the Kaunas Regional Court, the petitioner, is based on the following arguments.

1.1. Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) provides that residential houses shall be bought out from the persons specified in Article 2 of this law provided they are indispensable for state necessities. The notion "state necessities" is not defined in the law. In the opinion of the petitioner, state necessities are only linked with the ensuring of functioning of the state apparatus. Therefore, the petitioner had doubts as to the compliance of the said provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) with Paragraph 3 of Article 23 of the Constitution wherein it is provided that property may only be seized for the needs of society in accordance with the procedure established by law and shall be justly compensated for. It is asserted in the petition that although Paragraph 3 of Article 23 of the Constitution regulates seizure of property from the owner, however, the conditions under which the property is not returned in kind and is bought out may not be in conflict with the common constitutional principles of ownership protection and must meet the condition of the social nature of the needs.

1.2. The petitioner points out that on 17 January 1994,

the Government, in pursuance with the provisions of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993), adopted Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" whereby inter alia it was confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out. At the moment of the adoption of the said resolution, the building in question was being rented for the editorial office of the newspaper "Kauno diena". Subsequent to the aforementioned resolution, on 19 May 1994, the Board of Kaunas City adopted Ordinance No. 709-v whereby this building was transferred to the balance of the close company "Kauno diena". Subsequently, the building, being part of the authorised capital of the close company "Kauno diena", was privatised by way of buying out shares. The petitioner asserts that the society has an interest in effective activities of independent media of public information. However, in the opinion of the petitioner, the provision of editorial staffs of periodicals with premises is not attributed such public significance which would outweigh the private interest to retrieve property. Besides, if one construes the notion "state necessities" only as the requirements of functioning of the state apparatus, the provision of non-state-owned periodical with premises should not be regarded as a state necessity. Therefore, the petitioner had doubts as to whether Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out, was not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities.

2. The petition of 24 January 2002 of a group of members of the Seimas, the petitioner, is grounded on the following arguments.

2.1. After Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had been amended by the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (Paragraph 1 of Article 1), the citizens who had used to be specified in the amended item, i.e. the citizens who had been transferred property by house testament or agreements (of purchase and sale, gift, or by another written document), also the citizens, who had been bequeathed property by testament by successors to the rights of the property, lost their rights to restore their rights to the said property. Thus, in the opinion of the petitioner, in regard of the aforesaid citizens the constitutional principle of legitimate expectations as well as Articles 23 and 29 of the Constitution were violated.

2.2. In the opinion of the petitioner, after Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had been amended by the Law on the

Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, and after the provision had been established that the rights of ownership shall be restored to the citizens whose property was not mortgaged prior to the 15 June 1940 occupation, one unreasonably restricted the rights of citizens to the restoration of the rights of ownership, since the person who has mortgaged his property does not lose the rights of ownership to the said property. The petitioner asserts that the aforesaid provision of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is in conflict with Article 23 of the Constitution, also Article 29 of the Constitution which establishes the principle of equality of all persons before the law, as citizens' rights to real property had used to be restored for 10 years regardless of whether or not it had been mortgaged. After the disputed provision of the law (wording of 15 January 2002) had been adopted, the citizens, who, during the 10 years had not managed to restore their rights of ownership to the existing real property, which was mortgaged prior to 15 June 1940, lost their right to restore their rights of ownership.

2.3. The petitioner asserts that after Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) had been amended by Article 4 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property and after it had been established that residential houses, parts thereof, flats shall be bought out by the state from the citizens specified in Article 2 of this law and they shall be compensated under Article 16 of this law, if tenants reside therein, also taken (seized) if the citizen had been fully restored the rights of ownership but tenants reside therein, a new provision was consolidated that the residential houses, parts thereof, flats in which tenants reside are bought out by the state so that the tenants residing in the said houses might privatise them. The petitioner is of the opinion that the aforementioned provisions on the alteration of the manner of the restoration of the rights of ownership to residential houses, parts thereof, flats in which tenants reside violate the principle of equality of rights of persons entrenched in Article 29 of the Constitution.

The petitioner asserts that the provision that the state shall buy out the residential houses, parts thereof, flats which have been returned to the owners under the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property is in conflict with Article 23 of the Constitution, as the presence of the agreement of tenancy may not serve as the grounds for forceful seizure of the rented object from the owner so that the said object might be sold to the tenant; according to the petitioner, this is not a public need.

The petitioner is of the opinion that after the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property has been adopted, the rights of ownership of the owners who were returned residential houses under the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property in case the

said residential houses, parts thereof, flats were rented, are less protected than those of the owners of other residential houses, parts thereof and flats. According to the petitioner, the disputed norm of Article 15 (wording of 15 January 2002) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property is in conflict with Article 29 of the Constitution.

2.4. In the opinion of the petitioner, after Paragraphs 1-4 of Article 20 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had been recognised as no longer valid by Paragraph 1 of Article 7 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, the rights of the tenants residing in the houses that had been returned to the owners were also violated, since the guarantees that had been established to them had been abolished: the owners are no longer bound by the former obligation not to evict the tenants from the houses that had been returned to the owners until the state did not fulfil the guarantees which had previously been granted to them.

2.5. The petitioner asserts that the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property also violates the rights of the tenants who reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, since after Paragraph 6 of Article 20 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had been recognised as no longer valid by Paragraph 3 of Article 7 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, the tenants lost the right that they had used to enjoy until then to buy out these premises under the procedure established by the Government within 6 months of the decision on the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register.

2.6. In the opinion of the petitioner, the amendment of Paragraph 3 of Article 21 (wording of 15 January 2002) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property also violates the rights of citizens which are entrenched in the Constitution. The fact that a decision on the restoration of the rights of ownership has already been adopted and its implementation has begun shows that certain legal effects have occurred (one has been transferred gratis the ownership of property of equal value, monetary liabilities of the citizen for the state have been abolished by means of inclusion, all sum or part thereof has been paid for the property bought out, etc.). Therefore, the indicated decisions may only be abolished in court according to the procedure established in laws. The provision of the law that the said decisions are abolished according to the procedure established by the Government bars the way to persons to make use of their right to judicial protection, which is granted to them by the Constitution. The petitioner is of the opinion that this provision of Paragraph 3 of Article 21 (wording of 15 January 2002) of the Law on the Restoration of

the Rights of Ownership of Citizens to the Existing Real Property conflicts with Article 30 of the Constitution.

3. The petition of 6 January 2003 of a group of members of the Seimas, the petitioner, is grounded on the following arguments.

3.1. Under Article 23 of the Constitution, property shall be inviolable; it may only be seized for the needs of society and shall be justly compensated for. The Constitution does not contain any provisions stipulating that property can be bought out by the state without the consent of the owner. The notion "bought out" as employed in the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property is synonymous to the notion "seized". In the opinion of the petitioner, the articles of Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) which regulate the procedures of buying out of property, when they establish neither the needs of society as the ground for the buying out of property nor the obligation to justly compensate for the property bought out, violate the Constitution.

3.2. In the opinion of the petitioner, after one had entered the provision into the Preamble of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) that these norms of this law shall be special ones, one created preconditions not to apply the norms of the Civil Code of the Republic of Lithuania for the relations concerning the property which was unlawfully seized and which is at present being returned.

3.3. According to the petitioner, the norm of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) that residential houses, parts thereof, flats shall be bought out by the state (i.e. seized) from citizens of certain category, if one acquired the private ownership of the said houses according to law, is incompatible with Article 29 of the Constitution.

3.4. In the opinion of the petitioner, by Item 1 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) the constitutional rights of ownership are violated, since under the norm formulated therein it is sufficient to buy out (seize) the residential houses, parts thereof, flats even if at least some useful floor area (even 1 m²) has been created, or that separately created floor area ("possible for separation"), after it has been totted up with the previous floor area exceeds the previous floor area by not less than 30 percent.

3.5. Items 4, 5, and 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) indicate the tenants who "were unable to implement their right to privatise" the property which had belonged to other persons and which had been seized from them unlawfully. In the opinion of the petitioner, such an alleged right to privatise private property grossly violates Article 23 of the Constitution.

3.6. The petitioner maintains that the norm of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of

29 October 2002) is in conflict with Articles 23, 29 and 30 of the Constitution, as, under the said norm, the fact of the buying out itself is "circumvented": the decision on the upcoming buying out is enough, and, immediately, within three months, the owner is changed, although the property has not been bought out. Thus, the objects that have not been bought out are transferred to another owner on the grounds of an obscure right. Upon the establishment of the opportunity of extra haste procedures, the right of citizens to apply to court, which is established in Article 30 of the Constitution, is violated. In the opinion of the petitioner, Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) violates the equality of rights of citizens and also offends against the principle of their equality entrenched in Article 29 of the Constitution.

3.7. In the opinion of the petitioner, Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) restricts the right of the municipality to freely dispose of its property after the residential houses, parts thereof, flats have been seized (under Article 23 of the Constitution, i.e. after it has been justly compensated for).

3.8. According to the petitioner, Item 5 of Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is worded ambiguously: "It is totally unclear what one has in mind: whether the Soviet or present seizure of real property of citizens; whether the decision on the restoration of the rights of ownership taken upon the restoration of the Independence, or another, subsequent decision denying the rights of ownership that have already been restored." In the opinion of the petitioner, "it remains unclear in entire Paragraph 10 of Article 16 whether all seven ways of just compensation by the state to its citizens are presented for the owner as a choice, or whether one has in mind that the Government 'establishes a procedure' and the choice rests for municipalities as to what way of compensation to force upon the owner, thus denying him any choice".

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 V. Stankevičius, senior consultant to the Legal Department of the Office of the Seimas, D. Petrauskaitė, chief consultant to the Legal Department of the Office of the Seimas, D. Karvelis, senior consultant of the Legal Department of the Office of the Seimas, and the representative of the Government, the party concerned, who was I. Sabaliūtė, Head of the Legal Division of the Legal and Personnel Department of the Ministry of Environment.

1. The representative of the Seimas, the party concerned, V. Stankevičius maintains in his explanations concerning the petition of the Kaunas Regional Court that any interest of society must inevitably become one of the state as well, therefore the notions "needs of society" and "state necessities" are virtually the same. The concept of state necessities under which the content thereof is constituted by the needs of functioning of the state apparatus (i.e. needs of state power), in the opinion of V. Stankevičius, is indeed too

narrow: state necessities are not only the interests of state power but also other needs of the state and society. If there is a broader understanding of state interests, the limits between state needs and those of society virtually disappear, therefore there are no longer any differences in the content of the notions "state necessities" and "needs of society".

The representative of the party concerned also notes that, while assessing the compliance of the disputed provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) with Paragraph 3 of Article 23 of the Constitution, it is important to take account of the legal environment which existed at the time of the adoption of the said law, as well as the legal conscience of society and other social, political and economic circumstances which were influential on the legislator when he regulated the restoration of the rights of ownership of citizens to the existing real property. The period of the beginning of the restoration of the State of Lithuania and consolidation of the statehood is related with immense changes in the restructuring of the spheres of public life, first of all, the system of economy, in which state interests had dominated until then. To implement these changes, the legislator had to provide for essentially new legal regulation and to introduce new legal notions, however, one could not avoid using the old notions as well. In the opinion of the representative of the party concerned, while taking account of these circumstances, the notion "state necessities" ought to be regarded as identical to the notion "needs of society". According to V. Stankevičius, the legislator could not link the buying out of property with a mere need of functioning of the state apparatus or interests of state power, as such regulation would not have been in line with the processes that were taking place in society, and the consolidation of the priority of the rights and freedoms of the human being and society.

The representative of the party concerned maintains that the disputed provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) was not in conflict with Article 23 of the Constitution.

2. The representative of the Seimas, the party concerned, D. Petrauskaitė points out in her explanations concerning the petition of the Kaunas Regional Court, the petitioner, that in the legal theory the notion of the state is directly linked with the duties of the state towards the society. The state implements its functions concerning the regulation of affairs of society and guaranteeing the rights and freedoms of citizens through various institutions: state institutions and establishments as well as non-governmental establishments and organisations. In the opinion of the representative of the party concerned, it is groundless to assert that the notion "state necessities" ought to be understood only as needs of the state apparatus.

In the opinion of D. Petrauskaitė, while construing the provisions of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" in a systematic manner, one is to draw a conclusion that the notion "state necessities" employed in this law is identical with the notion "needs of society".

The representative of the party concerned draws one's

attention to the fact that in the laws adopted prior to 1993, while regulating seizure of property or establishing restrictions of rights, it was common to employ the notions "interests of the Republic of Lithuania", "state interests" or "interests of the state and society". Such terminology of the laws of that period is linked by the representative of the party concerned with the terminology of the Provisional Basic Law of the Republic of Lithuania (Article 46 regulating the nationalisation, which is subject to compensation, of property of citizens or their groups employs the notion "interests of Lithuania" which often was identified with the notion "state interests"). In the laws adopted after the Constitution had come into effect, while regulating seizure of property or restrictions of its use, one already employs the notion "needs of society".

D. Petrauskaitė notes that the fact alone that property is seized so that it might be transferred to a non-governmental establishment or organisation does not mean that there is not a need of society to seize such property. In the opinion of D. Petrauskaitė, provision of a non-state-owned periodical with premises in an attempt to guarantee the freedom of expression may be recognised as a need of society, however, it is important that in a particular case the balance between the interest of the society and the protection of the rights of ownership be not violated.

In the opinion of the representative of the party concerned, the disputed provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) was not in conflict with Article 23 of the Constitution.

D. Petrauskaitė also maintains that the disputed provision of Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities, if, at the time of the adoption of the resolution there was not any opportunity to apply other measures to reach the purpose corresponding with the interests of society or, if in the course of the application of other measures the balance between the interests of society and private interests would have been disturbed to a greater degree than in the case of compensated seizure of the building for state necessities.

3. It is noted in the explanations of the representative of the party concerned, the Government, I. Sabaliūtė, that the Government, while adopting Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994, was discharging functions of state power and had the right to decide the issue whether a particular building was necessary for the state. The representative of the party concerned asserts that the necessities of the state coincide with needs of society, since under the Constitution, the state is created by the Nation which enjoys the supreme sovereign power, while state institutions, while serving the people, must take into consideration the needs of society and its will, as well as follow the constitutional provisions and valid legal acts.

In the opinion of I. Sabaliūtė, the Government, while adopting Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994, was following the requirements of the law, therefore, the disputed provision of the said resolution is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities.

4. The representative of the party concerned, the Seimas, D. Karvelis, maintains in his explanations concerning the petition of 24 January 2002 of the petitioner, a group of members of the Seimas, that by Paragraph 1 of Article 1 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property the Seimas amended Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (13 May 1999) and, from the list of citizens entitled to restore their rights of ownership, deleted the citizens who had been transferred property by testament (house testament) or agreements while disregarding the form and procedure established by the law, as well as the citizens who had been bequeathed property by testament by successors to the rights of the property. Both the Civil Code (Article 255) which was in force earlier and the new Civil Code (Article 1.74) provide for the mandatory notarial form for transactions of transfer of an immovable item and of the tangible rights to the item. Therefore, the transactions concluded prior to and after 7 July 2001, while disregarding the established form, are held invalid. Paragraph 4 of Article 1.93 of the new Civil Code points out only one exception under which a court may recognise a transaction, which needs confirmation by a notary, as valid. Therefore, the persons who were transferred real property by a transaction which had not been confirmed by a notary did not and do not acquire the right of ownership to this property, as this would be in conflict with civil substantive law. The existence of such an agreement or testament may only be one of the legal means for averment in the restoration of the rights of ownership.

In the opinion of D. Karvelis, the disputed provisions of the articles (wording of 15 January 2002) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property which abolished the right of the citizens to restore their rights of ownership, who were transferred property by transactions that disregard the form or procedure of conclusion established by the law, are not in conflict with Article 29 of the Constitution.

The representative of the party concerned maintains that when the state does not have opportunities to ensure the rights and interests of the tenants who live in the houses subject to being returned, one can consider their needs to be needs of society. D. Karvelis assumes that the norms of Items 2 and 3 of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) establish seizure of property for the needs of society.

In the opinion of the representative of the party concerned, the statement of the petitioner that, under the

disputed provisions of the articles of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the state acquires the right to buy residential houses, parts thereof, flats from the owners even in cases when the agreement of tenancy was concluded after the residential houses had been returned to their legitimate owners, also the statement that the persons have been barred from an opportunity to make use of their right to judicial defence, granted to them by the Constitution, are groundless.

5. The representative of the party concerned, the Seimas, D. Karvelis asserts in his explanations concerning the petition of 6 January 2003 of the petitioner, a group of members of the Seimas, that the establishment of the procedure and conditions of restoration of the rights of ownership is within the discretion of the legislator.

In the opinion of the representative of the party concerned, the rights of ownership of the citizens from whom property is bought out, who are indicated in Items 4, 5, and 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, may be protected only after they have been restored, as until then the persons indicated in the said items do not acquire subjective rights of ownership. The representative of the party concerned assumes that Items 1 and 2 of Paragraph 1 of Article 15 (wording of 29 October 2002) of the aforementioned law not only are not in violation with the Constitution but their provisions attempt to protect the rights of ownership of persons. D. Karvelis notes that the legislator, while establishing that residential houses, parts thereof, flats may be bought out from citizens, attempted to defend the interests of the tenants, i.e. the interests of part of society, who reside in the houses, parts thereof, flats that are subject to being returned. The interests of the said tenants are interests of the entire society. Therefore, in the opinion of D. Karvelis, Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with the Constitution.

IV

In the course of the preparation of the case for the judicial investigation, written explanations were received from V. Markevičius, Minister of Justice of the Republic of Lithuania, J. Laiconas, Secretary of the Ministry of Environment, Prof. T. Birmontienė, Head of the Department of Constitutional Law of the Faculty of Law, the Law University of Lithuania, Assoc. Prof. V. Pakalniškis who works at the Department of Civil and Commercial Law of the same faculty, Assoc. Prof. A. Vileita who works at the Department of Civil Law and Procedure of the Faculty of Law, Vilnius University, M. Vitkauskas, Chairman of the Lithuanian Union of Owners of Houses and Land Plots, H. Kebeikis, Chairman of the Kaunas Committee for Protection of the Rights of Residents in the Houses to be Returned, M. D. Mrazauskienė, Chairwoman of the Association of the Future Homeless.

V

1. At the Constitutional Court hearing, the representatives of the petitioners, groups of members of the Seimas, who were A. Kubilius and R. Šukys, virtually reiterated

their arguments set forth in the petitions.

2. At the Constitutional Court hearing, the representatives of the party concerned, the Seimas, who were P. Papovas, D. Karvelis, D. Petrauskaitė virtually reiterated the arguments set forth in the written explanations of the representatives of the party concerned, the Seimas; the representative of the party concerned, the Government, who was I. Sabaliūtė, virtually reiterated the arguments set forth in her written explanations.

3. The following witnesses were interrogated at the Constitutional Court hearing: Violeta Anankienė, Romualdas Baltrušis, Antanas Janickas, Alfonsas Steponas Kleiza, Vytautas Landsbergis, Vita Lesauskaitė, Kęstutis Mozeris, Marija Danguolė Mrazauskienė, Arminas Ragauskas, Pranas Stankevičius, Vytautas Valunta, Mykolas Vitkauskas, Valerija Vitkauskienė, and Sofija Zailskaitė.

The Constitutional Court
holds that:

I

1. The petitioner, the Kaunas Regional Court, requests to investigate

1) whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the same law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution;

2) whether Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it was confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out, is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities.

The petitioner, a group of Seimas members, requests in its petition of 24 January 2002 to investigate as to whether Paragraph 1 of Article 1, Articles 4 and 7, and Paragraph 2 of Article 8 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was adopted by the Seimas on 20 December 2001, are not in conflict with Articles 23, 29 and 30 of the Constitution.

The petitioner, a group of Seimas members, requests in its petition of 6 January 2003 to investigate as to whether the Preamble to as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted by the Seimas on 29 October 2002, are not in conflict with Articles 23, 29 and 30 of the Constitution.

2. The petitioner, the Kaunas Regional Court, requests to

investigate whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the same law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution.

On 3 July 1995, the Seimas adopted the Republic of Lithuania Law "On the Amendment and Supplement of the Republic of Lithuania Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'", whereby Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) was recognised as no longer valid.

Under Paragraph 4 of Article 69 of the Law on the Constitutional Court, the annulment of a disputable legal act shall be grounds to adopt a decision to dismiss the initiated legal proceedings.

Under the Constitution, it is only the Constitutional Court that decides whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether acts of the President of the Republic and the Government are not in conflict with the Constitution or laws (Paragraph 1 of Article 102). It is impossible to construe the provisions of Paragraph 4 of Article 69 of the Law on the Constitutional Court while not taking account of the provisions of Article 110 of the Constitution. Paragraph 1 of Article 110 of the Constitution provides that a judge may not apply a law, which is in conflict with the Constitution. Under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that the law or other legal act applicable 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.

In its ruling of 21 August 2002, the Constitutional Court held that the formula "shall be grounds to adopt a decision to dismiss the initiated legal proceedings" employed in Paragraph 4 of Article 69 of the Law on the Constitutional Court is to be construed as establishing the right to the Constitutional Court, in cases when not courts but the other entities pointed out in Article 106 of the Constitution applied to the Constitutional Court, while taking account of the circumstances of the case, to dismiss the initiated legal proceedings, but not as establishing that in every case when the disputed legal act was annulled the instituted legal proceedings must be dismissed. Under the Constitution, in the cases when a court investigating a case applies to the Constitutional Court after it has had doubts concerning the compliance of a law applicable in the case with the Constitution, also concerning the compliance of an act adopted by the Seimas, or an act of the President of the Republic or the Government with the Constitution or laws, the Constitutional Court has a duty to investigate the request of the court regardless of the fact whether or not the disputed law or other legal is valid (Constitutional Court ruling of 21 August 2002).

It needs to be noted that after the Kaunas Regional Court, the petitioner, had applied with the petition to investigate

whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution, while if the Constitutional Court did not decide this issue in essence, the doubts the Kaunas Regional Court whether the disputed norm of the law was not in conflict with the Constitution would not be removed, and, if such a law were applied, the constitutional rights of persons might be violated.

Taking account of this, the Constitutional Court will investigate whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution.

3. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Paragraph 1 of Article 1, Articles 4 and 7, and Paragraph 2 of Article 8 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was adopted on 20 December 2001, are not in conflict with Articles 23, 29 and 30 of the Constitution.

It needs to be noted that the President of the Republic did not sign the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was adopted by the Seimas on 20 December 2001 and by his Decree of 22 December 2001 referred this law back to the Seimas for a repeated consideration. Upon the repeated consideration, the Seimas adopted the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property on 15 January 2002.

It is clear from the petition of the petitioner that he disputes the compliance of not the 20 December 2001 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, but that of Paragraph 1 of Article 1, Articles 4 and 7 and Paragraph 2 of Article 8 of the 15 January 2002 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property with the Constitution.

4. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Paragraph 1 of Article 1, Articles 4 and 7 and Paragraph 2 of Article 8 of the 15 January 2002 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property are not in conflict with the Constitution.

By disputed Paragraph 1 of Article 1 of the aforementioned law, one amended Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to

the Existing Real Property (wording of 1 July 1997); by disputed Article 4 of the law, one amended and supplemented Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999); by disputed Article 7 of the law, one amended Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999); by disputed Paragraph 2 of Article 8 of the law, one amended Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999).

Thus, the petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Item 5 of Paragraph 1 of Article 2, Article 15, Article 20 and Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) are not in conflict with the Constitution.

5. Although the petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 1999) to the extent that it no longer contains the norm which used to be in Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the said law, under which it used to be established that the rights of ownership to the real property specified in Article 3 of this law were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property is not in conflict with Articles 23, 29 and 30 of the Constitution, however, from the arguments pointed out in the petition, it is clear that the petitioner doubts whether the non-establishment of the aforesaid norm in Paragraph 1 of Article 2 (wording of 15 January 2002) of the said law is not in conflict with the constitutional principle of protection of legitimate expectations, Articles 23 and 29 of the Constitution.

Since the principle of protection of legitimate expectations is one of essential elements of the constitutional principle of a state under the rule of law (Constitutional Court ruling of 18 December 2001), subsequent to the petition of 24 January 2002 of the petitioner, a group of members of the Seimas, the Constitutional Court will investigate whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the norm which used to be in Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the said law, under which it used to be established that the rights of ownership to the real property specified in Article 3 of this law were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property is not in conflict with the

constitutional principle of a state under the rule of law.

6. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Articles 23, 29, and 30 of the Constitution.

Although the petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Articles 23, 29, and 30 of the Constitution, it is clear from the petition of the petitioner that the petitioner requests to investigate whether Item 5 of Paragraph 1 of Article 2 of the said law is not in conflict with Articles 23 and 29 of the Constitution.

By Article 2 of the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property Item 5 of Article 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was recognised as no longer valid.

It has been mentioned that in cases when not courts but other entities indicated in Article 106 of the Constitution applied to the Constitutional Court, the Constitutional Court dismisses the legal proceedings, while taking account of the circumstances of the case, however, it must not necessarily dismiss the initiated legal proceedings in every case, when the disputed legal act has been abolished.

Taking account of the circumstances of the case, the Constitutional Court will investigate whether Item 5 of Article 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was not in conflict with Articles 23 and 29 of the Constitution.

7. Although the petitioner, a group of members of the Seimas, in the petition of 24 January 2002 requests to investigate the compliance of entire Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Articles 23, 29 and 30 of the Constitution, however, it is clear from the petition of the petitioner that the petitioner does not doubt concerning the compliance of entire Article 15 of the said law with the aforementioned articles of the Constitution but whether the following provisions of Paragraph 2 of Article 15 of the aforementioned law (wording of 15 January 2002) are not in conflict with Articles 23 and 29 of the Constitution:

"Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...>

2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of

certain premises privatised under the Law on Privatisation of Flats;

3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

8. Although the petitioner, a group of members of the Seimas, in the petition of 24 January 2002 requests to investigate the compliance of entire Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Articles 23, 29 and 30 of the Constitution, however, it is clear from the petition of the petitioner that the petitioner doubts whether Article 20 of the law to the extent that this article no longer contains the provision "until that time the owner shall be prohibited <...> from evicting the tenants" which used to be in Paragraph 1 of the same article (wording of 13 May 1999) and the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) are not in conflict with Article 29 of the Constitution.

By Article 7 of the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted by the Seimas on 29 October 2002, one amended Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002): it was inter alia supplemented with the provision that "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them as well as the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register".

It has been mentioned that in the cases when not courts but other entities indicated in Article 106 of the Constitution applied to the Constitutional Court, the Constitutional Court dismisses the legal proceedings, while taking account of the circumstances of the case, however, it must not necessarily dismiss the initiated legal proceedings in every case, when the disputed legal act has been abolished. This can also be said as regards the cases when the disputed legal act (part thereof) is not abolished, however the legal regulation established therein is changed.

Taking account of the circumstances of the case, the Constitutional Court will investigate whether Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "until that time the owner shall be prohibited <...> from evicting the tenants" which used to be in Paragraph 1 of the same article (wording of 13 May 1999) and the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve

them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) are not in conflict with Article 29 of the Constitution.

9. Although the petitioner, a group of members of the Seimas, in the petition of 24 January 2002 requests to investigate the compliance of entire Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Articles 23, 29 and 30 of the Constitution, however, it is clear from the petition of the petitioner that the petitioner doubts whether the provision "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Paragraph 1 of Article 30 of the Constitution.

10. The petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether the Preamble to as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted by the Seimas on 29 October 2002, are not in conflict with Articles 23, 29 and 30 of the Constitution.

It is clear from the reasoning of the petitioner that he does not dispute the compliance of the Preamble to as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the 29 October 2002 Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, but Preamble to as well as Article 15, Paragraph 10 of Article 16 and Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with the Constitution.

11. The petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether the provision "the special legal norms of this Law shall regulate the legal relations of the restoration of the rights of ownership to the existing real property" of the Preamble of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with the Constitution.

The petition presents the arguments concerning only the relation of the said provision with the Civil Code. The petition does not present any arguments upon which the petitioner grounds his doubts as to the compliance of the said provision of the Preamble with the Constitution.

Under the Constitution, the Constitutional Court shall consider whether the laws of and other acts adopted by the Seimas are not in conflict with the Constitution, also if acts of the President of the Republic and acts of the Government are not in conflict with the Constitution (Paragraphs 1 and 2 of Article 105 of the Constitution). Thus, under the Constitution, the Constitutional Court does not consider whether a certain law is in compliance with another law (Constitutional Court ruling of 2 April 2001). Petitions requesting to investigate whether a certain law is in compliance with another law are not

in charge (outside the jurisdiction) of the Constitutional Court.

Item 2 of Paragraph 1 of Article 69 of the Law on the Constitutional Court provides that by a decision, the Constitutional Court shall refuse to consider petitions to investigate the compliance of a legal act with the Constitution if the consideration of the petition does not fall under the jurisdiction of the Constitutional Court. Paragraph 3 of Article 69 of the Law on the Constitutional Court provides that 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.

Conforming to Item 2 of Paragraph 1 of Article 69 and Paragraph 3 of Article 69 of the Law on the Constitutional Court, the case in the part concerning the compliance of the provision "the special legal norms of this Law shall regulate the legal relations of the restoration of the rights of ownership to the existing real property" of the Preamble of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with the Constitution is to be dismissed.

12. Although the petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether entire Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and 30 of the Constitution, however, it is clear from the arguments of the petition that the petitioner requests to investigate whether Item 1 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution, whether Item 2 of Paragraph 1 of Article 15 (wording of 29 October 2002) is not in conflict with Article 29 of the Constitution, whether Items 4, 5, and 6 of Paragraph 1 of Article 15 (wording of 29 October 2002) are not in conflict with Article 23 of the Constitution, whether Paragraph 2 of Article 15 (wording of 29 October 2002) is not in conflict with Articles 23, 29 and Paragraph 1 of Article 30 of the Constitution, as well as whether Paragraph 4 of Article 15 (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution.

13. The petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether Item 1 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution. The reasons of the petitioner for this request are that Item 1 of Paragraph 1 of Article 15 of the law (wording of 29 October 2002) "is directed to violation of constitutional rights of ownership by means of as many as possible of cavils, practically as in a totalitarian society".

The aforesaid arguments are not legal ones.

Under Item 5 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 is grounded on non-legal arguments.

Paragraph 3 of Article 69 of the Law on the Constitutional Court provides that 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.

Conforming to Item 3 of Paragraph 1 of Article 69 and Paragraph 3 of Article 69 of the Law on the Constitutional Court, the case in the part concerning the compliance of Item 1 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with the Constitution is to be dismissed.

14. Although the petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and 30 of the Constitution, however, it is clear from the arguments of the petition that the petitioner doubts whether Paragraph 10 of Article 16 of the same law (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution.

15. Although the petitioner, a group of members of the Seimas, in the petition of 6 January 2003 requests to investigate whether Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and 30 of the Constitution, however, it is clear from the arguments of the petition that the petitioner doubts not as to the compliance of entire Paragraph 3 of Article 20 of the said law (wording of 29 October 2002) with the aforementioned articles of the Constitution, but whether the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution.

16. Subsequent to the petitions of the petitioners, the Constitutional Court will investigate:

whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of this law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution;

whether Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 whereby it was confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out was not in conflict with Article 23 of the Constitution and the

provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses which are indispensable for state necessities;

whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the norm which used to be in Item 5 of Paragraph 1 of Article 2 of the said law (wording of 13 May 1999), under which it used to be established that the rights of ownership to the real property specified in Article 3 of this law were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property is not in conflict with Articles 23 and 29 of the Constitution and the constitutional principle of a state under the rule of law;

whether Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Articles 23 and 29 of the Constitution;

whether the following provisions of Paragraph 2 of Article 15 of the aforementioned law (wording of 15 January 2002) are not in conflict with Articles 23 and 29 of the Constitution:

"Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...>

2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats;

3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

whether Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "until that time the owner shall be prohibited <...> from evicting the tenants" which used to be in Paragraph 1 of the same article (wording of 13 May 1999) is not in conflict with Article 29 of the Constitution;

whether Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) is not in

conflict with Article 29 of the Constitution;

whether the provision "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Paragraph 1 of Article 30 of the Constitution;

whether Item 2 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 29 of the Constitution;

whether Items 4, 5, and 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) are not in conflict with Article 29 of the Constitution;

whether Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29 and Paragraph 1 of Article 30 of the Constitution;

whether Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution;

whether Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution;

whether the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution.

II

1. After the occupation government had carried out nationalisation in 1940 and later as well as after private property had been disseized in other unlawful ways, the innate human right to possess private property was denied. Residential houses were also nationalised and otherwise unlawfully disseized, while their premises were attributed to the state, public housing stock.

On the basis of such arbitrary acts of the occupation government, lawful state or public property could not appear and it did not appear, since no right can appear on the grounds of unlawfulness. In its ruling of 27 May 1994, the Constitutional Court held that "property taken from people in such a way, may be considered as property which is only factually managed by the state".

2. In the 11 March 1990 Act "On the Restoration of the Independent State of Lithuania", the State of Lithuania emphasised its adherence to the generally recognised principles of international law, and guaranteed the rights of the human

being and citizen.

3. On 15 November 1990, while recognising the succession and restoration of rights of ownership, the Supreme Council adopted a principle decision and confirmed these provisions: succession of the rights of ownership of citizens of Lithuania is unquestionably recognised; citizens of Lithuania have the right to retrieve in kind, within the limits and procedure defined by the law, the property that belonged to them, while in the absence of an opportunity to retrieve it, to be compensated for.

4. It was impossible to restore by means of the laws valid at that time the rights of ownership which had been violated by unlawfully disseizing private property. For this, it was necessary to establish a special (ad hoc) legal regulation.

5. While regulating, by laws, the restoration of the rights of ownership which had been denied, one had to take account of the fact that during the occupation years different property, social and economic relations of people appeared, there occurred other objective circumstances due to which it was impossible to completely restore the rights of ownership (to go back to the initial situation).

6. On 18 June 1991, the Supreme Council adopted the Law "On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property", in which it was provided as to what persons, what property and under what conditions the rights of ownership were to be restored. It is clear from the legal regulation established in this law that one chose limited restitution but not restitutio in integrum.

7. The 18 June 1991 Law "On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property" went into effect on 1 August 1991. It needs to be noted that at that time the Republic of Lithuania Law on Privatisation of Flats (adopted on 28 May 1991; went into effect on 30 June 1991) was already valid. Thus, two processes related with the essential changes in property relations were taking place at the same time. This exerted influence on the legal regulation of both privatisation of flats and the relations of restoration of the rights of ownership as well as on subsequent changes in this regulation.

8. In the context of the case at issue, it is important to elucidate upon what principles the restoration of the rights of ownership was and is grounded in the course of returning the residential houses, parts thereof, flats in kind to the owners in which tenants reside; also, it is important to establish as to what state guarantees were established for the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned).

9. It was established in the 28 May 1991 Law on Privatisation of Flats that, under this law, one is prohibited from selling "the residential houses, flats, which were seized, confiscated or nationalised by administrative acts or in other ways from the citizens of Lithuania who have the right to the restoration of the rights of ownership under Article 2 of the Republic of Lithuania Law 'On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property'. Such premises may be sold on the basis of other laws" (Item 4 of Paragraph 1 of Article 3).

Under the Law on Privatisation of Flats, the persons who at that time were tenants of premises attributed to the state and public housing stock had the right, under the procedure established by the Law on Privatisation of Flats, to buy

(privatise) the residential premises which had not belonged to citizens of Lithuania and which had not been seized, confiscated or nationalised by administrative acts or in other unlawful ways, and, thus, to become the owners of the said residential premises; meanwhile, the persons who at that time were tenants of the residential houses, parts thereof, flats which were attributed to the state and public housing stock, which had belonged to citizens of Lithuania and which had been seized, confiscated or nationalised by administrative acts or in other unlawful ways, did not have the right, under the procedure established by the Law on Privatisation of Flats, to buy (privatise) the said residential houses, parts thereof, flats. Therefore, the legal status of the latter persons did not change: they continued to be tenants of the aforesaid residential houses, parts thereof, flats, however, they did not have the right, under the procedure established by the Law on Privatisation of Flats, to buy (privatise) the rented residential houses, parts thereof, flats.

10. Since 1991, when the restoration of the rights of ownership began, the legal regulation of these relations has been amended for more than once. The legal regulation of the restoration of the rights of ownership by returning residential houses, parts thereof, flats in kind and the state guarantees established for the tenants residing in the houses subject to being returned (already returned) have been changed for more than once, too.

The legislator amended and supplemented the Law on Privatisation of Flats many a time, however, the provision of this law that, pursuant to the said law the residential houses, flats may not be sold, which were seized, confiscated or nationalised by administrative acts or in other unlawful ways, remained virtually intact. The Law on Privatisation of Flats became no longer valid on 12 October 2000.

11. By the 25 October 1992 referendum the Constitution of the Republic of Lithuania was adopted. In the Constitution the striving for an open, just, and harmonious civil society and state under the rule of law is enshrined. While implementing it, one must ensure the balance of interests, evade their contraposition, as well as fortuities and arbitrariness, and instability of social life. It is impossible to strive for a state under the rule of law while recognising the interests of only one group or one person and, at the same time, denying the interests of others.

Justice is one of the main objectives of law as means of regulation of social life; it is one of the most important moral values and the basis of a state under the rule of law. It is impossible to achieve justice by satisfying the interests of one group and, at the same time, denying the interests of others.

It needs to be noted that the values entrenched in the Constitution constitute a harmonious system, there is a balance between them. At the junction of the values safeguarded by the Constitution one must come to decisions which ensure that not a single of the said values is denied or unreasonably restricted. Otherwise, the balance of values safeguarded by the Constitution, the constitutional imperative of a harmonious, civil society and the constitutional principle of the state under the rule of law would be denied (Constitutional Court ruling of 23 October 2002).

12. It needs to be noted that the legislator, while regulating the restoration of the denied rights, enjoys the

discretion to establish the conditions and procedure of restoration of the rights of ownership. This discretion is objectively determined by the fact that during the time period which passed from the unlawful disseizing of the property, the system of property relations underwent essential changes. However, while establishing, by laws, the conditions and procedure of restoration of the rights of ownership to the existing real property, the legislator is bound by the Constitution, thus, he must also take into consideration the constitutional principles of the protection of the rights of ownership, the constitutional striving for an open, just, and harmonious civil society, as well as other constitutional values.

It also needs to be noted that the necessity to guarantee the constitutional protection of the rights of ownership, the constitutional imperative of an open, just, and harmonious civil society implies a duty of the state, when it establishes, by laws, the conditions and procedure of restoration of the rights of ownership, to take account of the changed social, economic, legal and other realia, to ensure that, while restoring the rights of ownership of one group of persons, the owners, one should not violate the rights and legitimate interests of other persons, the tenants, who reside in the residential houses, parts thereof, flats which are subject to being returned to the owners. In the process of the restoration of the rights of ownership, one must coordinate the interests of both the former owners and society (Constitutional Court rulings of 27 May 1994 and 8 March 1995) as well as the legitimate interests of the former and present owners of the same property and of the tenants who reside in the houses subject to being returned (Constitutional Court rulings of 15 June 1994 and 22 December 1995). In its ruling of 22 December 1995, the Constitutional Court held that it is impossible to solve clashes of interests by making absolute the protection of rights of a person who attempts to restore the rights of ownership to a residential house by getting it back in kind, and at the same time denying the right of tenants to possess a dwelling place.

13. It is in this context that the compliance of the legal acts, disputed by the petitioner, with the Constitution must be investigated.

III

1. The restoration of the rights of ownership to the existing real property began upon coming into effect of the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property". It was provided inter alia in Article 3 of this law that the right of ownership shall be restored to residential houses together with their appurtenances.

1.1. The conditions and procedure of restoration of the right of ownership to residential houses were regulated by Article 8 of the said law Paragraph 2 whereof provided:

"The procedure and time limits for the restoration of residential houses (or parts thereof) which do not fall under the category of houses defined in Article 14 of this law, shall be established by the Government of the Republic of Lithuania, pursuant to the provision that the residential houses shall be returned in the following cases:

1) if they are reconstructed into non-residential premises or if they are vacant;

2) if tenants, occupying houses subject to being returned, and which are occupied by more than one family, have been familiarised with all of the laws guaranteeing their rights, and with their option to move under the conditions proposed by the municipality and set forth in Article 21 of this Law, or under other conditions guaranteed by the former owner of the house;

3) if the residential house consists of a single dwelling unit;

4) if the former owners reside in the house which is subject to being returned."

1.2. The law also consolidated the right of the state to buy out the houses from the persons to whom the rights of ownership were being restored, and it was provided as to the cases when residential houses were to be bought out by the state. Article 14 of the same law provided:

"Residential houses shall be bought out by the State from persons specified in Article 2 of this Law while applying the ways of buying out (compensation) provided for in Article 16 of this Law, if they, in the opinion of the Government, are indispensable for State necessities or if:

1) they have been expanded, rebuilt, or reconstructed into non-residential premises and have thereby been given to scientific, medical, cultural, educational or communications establishments;

2) it is a wooden residential house which has been substantially improved, or if the house has been augmented, rebuilt, or reconstructed, thereby increasing the gross floor area by more than 1/3, in a manner which makes it impossible to separate the additional gross floor area from the original one."

1.3. Article 16 of the same law provided:

"The State shall buy out the existing real property:

1) by transferring gratis the ownership of property of the same type or value (of equivalent kind);

2) by one granting one-time state payments or by allotting shares;

3) by making void financial liabilities of a citizen to the state, by way of inclusion, which were incurred after the appropriation of real property;

The method of buying out shall be chosen by the citizen with the exception of cases specified in Articles 7, 8, 14 and 15 of this Law."

1.4. The same law also consolidated the provisions which attempted to ensure the interests of the tenants residing in houses returned to the owners: Article 21 of the law inter alia provided that in the cases provided for in Item 3 of Paragraph 2 of Article 8 of this law, the owner shall be prohibited from evicting the tenants of the house for ten years from the day of restoration of ownership; persons who reside in a residential house which has been returned to the owner shall be provided with a place of residence by the municipality of the respective town or district, pursuant to the programme prepared and carried out by the Government. The said article also provided that tenants residing in houses which have been returned to their former owners shall have the right to obtain, free of charge, a plot of land for the construction of a house, to join a housing construction cooperative, and to get credits under preferential conditions for these purposes, and that in the event that a house is being sold by the original owner, the tenants of this house shall have priority in the purchase of

it. It was stipulated in Paragraph 8 of Article 21 of the same law that any actions intended to compel tenants to move from the returned house, without safeguarding the guarantees defined in this article, shall be prohibited, and shall incur liability according to valid laws.

1.5. Thus, the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" established the right of the owners to restoration of the rights of ownership to residential houses, parts thereof. From the legal regulation established in the said law there appeared a legal expectation of the owners that should they meet the conditions established in the law, their rights of ownership to the residential houses, parts thereof would be restored according to the procedure and under conditions established by the law.

1.6. On the grounds of the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" there appeared a legitimate expectation of the tenants residing in the houses subject to being returned to the owners that they would be allocated other residential premises of equal value or that the state would help them otherwise to provide themselves with residential premises. In its ruling of 27 October 1998, the Constitutional Court held that "under the 18 June 1991 law on restitution, the tenants who reside in houses subject to being returned had to be provided with another dwelling place which they had the right to buy out under the Law on Privatisation of Flats by making use of the deposited state one-time payments (vouchers)." It was prohibited, by law, from evicting the tenants who resided in houses returned to the owners, until their guarantees legally established to them by the state were fulfilled. Thus the law established the succession of rent legal relations.

1.7. It needs to be emphasised that under the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" there appeared legal relations between the state and the owners and between the state and the tenants residing in the houses (parts thereof) subject to being returned (already returned). In the relations with the owners a duty appeared before the state to act so that the residential houses, parts thereof which are not bought out by the state should be returned to the owners in kind; in the relations with tenants residing in the houses, parts thereof subject to being returned (already returned), a duty appeared to the state to prepare programmes for allocation of residential premises to the tenants, i.e. to plan as to when and what premises would be allocated to the tenants, to design for the funds in the state budget, necessary to implement this programme, to design for other financial and material resources which are needed to implement the aforementioned programme, and act so that the obligations of the state before the tenants might be fulfilled.

1.8. It also needs to be noted that after the provision had been established in the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" that the state has the right to buy out residential houses provided they are indispensable for state necessities (Article 14), one did not indicate as to the nature of the necessities that might be held state necessities: the right to decide, at its discretion, whether a particular residential house is indispensable for

state necessities was granted to the Government.

2. By the 25 October 1992 referendum, the Constitution of the Republic of Lithuania was adopted. In the Constitution the striving for an open, just and harmonious civil society and state under the rule of law is enshrined; under Article 18 of the Constitution, human rights and freedoms are innate. Article 23 of the Constitution provides that property shall be inviolable and that the rights of ownership shall be protected by laws; property may only be seized for the needs of society in accordance with the procedure established by law and shall be justly compensated for. Under Paragraph 1 of Article 29 of the Constitution, all persons shall be equal before the law, the court, and other state institutions and officials. Paragraph 1 of Article 30 of the Constitution provides that the person whose constitutional rights or freedoms are violated shall have the right to apply to court.

The Constitutional Court has investigated the compliance of articles (paragraphs thereof) of restitution laws with the Constitution for more than once and has held for many a time that the legislator, while enjoying the discretion to establish, by laws, the conditions and procedure of restoration of the rights of ownership to the existing real property, is bound by the Constitution, that, while establishing the conditions and procedure of restoration of the rights of ownership, one is also to take account of the constitutional principles of the protection of the rights of ownership. The Constitutional Court has also noted that while establishing, by laws, the conditions and procedure of restoration of the rights of ownership, one must take into consideration the changed social, economic and other conditions and ensure that in the course of the restoration the rights of ownership of the owners the rights and legitimate interests of the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned) to the owners not be violated. While recognising the succession of the rights of ownership and restoring the rights of ownership, one cannot deny the succession of the formed tenancy relations.

3. On 12 January 1993, the Law "On the Amendment of the Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'" was adopted.

3.1. By the law of 12 January 1993, Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 18 June 1991) was amended and it was established in Paragraph 2 of the said article:

"The procedure and time limits for the restoration of residential houses (or parts thereof) shall be established by the Government of the Republic of Lithuania, pursuant to the provision that the residential houses shall be returned in the following cases:

- 1) when they are reconstructed into non-residential premises or if they are vacant;
- 2) when, after they have been reconstructed, reconstructed or augmented, the gross floor area increased by not more than one third, if it is impossible to separate the additional gross floor area from the original one, or if the main constructions have not been changed by more than 50 percent;
- 3) when they have not been transferred to scientific, health care, cultural, educational and communications establishments;

4) when the tenants of the houses subject to being returned agree, of their own free will, to move to other residential premises which have been allocated to them;

5) when in the house subject to being returned the former owners reside (if the former owners reside in a part of the house, the said part of the house shall be returned to them unconditionally);

6) when the residential house subject to being returned, which together with its appurtenances (save those that have been sold by the owner) belonging to the state or public housing stock, is in agricultural or forest land which is subject to being returned."

3.2. By the law of 12 January 1993, Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 18 June 1991) was also amended and it was established therein:

"Residential houses shall be bought out (compensated for) by the State from persons specified in Article 2 of this law in the procedure established in Article 16 of this law, provided they are indispensable for State necessities or if:

1) they have been expanded, rebuilt, or reconstructed into non-residential premises and have been given to scientific, medical, cultural, educational or communications establishments;

2) it is a wooden residential house which has been substantially improved, or if the house has been augmented, rebuilt, or reconstructed, thus increasing the gross floor area by more than 1/3, in a manner which makes it impossible to separate the additional gross floor area from the original one."

3.3. Besides, by the law of 12 January 1993, Article 21 of the law of 18 June 1991 was amended, which provided for the guarantees for the tenants who resided in the houses subject to being returned to the owners: Paragraph 4 of the said article provided that "the owner of the returned house or flat shall be prohibited from evicting the tenants until they have been allotted or until they have acquired other residential premises of equivalent value".

3.4. Thus, upon the amendment of the articles (paragraphs thereof) of the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" on 12 January 1993, the principles of restoration of the rights of ownership to residential houses (parts thereof) which had previously been established remained unchanged. The legal expectations of the owners as well as the tenants residing in the houses (parts thereof) subject to being returned (or which had been returned) remained unchanged as well; the duties of the state for the owners of the houses (parts thereof) subject to being returned (already returned) as well as the tenants residing in these houses (parts thereof) did not change, either.

Upon the amendment of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property", the legal regulation of buying out of the residential houses which had been established before was not in essence amended as well, however, after the words "in the opinion of the Government" had been deleted, it was no longer indicated as to which state institution is competent to decide whether the houses are indispensable for state necessities and, due to this, were to

be not returned in kind but were to be bought out.

3.5. In its ruling of 15 June 1994, the Constitutional Court held that under Item 4 of Paragraph 2 of Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) "the manner of restoration of the rights of ownership to a residential house (parts thereof) is, at present, determined not by objective circumstances but by a subjective factor established in the law, which is the agreement or refusal by the tenants to move to the residential premises allotted to them". By the said ruling, the Constitutional Court recognised that Item 4 of Paragraph 2 of Article 8 of the said law, whereby the residential houses were to be returned in cases when "the tenants of the houses subject to being returned agree, of their own free will, to move to the residential premises allotted to them" was in conflict with Article 23 of the Constitution. It is emphasised in the same Constitutional Court ruling that "persons to whom ownership rights to residential houses are being restored, had the possibility to restore the houses in kind under different conditions (after the amendment of the Law they had to face harder requirements than in the first period of its validity). However, new requirements may not be applied to the existing legal relations of the same contents, as it would mean violation of persons' equality before law".

4. On 11 January 1994, the Seimas adopted the Republic of Lithuania Law "On the Amendment and Supplement of the Republic of Lithuania Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'".

4.1. The said law inter alia supplemented Paragraph 2 of Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" with Item 4 and it was established that residential houses (or parts thereof) shall be returned to the former owners "when the natural persons who have acquired the ownership of the houses (or parts thereof) subject to being returned agree, of their own free will, to move to other residential premises allotted to them."

4.5. By its ruling of 15 June 1994, the Constitutional Court recognised the said provision of the law of 11 January 1994 whereby Paragraph 2 of Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" had been supplemented with Item 4 to be not in conflict with the Constitution.

5. On 3 July 1995, the Seimas adopted the Republic of Lithuania Law "On the Amendment and Supplement of the Republic of Lithuania Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'".

5.1. By the law of 3 July 1995, Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) was recognised as no longer valid.

5.2. By the same law of 3 July 1995, Article 8 of the law (wording of 12 January 1993) was amended and it was established in Paragraph 2 thereof:

"Residential houses, parts thereof, flats shall be returned in kind in each of the following cases, if

- 1) they are vacant;

2) they have been reconstructed into non-residential premises and have not been transferred to scientific, health care, cultural, educational and communications establishments;

3) they have been transferred to scientific, health care, cultural, educational and communications establishments, however, they are not used to their purpose provided for in the projects of rearrangement of the premises or the documents of transfer;

4) the tenants who reside in the houses, parts thereof, flats have been allotted other residential premises which meet the requirements of Article 358 of the Civil Code of the Republic of Lithuania;

5) in the house subject to being returned the persons specified in Article 2 of this Law reside: they shall be returned the part of the house, flat in which they reside;

6) the houses subject to being returned have been reconstructed, reconstructed so that their gross floor area increased for more than one third, but it is possible to separate the newly created area from the former one, although the main constructions have been changed for more than 50 percent, however, on 1 July 1995 they are vacant or rented for economic-commercial activity, the part of the house shall be returned which corresponds to the part of the former residential house;

7) the natural persons who have acquired the ownership of the houses, parts thereof, flats subject to being returned agree (the agreement is expressed by notarial form) to move to the residential premises allotted to them."

5.3. After Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) had been amended by the aforesaid law of 3 July 1995, Paragraph 4 of the same article provided: "In all other cases not specified in the second paragraph of this Article, the right of ownership to residential houses, parts thereof, flats shall be restored by buying them out by the state from the persons specified in Article 2 of this Law, at their option, in the following ways: <...>."

5.4. Thus, the 3 July 1995 Law "On the Amendment and Supplement of the Republic of Lithuania Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'" established additional cases when residential houses, parts thereof, flats were to be returned to the owners, and consolidated the provision that the residential houses, parts thereof, flats in which tenants reside were to be returned to the owners after the tenants had been allotted other residential premises which met the requirements of Article 358 of the Civil Code which was then in effect.

It also needs to be noted that the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 3 July 1995) no longer contained the provision that the residential houses shall be bought out by the state if they are indispensable for state necessities.

5.5. In its ruling of 22 December 1995, the Constitutional Court held that the provision of Item 4 of Paragraph 2 of Article 8 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 3 July 1995), under which the tenant is allotted other residential premises which meet

the requirements of Article 358 of the Civil Code, attempted to coordinate the protection of the rights of the former owners and the tenants, therefore this provision was not in conflict with the Constitution. In the said ruling, the Constitutional Court also held that such coordination of the rights of the former owners and the tenants when, in the course of the returning of residential houses to the former owners the rights of the tenants were ensured by the fact that they had to be allotted other properly furnished residential premises had been established from the day of the entry into effect of the law.

6. The process of restoration of the right of citizens to the existing real property, thus to residential houses, parts thereof, flats was temporarily withheld from 24 January 1997 till 8 July 1997. This was done upon the entry into effect of the 16 January 1997 Republic of Lithuania Provisional Law on the Suspension of the Validity of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership of Citizens to the Existing Real Property". It was established in Article 1 titled "Purpose of the Law" of the law of 16 January 1997 that temporarily, until a new law is adopted, the validity of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" shall be suspended.

In its decision of 13 November 1997, the Constitutional Court held that "suspension of validity of laws is not characteristic of law-making and, as a rule, is linked with situations pointed out in the Constitution". Taking account of the fact that on 1 July 1997, the Seimas adopted the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property Item 3 of Article 22 whereof provided that upon the entry into effect of this law, the Provisional Law on the Suspension of the Validity of the Law "On the Procedure and Conditions of the Restoration of the Rights of Ownership of Citizens to the Existing Real Property" becomes no longer valid, the Constitutional Court dismissed the initiated legal proceedings.

7. On 1 July 1997, the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was adopted. This law went into effect on 9 July 1997. As of the day of the entry into effect of the said law, the 18 June 1991 Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" became no longer valid (with all its amendments and supplements).

7.1. It is established in the Preamble to the 1 July 1997 Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property that "the rights of ownership acquired by the citizens of the Republic of Lithuania before the occupation are not revoked and have continuity", that "the Constitution of the Republic of Lithuania adopted by the will of citizens of the Republic of Lithuania in 1992, guarantees and defends the rights and property of the State and its citizens", that "the restoration of continuation of the rights of ownership is based on the provision of the 18 June 1991 Law of the Republic of Lithuania 'On the Procedure and Conditions of Restoration of the Rights of Ownership to the Existing Real Property'-the existing real property shall be returned to citizens of the Republic of Lithuania, and in the event it is impossible to do so, they shall be compensated justly."

7.2. It was established in Paragraph 1 of Article 8 of the 1 July 1997 Law on the Restoration of the Rights of Ownership

of Citizens to the Existing Real Property: "Ownership rights to residential houses, parts thereof, flats shall be restored to persons specified in Article 2 of this Law by returning them in kind, except the residential houses, parts thereof, flats which are subject to the State buy-out pursuant to Article 15 of this Law."

7.3. In its ruling of 27 October 1998, the Constitutional Court recognised that Paragraph 1 of Article 8 of the 1 July 1997 law was not in conflict with the Constitution. The Constitutional Court held that Paragraph 1 of Article 8 did not contain any all-encompassing rule that all residential houses were to be returned in kind. The said paragraph of that article contained reference to Article 15 of the law Item 3 whereof provided that the residential houses (parts thereof) and flats shall be bought out by the state from the citizens as pointed out by Article 2 of this law and that they shall be compensated in the case that one had acquired private ownership of the said houses by law. The Constitutional Court also held that, under the law, it was impossible to return such residential houses (parts thereof) and flats in kind to persons who were subject to restoration of the rights of ownership; such residential premises remained property of their present owners, and the disputed norm of the law did not violate their rights of ownership.

7.4. Article 15 of the law of 1 July 1997 provided:

"Residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and it shall be compensated for them according to Article 16 of this Law, provided:

1) they have been reconstructed into non-residential premises and used for educational, health care, cultural, scientific needs, and by communal care residences. The list of these premises shall be approved by the Government;

2) they have been substantially reconstructed to such an extent that more than 60 percent of the main constructions have been altered and it is impossible to separate the newly created gross floor area from the former one, if the gross floor area exceeds the former by 30 per cent;

3) one has acquired private ownership thereof according to laws."

7.5. In the said 27 October 1997 ruling, the Constitutional Court held that the legal regulation when "the residential houses are bought out by the state", if "more than 60 per cent of the main constructions" are replaced, "is not fair in respect to the citizens to whom the rights of ownership to houses have already been restored when one was taking account of another norm of replacement of the main constructions, which determined that residential houses were not to be returned to them in kind but bought out by the state". The Constitutional Court recognised that the provision "more than 60 per cent of the main constructions have been replaced" of Item 2 of Article 15 of the law of 1 July 1997 was in conflict with Article 29 and Paragraphs 2 and 3 of Article 46 of the Constitution.

7.6. On 13 May 1999, the Seimas adopted the Republic of Lithuania Law on the Amendment and Supplement of Articles 2, 4, 5, 10, 12, 13, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property by Article 7 whereof Item 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 1 July 1997)

was amended and, instead the words "more than 60 percent" the words "more than 50 percent" were entered.

8. The ways by which the state compensates citizens for the residential houses, parts thereof, flats bought out by the state were established in Paragraph 9 of Article 16 of the law of 1 July 1997. Under this paragraph of the said article, the state shall compensate citizens for the residential houses, parts thereof, flats which are being bought out by the state in the following ways:

"1) by transferring them gratis the ownership of the flats rented by them from the state or municipal housing stock, the difference in values whereof shall be paid in the manner prescribed by the Government;

2) by transferring them gratis, in the manner prescribed by the Government, the ownership of the flats which are equal in value to the previously held houses, parts thereof, flats;

3) by transferring gratis the ownership of a new plot of land for individual construction, equal in value to the houses, parts thereof, flats held previously, in the locality where they were situated. At the request of a citizen, the ownership of an equivalent new plot of land for individual construction may be, in the manner prescribed by the Government, transferred gratis in the towns and rural areas other than those where residential houses, parts thereof, flats were situated, except the towns of Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas, and Neringa;

4) by transferring them gratis the ownership of vacant, not rented buildings, structures or the parts thereof equal in value to the houses, parts thereof, flats held previously. The procedure for the transfer of these buildings, structures and parts thereof shall be established by the Government;

5) by making void by way of inclusion a citizen's monetary liabilities to the State which occurred after the taking away of the real property up to the passing a decision to restore the rights of ownership, in accordance with the procedure established by the Government;

6) by transferring them gratis the ownership of other property in the manner prescribed by the Government;

7) in cash and/or in securities."

9. Article 16 of 1 July 1997 had been amended for more than once (on 13 May 1999, 3 August 2001, 11 December 2001) until 15 January 2002, when the law was adopted the provisions whereof a group of members of the Seimas, the petitioner, have disputed by their petition of 24 January 2002, however, the provisions of Paragraph 9 of Article 16 did not change (by Paragraph 2 of Article 8 of the Law on the Amendment and Supplement of Articles 2, 4, 5, 10, 12, 13, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property the numeration of paragraphs of Article 16 was changed: Paragraph 9 of Article 16 became Paragraph 10 thereof).

10. In the 1 July 1997 Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property one established guarantees for the tenants residing in the houses, parts thereof, or flats subject to being returned to the owners.

10.1. Article 20 of the said law provided:

"1. When a residential house, part thereof, flat, in which tenants reside, is given back in kind to a citizen, all the tenants' rights and duties according to the agreement of

tenancy of residential premises shall, in the manner prescribed by the Government, be taken over by the municipality until the time when the State provides the tenant with other residential premises or shall otherwise compensate him in the forms specified in this Law. Until such time the owner shall be prohibited from terminating the agreement of tenancy with the municipality and shall be prohibited from evicting the tenants, with the exception of the cases provided for in the Civil Code.

2. The municipality which has taken over the tenants' rights and duties, shall, in the manner and in accordance with the conditions prescribed by the Government, rent residential premises to the tenants who reside in these premises, as well as shall have care of exploitation and maintenance thereof. These tenants shall pay the municipality rent and public utilities charges according to the rates established by the municipality, and the municipality shall, under the procedure and conditions established by the Government, settle with the owner of a returned house, part thereof, flat according to the agreement of tenancy of residential premises.

3. The municipality must, under the procedure and conditions established by the Government, issue a guarantee certificate confirming that the tenants residing in the house, part thereof, flat which has been returned to the citizen, shall be provided gratis with other residential premises. In the event that the tenant refuses such a possibility, the municipality must, under the procedure and conditions established by the Government, reimburse the expenses related to acquisition of other residential premises or, if the tenant requests so, allot gratis a plot of land for the construction of a residential house. The tenant who has been provided with other residential premises or has been paid compensation for the acquisition of other residential premises, must within 6 months vacate the residential premises he occupied, and if he has been provided gratis with a plot of land for the construction of a residential house-within 1 year.

4. The value of other residential premises which are provided gratis to the tenants, reimbursable expenses related to the acquisition of other residential premises, the size of a plot of land which is allotted gratis for the construction of a residential house shall be established under procedure established by the Government.

5. The tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not desire to retrieve them, shall acquire the right to buy them out pursuant to the Law on the Privatisation of Flats within 6 months of the decision on the legal registration of the residential house, part thereof, flat under the name of the municipality or the state in the Real Property Register.

6. The value of other residential premises which are assigned to the ownership of the tenant or the value of a plot of land which is allotted gratis to the tenant may not exceed the amount of the compensation for the tenant, which is calculated in accordance with the procedure established by the Government. At the tenant's request, residential premises or a plot of land of lesser value may be allotted to him, while the difference of the compensation he has the right to be paid in cash.

7. The provisions of Paragraphs 1 and 2 of this Article shall be valid even in the event of the change of the owner of a house, part thereof, flat."

10.2. In its ruling of 27 October 1998, the Constitutional

Court held that as Paragraph 3 of Article 20 of the law of 1 July 1997 did not contain any provision that the guarantee certificate issued by the municipality was a state guarantee (obligation by the state), such a document might be treated as a legal act passed by the municipality the force of which, from the point of view of the protection of human rights, would be insufficient in that case. The Constitutional Court recognised that the provision "the municipality must, under the procedure and conditions established by the Government, issue a guarantee certificate confirming that the tenants residing in the house, part thereof, flat which has been returned to the citizen, shall be provided gratis with other residential premises. In the event that the tenant refuses such a possibility, the municipality must, under the procedure and conditions established by the Government, reimburse the expenses related to acquisition of other residential premises or, if the tenant requests so, allot gratis a plot of land for the construction of a residential house" of Paragraph 3 of Article 20 of the said law (wording of 1 July 1997) and Paragraph 4 of Article 20 of the same law inasmuch as it is related to the implementation of the aforementioned provisions were in conflict with Article 29 of the Constitution.

11. Thus, the 1 July 1997 Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property broadened the rights of the owners to restore the rights of ownership by returning residential houses, parts thereof, flats in kind. The fact that tenants resided in the houses, parts thereof, flats subject to being returned to the owners was not considered to be a ground for not restoring of the rights of ownership by returning the houses, parts thereof, flats in kind. The returning of the residential houses, parts thereof, flats to the owners also in the cases when tenants resided therein was not in itself diminishing of the guarantees of the tenants, since due to that the legal status of the tenants did not change. Paragraph 3 of Article 20 of the Law and Paragraph 4 thereof inasmuch as it established not sufficient guarantees for the tenants were recognised by the Constitutional Court to be in conflict with the Constitution.

The law again consolidated the legitimate expectations of the owners and the tenants, which appeared from the previous law which had been in effect.

12. On 13 May 1999, the Republic of Lithuania Law on the Amendment and Supplement of Articles 2, 4, 5, 10, 12, 13, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was adopted, which inter alia amended Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 1 July 1997).

12.1. Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) prescribed:

"1. When a residential house, part thereof, flat, in which tenants reside, is given back in kind to a citizen, all the tenants' rights and duties according to the agreement of tenancy of residential premises shall, in the manner prescribed by the Government, be taken over by the municipality until the time when the State fulfils the guarantees granted to them. Until such time the owner shall be prohibited from terminating the agreement of tenancy with the municipality and shall be prohibited from evicting the tenants, with the exception of the cases provided for in the Civil Code.

2. The municipality which has taken over the tenants' rights and duties, shall, in the manner and in accordance with the conditions prescribed by the Government, rent residential premises to the tenants who reside in these premises, as well as shall have care of exploitation and maintenance thereof. These tenants shall pay the municipality rent and public utilities charges according to the rates established by the municipality, and the municipality shall, under the procedure and conditions established by the Government, settle with the owner of the returned house, part thereof, flat according to the agreement of tenancy of residential premises.

3. The institution which adopts a decision to return a citizen his house, part thereof, flat, must issue a State guarantee certificate to the tenants. Such a guarantee certificate shall also be issued to the owner of the house, part thereof, flat subject to being returned. The State guarantees, execution thereof, the rights and duties of those enjoying the said guarantees shall be established by the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property.

4. The tenants residing in the residential house, part thereof, flat subject to being returned in kind to a citizen, must, within 3 months of the reception of the notice from the institution specified in Paragraph 2 of Article 17 of this Law, state their will on the State guarantee provided by the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property. In case the tenants do not state their will on the State guarantee provided by the said law within the indicated time, the said guarantee shall be established by the institution specified in Paragraph 2 of Article 17 of this Law at its discretion.

5. If the owner of the residential house sells the returned residential house, part thereof, flat, the tenants shall have the right of priority to buy it under the procedure and conditions established in Article 125 of the Civil Code.

6. The tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not desire to retrieve them, shall acquire the right to buy them out under procedure established by the Government within 6 months of the decision on the legal registration of the residential house, part thereof, flat under the name of the municipality or the State in the Real Property Register.

7. The provisions of Paragraphs 1 and 2 of this Article shall be valid even in the event of the change of the owner of the house, part thereof, flat."

12.2. Thus, the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) established guarantees for the owners and the tenants, which in part corresponded to those established previously (wording of 1 July 1997) by inter alia withdrawing the legal regulation which had been recognised by the Constitutional Court in its 27 October 1998 ruling to be in conflict with the Constitution.

13. The guarantees for the tenants were established in Article 9 of the Law on the Amount, Sources, Terms and

Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was adopted on 16 June 1998.

The said article provided for the following guarantees for the tenants and the owners:

"1. The tenant of the residential house, part thereof, flat returned to the owner shall be granted gratis the ownership of other residential premises or shall be compensated the expenses of acquisition of other residential premises or a land plot for the construction of a residential house under procedure established by the Government according to the programme prepared by the Government which is drawn up while taking account of the data presented by municipalities of towns and districts. On the grounds of the said data, the Government shall annually provide in the Republic of Lithuania draft law on approving the financial indicators of the state budget and municipal budgets the amount of funds necessary for the implementation of the said programme.

2. If the owner of the residential house sells the returned residential house, part thereof, flat, the tenants shall have the right of priority to buy it under the procedure and conditions established in Article 125 of the Civil Code.

3. The size of the land plot allotted gratis to the tenant for the construction of a residential house, the compensated expenses for the acquisition of other residential premises, also, the value of other residential premises must be equivalent to the value of the premises rented by the said tenants. The value of the rented premises shall be determined under the same procedure as that determining the value of the houses, parts thereof, flats which are returned to the owners.

4. In cases when the value of the premises allotted to the tenant exceeds the value of the premises rented by him, the tenant shall be transferred gratis the ownership of only the part of the newly allotted premises which corresponds to the value of the premises rented by him. The remaining part of the residential premises must be bought out by the tenant according to the market value by instalments within 10 years under procedure established by the Government.

5. In cases when the tenant, with his consent, is transferred gratis the ownership of residential premises the value whereof is less than of those previously rented, the difference in value between the rented and transferred premises shall be compensated to the tenant under procedure and terms established by the Government.

6. The tenant who has been provided with other residential premises or has been paid compensation for the acquisition of other residential premises or a land plot, must within 6 months of the provision of the other residential premises or payment of the compensation vacate the residential premises he occupied, and if a land plot is bought with the acquired funds for the construction of a house-within 1 year of the day of buying the plot. If the tenants do not move, they are evicted under procedure established by laws pursuant to the claim of the district municipality."

14. By Article 2 of the 13 May 1999 Republic of Lithuania Law on the Amendment and Supplement of Articles 8, 9, 10, and 12 of the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided

for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property Article 9 of the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was amended and it was established therein:

"1. The institution which adopts a decision to return a citizen his house, part thereof, flat, must issue a guarantee certificate (hereinafter-guarantee) to the tenants residing in the house, part thereof, flat which is returned to the citizen whereby one undertakes an obligation that during the time period specified in the certificate they:

1) will be transferred gratis the ownership of other residential premises, or

2) will be allotted other residential premises of greater value the ownership of the part whereof conforming to the value of the rented premises will be transferred gratis, while the remaining part will have to be bought out by them under procedure established by law, or

3) will be transferred gratis the ownership of other residential premises of lesser value, while the difference in value between the rented and transferred residential premises shall be compensated under procedure and terms established by the Government, or

4) will be transferred gratis the ownership of a land plot for the construction of a residential house or granted a credit on preferential terms will be issued for such a construction, or

5) will be granted a credit on preferential terms for the construction or acquisition of a dwelling place, or

6) will be compensated the expenses of the acquisition of other residential premises.

2. The tenants of the house, part thereof, flat returned to a citizen shall have the right to only one of the guarantees specified in Paragraph 1 of this Article.

3. The institution specified in Paragraph 1 of this Article must alongside issue a guarantee to the owner of the returned house, part thereof, or flat.

4. The State guarantee for the tenant shall be a certificate issued under established procedure whereby the State (guarantor) shall obligate itself to fulfil the guarantee specified in Paragraph 1 of this Article for the tenant (possessor of the guarantee) of the house, part thereof, flat which is returned, while the tenant (possessor of the guarantee) shall obligate himself, after the guarantee is fulfilled, to vacate the held residential premises during the time period established in Paragraph 7 of this Article. The State guarantee to the tenant must contain: the place, date of the issuance of the guarantee, its number, the institution which issued it, the date and number of the decision adopted by it on the returning of the house, part thereof, or flat in kind, the guarantor, the possessor of the guarantee and his personal code, one of the guarantees specified in Paragraph 1 of this Article and the date of its fulfilment, the obligation of the possessor of the guarantee, after the guarantee is fulfilled, to vacate the held residential premises, and the enumeration of all members of the family of the possessor of the guarantee as well as other residents who, under the laws, have the right to the rented residential premises (save

subtenants and transients), the surname, name, office of the person who signed it, and the seal of the institution. This guarantee is signed by the possessor of the guarantee, the members of the family of the tenant and the other residents who, under the laws, have the right to the rented residential premises. Upon the death of the possessor of the guarantee, the guarantee shall be valid until it is fulfilled.

5. The State guarantee to the owner shall be a certificate issued under established procedure whereby the State (guarantor) shall obligate itself to transfer, during the time period specified therein, to the owner (possessor of the guarantee) the residential and other premises vacated by the tenants in the house, part thereof, flat returned for the owner. The State guarantee to the owner must contain: the place, date of the issuance of the guarantee, its number, the institution which issued it, the date and number of the decision adopted by it on the returning of the house, part thereof, or flat in kind, the guarantor, the possessor of the guarantee and his personal code, the date of the fulfilment of the guarantee, the surname, name, office of the person who signed the guarantee, the seal of the institution and the signature of the possessor of the guarantee. Upon the death of the possessor of this guarantee, until it is fulfilled, the guarantee shall be valid in respect to his heirs.

6. The succession of fulfilment and records of the State guarantees specified in Paragraphs 4 and 5 of this Article shall be established by the Government of the Republic of Lithuania, while taking account of the fact that the guarantees specified in Items 1, 2, 3, and 6 of Paragraph 1 of this Article must be fulfilled until 1 January 2006, while those specified in Items 4 and 5-within 1 year of their issuance, that in the first place the guarantees shall be fulfilled the possessors of which are attributed to the persons who need social assistance by the Law 'On the Provision by the Residents of the Republic of Lithuania with Residential Premises', while in the second place-the guarantees of other possessors.

7. The time of validity of the State guarantee expires after it is fulfilled. The tenant who has been allotted other properly furnished residential premises or transferred gratis the ownership of other residential premises, must vacate the held residential premises within 1 month; if he has been transferred gratis a land plot for the construction of a residential house and granted a credit on preferential terms for the construction, he must vacate the held residential premises within 2 years; if he has been granted a credit on preferential terms for the construction of a dwelling place, he must vacate the held residential premises within 2 years, while if this was for the acquisition of a dwelling place-within 2 months of the day of the fulfilment of State guarantees. The tenants who have not fulfilled the above conditions shall be evicted from the previously held residential premises. After the tenants of the returned house, part thereof, or flat vacate the held residential and other premises or if the tenants are evicted from them, the institution specified in Paragraph 1 of this Article must, under procedure established by the Government, transfer the premises to the owner of the residential house, part thereof, or flat.

8. The State guarantees to the owner shall be fulfilled according to the programme prepared by the Government which is drawn up while taking account of the data presented by municipalities of towns and districts. On the grounds of the

said data, the Government shall annually provide in the Republic of Lithuania draft law on approving the financial indicators of the state budget and municipal budgets the amount of funds necessary for the implementation of the said programme.

9. The value of the land plot allotted gratis to the tenant for the construction of a residential house, the compensated expenses for the acquisition of other residential premises, also, the value of other residential premises must be equivalent to the value of the premises rented of the said tenants. The value of the rented premises shall be determined under the same procedure as that determining the value of the houses, parts thereof, flats which are returned to the owners.

10. The amounts of credits on preferential terms granted to the tenants for the construction of a residential house or for the construction or acquisition of a dwelling place and the procedure of their granting and repayment shall be established by the Government."

15. On 21 March 2000, Item 2 of Paragraph 1 of Article 9 of the Republic of Lithuania Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was amended, however, the state guarantees for the tenants and the owners in essence remained the same.

In this context, it also needs to be noted that under the 7 April 1992 Republic of Lithuania Law on the Provision by the Residents of the Republic of Lithuania with Residential Premises (with subsequent amendments and supplements), the citizens residing in the houses subject to being returned shall have the right to state support in providing themselves with residential premises.

16. Summarising the legal regulation of restoration of the rights of ownership by returning residential houses, parts thereof, flats to the owners which existed until 15 January 2002 when the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was adopted and the provisions of the amendments made by the said law to the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property are disputed by the petitioner, a group of members of the Seimas, in its petition of 24 January 2002, it is clear that the said legal regulation was initially grounded on the provision that the existing residential houses (parts thereof), which were unlawfully disseized, confiscated or nationalised by administrative acts of the occupation government or in other ways, must be returned to the owners in kind, while if it is impossible to return them in kind, such houses (parts thereof) are bought out by the state, while the owners are compensated. The residential houses, parts thereof, flats are not returned to the owners in kind and are bought out by the state if they are indispensable for the state necessities, if one has acquired, according to laws, the private ownership of the houses, parts thereof, flats, also in other cases provided for in the law. For instance, the residential houses, parts thereof, flats are also bought out by the state which have essentially been reconstructed so that the greater part of the main constructions was changed and it is impossible to separate the new gross floor area from the former one.

The legislator gradually broadened the rights of the owners to restore the rights of ownership to the residential houses, parts thereof, flats also in the cases when tenants resided therein. The legal status of the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned) to the owners was not changed: they remained tenants of the said premises.

The legislator, while taking account of the conditions and procedure of restoration of the rights of ownership to residential houses, parts thereof, flats, at the same time established state guarantees to the tenants residing therein. These guarantees were different at different time periods, however, the state was always obligated to transfer the ownership of other residential premises to the tenants or to allot them gratis a land plot for the construction of a residential house or to compensate them the expenses of the acquisition of other residential premises. The legislator consolidated the provision that state guarantees are fulfilled according to the programme prepared by the Government, that the Government must annually provide in the draft law on approving the financial indicators of the state budget and municipal budgets for funds necessary for the implementation of the said programme. The state also guaranteed that until the tenants are allotted other residential premises or paid compensation for the acquisition of other residential premises, the tenants may not be evicted from the residential houses, parts thereof, flats which have been returned to the owners save the cases provided for in the Civil Code.

17. It needs to be noted that the right of citizens to restore their violated rights of ownership under procedure and conditions established by law by retrieving the residential houses, parts thereof, flats in kind stems from the principle of constitutional protection of the right of ownership, which is innate, also, from the laws adopted by the Seimas regulating restoration of the rights of ownership. The state, after it has adopted a decision to restore the rights of ownership, must follow the undertaken obligations and create conditions for the actual implementation of the said right.

The legitimate expectations of the tenants who reside in the houses, parts thereof, flats subject to being returned (already returned) to the owners, to acquire the ownership of other residential premises of equal value, arise from the laws adopted by the Seimas establishing state guarantees to the tenants.

18. As it has been held in this Ruling of the Constitutional Court, by such legal regulation legal relations between the state and the owners of the houses (parts thereof) subject to being returned (already returned) and between the state and the tenants residing in the houses (parts thereof) subject to being returned (already returned) were created.

18.1. In the context of the case at issue, one is to note that the content of the relations between the state and the owners of the residential houses, parts thereof, flats subject to being returned means that the owners have acquired the right to restore, under conditions and procedure established in the law, their rights to the existing residential houses, parts thereof, flats by getting them back in kind, while in the absence of such an opportunity, to be compensated; a duty appeared for the state to further regulate the restoration of the rights of ownership by laws so that the rights of ownership to the existing residential houses, parts thereof, flats would

be restored to the owners. The owners have a legitimate expectation that their rights of ownership to the existing residential houses, parts thereof, flats will be restored; this legitimate expectation of theirs is protected and safeguarded by the Constitution.

18.2. In the context of the case at issue, it also needs to be noted that the content of the relations between the state and the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned) means that after the state has established the guarantees to the tenants, the tenants acquired a legitimate expectation that the state guarantees established and repeatedly reiterated by laws will be fulfilled in reality. A duty appeared for the state to establish the legal regulation and act so that the guarantees established by the state for the tenants would be fulfilled in reality. The said expectation of the tenants is also protected and safeguarded by the Constitution.

18.3. There is not any contraposition between the duty of the state for the owners and the duty of the state for the tenants residing in the houses, parts thereof, flats subject to being returned (already returned) to the owners. The guarantees established by the state for the tenants are, at the same time, state guarantees for the owners, since only upon the fulfilment of the guarantees to the tenants, the owners can completely implement their rights of ownership, i.e. possess, use and dispose of the residential houses, parts thereof, flats returned to them in kind. Thus, from the standpoint of law, there is no contraposition between the aforesaid legal expectations of the owners and the tenants.

18.4. The legislator, by choosing the flat privatisation model in 1991 when part of persons who, as the rest of the tenants, rented the premises assigned to the state and public housing stock could not acquire their ownership (privatise them) only due to the fact that the said premises were in the houses subject to being returned to the owners, alongside undertook the obligation not only to establish state guarantees to the tenants but also to establish the legal regulation and to act so that the said tenants would have the right to acquire the ownership of other residential premises belonging to the state or municipalities or, with the help of the state, to provide themselves with residential premises by other ways.

It needs to be noted that a mere establishment of state guarantees to the tenants is not sufficient. Although allotting the tenants other residential premises of equal value or accomplishment of other ways which might ensure the provision by the tenants with residential premises is linked with the state economic and financial capacities, it needs to be noted that the state guarantees to the tenants which are established by laws and the legitimate expectations of the tenants that appeared due to this imply a duty of the state to draw up a state programme for the provision of the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned) to the owners with residential premises of equal value, to provide for the funds in the state budget, necessary for the fulfilment of the guarantees established to the tenants. Under the Constitution, the state must fulfil the obligation which it has undertaken. Thus, the laws by which the state establishes the guarantees to the tenants must be supported by material and financial resources (Constitutional Court ruling of 12 November 1996). Otherwise, the laws become ineffective, it is impossible to make use of

them. Hence, the confidence of the person in the state and law is shattered, preconditions are created to violate human rights as well as the constitutional principle of a state under the rule of law, and to disregard the imperative of an open, just, harmonious civil society, which is entrenched in the Constitution.

19. On 15 January 2002, the Seimas adopted the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property; on 29 October 2002, the Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was adopted. These laws made the amendments of the articles (paragraphs thereof) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property which are disputed by the petitioners, groups of members of the Seimas, the compliance whereof with the Constitution is a matter of investigation in this case.

IV

On the compliance of the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting buying out of residential houses if they are indispensable for state necessities with Article 23 of the Constitution.

1. Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) used to provide:

"Residential houses shall be bought out (compensated for) by the State from persons specified in Article 2 of this Law in the procedure established in Article 16 of this law, provided they are indispensable for State necessities or if:

1) they have been expanded, rebuilt, or reconstructed into non-residential premises and have been given to scientific, medical, cultural, educational or communications establishments;

2) it is a wooden residential house which has been substantially improved, or if the house has been augmented, rebuilt, or reconstructed, thereby increasing the gross floor area by more than 1/3, in a manner which makes it impossible to separate the additional gross floor area from the original one."

2. The petitioner, the Kaunas Regional Court, had doubts as to whether the provision of the provision of the said article under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution.

3. Article 23 of the Constitution provides:

"Property shall be inviolable.

The rights of ownership shall be protected by laws.

Property may only be seized for the needs of society in accordance with the procedure established by law and shall be justly compensated for."

4. The inviolability and protection of ownership

entrenched in Article 23 of the Constitution mean that the owner has the right to possess, use and dispose of the property that belongs to him, also the right to demand that other persons not violate his rights, while the state has a duty to defend and safeguard ownership from unlawful encroachment upon it (Constitutional Court ruling of 19 September 2002).

5. Under the Constitution, the right of ownership is not absolute, it may be restricted by law in connection with the nature of an object of property, deeds committed against law and/or a need which is necessary for society and which is constitutionally justified (Constitutional Court rulings of 13 December 1993, 6 October 1999, 19 September 2002).

6. While restricting the right of ownership, in all cases one must follow these conditions: the right of ownership is restricted by law only; the restrictions are necessary in a democratic society in attempt to protect the rights and freedoms of other persons, the values entrenched in the Constitution and/or constitutionally important objectives; one follows the proportionality principle under which the measures provided for in laws must be in line with the sought objectives which are necessary to society and which are constitutionally justified (Constitutional Court ruling of 19 September 2002). Under the Constitution, it is not permitted to deny the essence of the right of ownership by any restriction of the right of ownership. In its ruling of 18 April 1996, the Constitutional Court held that if a right were limited so that it becomes impossible to implement it, that if the right were restricted so that reasonable limits were exceeded, or its legal protection were not ensured, in that case there would be grounds to assert that the fundamentals themselves of such a right are violated, which would be equivalent to the denial of this right.

7. Under Article 23 of the Constitution, property may be seized from the owner only when it is necessary for the needs of society and when it is justly compensated; property may only be seized for the needs of society and shall be justly compensated only in accordance with the procedure established by law. In its ruling of 2 April 2001, the Constitutional Court held that the needs of society indicated in Paragraph 3 of Article 23 of the Constitution, for which property may be seized according to the procedure established by law and must be adequately compensated for, are interests of either the whole or part of society, which the state, while implementing its functions, is constitutionally obligated to secure and satisfy; when property is seized for the needs of society, one must strive for the balance between various legitimate interests of society and its members; the needs of society, for which property is seized, are always particular and clearly expressed needs of society for a concrete object of property; it is permitted to seize property (by adequately compensating for) only for such public needs which would not be objectively met if a certain concrete object of property were not seized; the person whose property is being seized for the needs of society has the right to demand that the established compensation be equivalent in value for the property seized.

8. It needs to be noted that seizure of property for the needs of society is linked in the Constitution not with who will receive the seized property but with the objectives of the seizure of property: to use the item in the interests of society, for the socially important objectives which can only be achieved by making use of the individual features of a

particular item seized.

Thus, it is impossible to construe the formula "needs of society" of Paragraph 3 of Article 23 of the Constitution as in all cases prohibiting to seize property and transfer it for private ownership. The question of whether property is seized for the needs of society is not determined by what subject (the state, municipality, legal or natural person) will subsequently become the owner of this property but by the fact whether the property seized from the owner was really seized because it was necessary to satisfy the needs of society, i.e. socially important objectives, which can only be achieved by making use of the particular property seized.

It needs to be noted that when property is seized for the needs of society, the legislator, irrespective of the fact what subject (the state, municipality, legal or natural person) becomes the owner of this property, has a duty to establish the legal regulation ensuring that the said property be used for the needs of society in reality.

9. While deciding whether property is seized for the needs of society, one is to take account of the fact that needs of society are not a static phenomenon. The needs that at a certain stage of development of society and the state were regarded as needs of society may be considered to be not in line with the constitutional concept of the needs of society at a different stage of development of society and the state, and vice versa. While taking account of the fact as to what socially important objectives are sought at the moment of seizure of particular property, one has to decide each time on an individual basis whether the needs for which property is seized are those of society.

10. The seizure of property provided for in Paragraph 3 of Article 23 of the Constitution is understood "as an individual decision concerning seizure of private property held as private ownership which is made in every concrete case according to the procedure established by laws" (Constitutional Court ruling of 18 June 1998). The constitutional formula "property may <...> be seized for the needs of society" means that seizure of property is linked with particular socially important objectives. Under Paragraph 3 of Article 23 of the Constitution, the state has a duty to establish, by laws, the procedure of seizure of property whereby the right of the owner to know in advance for which particular needs the property is seized must be ensured.

11. It also needs to be noted that, while adopting a decision on seizure of property for the needs of society, at the same time one must establish the amount of compensation for the property seized, also, one must establish a procedure according to which the owner will be compensated for the property seized. The state or municipal institution specified by law that has the right to adopt the decision on seizure of property for the needs of society, has a duty to inform the owner in advance (before the decision is taken) about the intention to seize his property for the needs of society, also, as to the procedure of the compensation for the property. The institution intending to adopt a decision on the seizure of property and the owner from whom one intends to seize his property must seek agreement on the compensation for the property seized as well as on the procedure of the compensation for the property. If the dispute arises on whether the property is seized for the needs of society or whether it is justly compensated for, it must be settled in court. Until the

agreement is reached on the compensation for the property seized or until the dispute is not settled by court, the property may not be seized from the owner.

12. While interpreting the content of Article 23 of the Constitution in the context of the restoration of the rights of ownership to the existing real property, the Constitutional Court has held for more than once that although the legislator enjoys certain discretion to establish the conditions and procedure of restoration of the right of ownership, however, when doing so, he must take account of the constitutional principles of protection of the right of ownership.

It needs to be noted that it is impossible to identify the buying out of the existing real property from the citizens to whom the right of ownership is restored with the seizure of property from the owner for the needs of society.

The Constitutional Court has noted that until his property is restored or he is paid an appropriate compensation for it, the subjective rights of the former owner to a specific property are not restored yet; the legal meaning of the decision of the institution authorised by the state to restore property in kind or compensate for it is that only from this proper moment the former owner acquires the rights of ownership to such property (Constitutional Court ruling of 27 May 1994); until respective state institutions have not adopted a decision on the restoration of the rights of ownership, in reality such persons do not enjoy the subjective rights to the property which earlier belonged to them (Constitutional Court ruling of 18 June 1998).

The constitutional guarantee of property protection is, as a rule, referred to as the status quo guarantee, as it, first of all, protects persons' property which they possess at the moment (Constitutional Court rulings of 27 October 1998 and 16 March 1999).

It also needs to be noted that, while establishing the conditions and procedure for the restoration of the rights of ownership to the existing real property, the legislator must take account not only of the constitutional principles of ownership protection: the legislator is also bound by the duty to protect the other values entrenched in the Constitution, inter alia the striving for an open, harmonious and just civil society. In the context of the case at issue, it is noteworthy that if there is not any opportunity to return the existing real property in kind, just compensation also ensures the restoration of the rights of ownership (Constitutional Court rulings of 27 May 1994, 22 December 1995, 18 June 1998).

While deciding whether the compensation for the existing real property which has not been returned in kind is a just one, one has to take account of the fact that it was not the State of Lithuania that unlawfully nationalised or disseized in other unlawful ways the property of the owners. The State of Lithuania, while striving to restore justice in part at least, i.e. to restore the violated rights of ownership, chose restricted restitution but not restitutio in integrum. The restoration of justice when the owners are compensated for the existing real property which has not been returned in kind has two sides: it is justice in regard of the owner as well as the entire society. The unlawful actions of the occupation government inflicted enormous damage not only on the owners whose rights of ownership were denied but also on the whole society and the entire state. While restoring justice in regard of the owners, one cannot ignore justice in regard of the

entire society whose members are also the owners as well. In the process of the restoration of the rights of ownership one must strive for a balance between the persons whose rights are being restored and the interests of the entire society.

It has been mentioned that the state chose restricted restitution but not restitutio in integrum. The rights of ownership of citizens are restored not to the entire property which was unlawfully nationalised and disseized by other unlawful ways, but to the existing real property.

While deciding whether compensation for the existing real property which has not been returned in kind is a just one, one has to take account of not only the present market value of the property not returned in kind but also of the value of the property at the time when it was unlawfully nationalised or disseized by other unlawful ways, also, of the changes in quality and value of the property. The state cannot establish the ways and amounts of compensation which would be financially unbearable for society and the state, which would set a disproportionately big financial burden for the society, which would cause social tensions and disagreement. Otherwise, the constitutional imperative of a harmonious and just society would be violated.

It needs to be noted that all disputes whether it is justly compensated for the property not returned in kind must be settled in court.

It also needs to be noted that just compensation for the property which was unlawfully nationalised or disseized in other unlawful ways may not be identified with just compensation for the property seized for the needs of society: when property for the needs of society is seized under Article 23 of the Constitution, just compensation for it is that of equal value for the property seized.

13. The Kaunas Regional Court, the petitioner, grounds its doubts as to the compliance of whether the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) under which the state is permitted to buy out residential houses from the persons specified in Article 2 of the same law provided they are indispensable for state necessities with Article 23 of the Constitution on the fact that the notion "state necessities" employed in the said law and the notion "needs of society" employed in Article 23 of the Constitution are not identical in their content.

14. While construing the content of the notion "state necessities", one has to take account of the historical legal context of its consolidation in the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993).

It needs to be noted that the notion "state necessities" is employed not only in this law but also in other laws adopted in the laws of the Republic of Lithuania soon after the restoration of the independence of the state: the Law on Budgeting, the Law on Science and Studies, the Law on Land etc. In the laws one also employed the notions "interests of Lithuania", "state interests", "interests of the state and society". Article 46 of the Provisional Basic Law, which regulated the nationalisation, subject to compensation, of property of citizens or their groups, also employed the notion "interests of Lithuania".

The legal terminology characteristic of that period is to be interpreted as reflecting peculiarities of the restoration and consolidation of the statehood at that stage of development of society and the state, but not as expressing a certain priority of the state over society.

15. In the context of the case at issue, one is to note that, while discharging its functions, the state as the organisation of the entire society, must act in the interests of society. In this aspect the state necessities are inseparable from the interests of society and must correspond to them. Thus, needs of society, for which property may be seized according to the procedure established by law and must be adequately compensated for indicated in Paragraph 3 of Article 23 of the Constitution are interests of either the whole or part of society which the state, while discharging its functions, is constitutionally obligated to secure and satisfy (Constitutional Court rulings of 2 April 2001, 10 May 2002, 19 September 2002). Thus, the said needs of society are state necessities at the same time.

One is also to note that the notion "state necessities", depending on the context, may be construed not only in its broad sense, which is the ensuring of proper discharging of all functions of the state as the organisation of the entire society, but also in its narrow sense, which is necessities to ensure the activities of state institutions (state apparatus). However, the construction of the content of this notion must be based on the provision that the state (its institutions) must act in the interests of society, therefore the ensuring of the conditions of activities of state institutions in discharging their functions in the interests of society is also a need of society. Therefore, it is impossible to construe the notion "state necessities", even while understanding it in its narrow meaning, as being inconsistent, in itself, with the notion "needs of society" entrenched in Article 23 of the Constitution.

16. Thus, the legislator, while enjoying the discretion to establish the conditions and procedure for the restoration of the right of ownership, was also permitted to establish, by law, that the residential houses shall be bought out by the state if they are indispensable for state necessities.

17. Taking account of the arguments set forth, one is to conclude that the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses from the persons specified in Article 2 of this law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution.

V

On the compliance of Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

1. On 17 January 1994, the Government adopted Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" in which it was established:

"Conforming to Republic of Lithuania Law No. I-44 'On the Amendment of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property"' adopted on 12 January 1993, also, taking account of the request of Kaunas city and Panevėžys city boards and the proposals of the commission formed following Government of the Republic of Lithuania Order No. 803p 'On the Commission for the Issues of Rent and Distribution of Non-residential Buildings, Facilities and Premises' of 24 November 1993, the Government of the Republic of Lithuania resolves:

To confirm that the residential houses at V. Putvinskio St. 70, Seredžiaus St. 4, Vytauto Ave. 27, Kaunas, and at Respublikos St. 23a, Panevėžys, are indispensable for state necessities and are to be bought out under procedure established in Government of the Republic of Lithuania Resolution No. 470 'On the Implementation of the Republic of Lithuania Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property"' of 15 November 1991 (Official Gazette Valstybės žinios, 1992, No. 4-74; 1993, No. 17-440)."

2. The petitioner, the Kaunas Regional Court, had doubts whether the said Government resolution to the extent that it confirms that the residential house at Vytauto Ave. 27, Kaunas, is indispensable for state necessities and is to be bought out is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

3. While deciding whether the disputed provision of the Government resolution is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the said law (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities, one is to note that the said Government resolution, as pointed out in the resolution itself, was adopted conforming to the 12 January 1993 Law "On the Amendment of the Law 'On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property'" whereby Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 18 June 1991) was inter alia amended. Thus, as it is possible to judge from the case material, at the time of the adoption of the Government resolution the provision of which is being disputed, one followed Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993).

4. As it has been mentioned, Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) used to provide:

"Residential houses shall be bought out (compensated for) by the State from persons specified in Article 2 of this Law in

the procedure established in Article 16 of this law, provided they are indispensable for State necessities or if:

1) they have been expanded, rebuilt, or reconstructed into non-residential premises and have been given to scientific, medical, cultural, educational or communications establishments;

2) it is a wooden residential house which has been substantially improved, or if the house has been augmented, rebuilt, or reconstructed, thereby increasing the gross floor area by more than 1/3, in a manner which makes it impossible to separate the additional gross floor area from the original one."

5. It needs to be noted that it is impossible to construe the legal regulation established in Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) separately from the legal regulation established in Paragraph 2 of Article 8 of the same law. Under Paragraph 2 of Article 8 of the said law, the procedure and terms of the returning of residential houses (or parts thereof) shall be established by the Government on the basis inter alia of the provision that the residential houses are returned when they have been reconstructed into non-residential premises (Item 1).

While comparing the legal regulation established in Articles 8 and 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993), it is clear that the residential houses (parts thereof), if they are indispensable for state necessities, may be returned not in kind but bought out even when they have been reconstructed into non-residential premises. Under the said law (wording of 12 January 1993), the issue of returning of such houses (parts thereof) in kind may have been decided in all cases, while taking account of whether they were indispensable for state necessities.

6. It has been held in this Ruling of the Constitutional Court that the provision of Article 14 of the said law (wording of 12 January 1993) permitting the state to buy out the residential houses from the persons specified in Article 2 of this law provided they are indispensable for state necessities was not in conflict with Article 23 of the Constitution.

In the context of the case at issue, one is to note that it is not permitted to oppose the notion "state necessities" employed in the said law against the notion "needs of society" employed in the Constitution.

7. While establishing the legal regulation of the buying out of the residential houses from the citizens to whom the rights of ownership are restored in Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993), the legislator also directly indicated the conditions under which the residential houses are bought out. One of such conditions provided for in the law was the fact that the residential houses are indispensable for state necessities. The law did not point out as to the nature of state necessities for which the residential houses were permitted not to be returned in kind and were to be bought out.

The Constitutional Court has held that the notion "buying out" employed in the said law (wording of 12 January 1993) means the competence of the authorised state institutions to

adopt a decision, provided there are respective conditions established in the law, not to return the existing real property to the person to whom the rights of ownership are restored (Constitutional Court rulings of 27 May 1994, 8 March 1995); if there is not any possibility to return the existing real property in kind, just compensation also ensures the restoration of the rights of ownership (Constitutional Court rulings of 27 May 1994, 22 December 1995, 18 June 1998).

It needs to be noted that the Government, when the residential houses subject to being returned were indispensable for state necessities, enjoyed the competence to adopt a decision on their buying out. Whether the necessities under which the houses subject to being returned were to be bought out were state necessities had to be decided on an individual basis, while taking account of the fact as to what socially important objectives were being sought by the particular buying out at the particular period.

8. While deciding the question of whether the disputed provision of the Government resolution is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities, it is important to elucidate as to the purpose of the decision taken to recognise the residential house at Vytauto Ave. 27, Kaunas, to be indispensable for state necessities.

9. It needs to be noted that the Government resolution of 17 January 1994 does not directly indicate as to what particular state necessities as needs of society the residential house at Vytauto Ave. 27, Kaunas, is to be bought out, however, it is clear from the 20 October 1993 request of the Kaunas City Board (mentioned in the said Government resolution) which is attached to the case as well as from other material of this case that the said building was needed for the activities of the editorial office of the newspaper "Kauno diena", which was renting the said building at the time of the adoption of the Government resolution in question.

It is also clear from the case material that the residential house at Vytauto Ave. 27, Kaunas, had undergone major repairs in 1987 and had been fitted to the work of the newspaper editorial board. Pursuant to the said Government resolution and the 17 February 1994 Seimas Resolution "On the Supplement of Item 8 of Republic of Lithuania Supreme Council Resolution 'On the Entry into Effect of the Law on Initial Privatisation of State-owned Property'", the Board of Kaunas City by Ordinance No. 709-v "On the Transfer of the Building at Vytauto Ave. 27" of 19 May 1994 transferred this building to the balance of the close company "Kauno diena". Thus, the said building, after it had been decided to buy it out, was transferred to the necessities of the editorial board of the daily. It has been used for the purpose mentioned.

Thus, by the said resolution the Government recognised that the building must be bought out so that the further activity of the editorial board of the daily "Kauno diena" would be ensured.

10. One must pay attention to the fact that the Government, on the grounds of the powers granted to it by law and while adopting the decision stating that the residential house at Vytauto Ave. 27, Kaunas, is indispensable for state

necessities as needs of society, did not point out any particular reasons for such a decision. However, one is to note that the said building was used for the purposes for which it had been bought out, i.e. to ensure further activities of the editorial board of the daily "Kauno diena". A mere fact that the Government resolution the provision of which is challenged in this case does not point out particular arguments regarding the indispensability of the building at Vytauto Ave. 27, Kaunas, for the state necessities as needs of society does not constitute grounds to recognise the disputed provision of the Government resolution to be in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

11. While deciding whether the disputed provision of the Government resolution is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities, and, while taking account of the fact that, by buying out of the residential house at Vytauto Ave. 27, Kaunas, one attempted to ensure further activities of the editorial board of the daily "Kauno diena", it is important to elucidate whether the said purpose is to be treated as a state necessity, i.e. need of society, at the said concrete time period.

12. Laws of a democratic state establish and protect not only the subjective human right to have and freely express convictions but also freedom of information as an objective need of society. It means that not only freedom of information in general has to be protected but also freedom of means of mass information as the expression of freedom of information in its objective form (Constitutional Court ruling of 20 April 1995). In its ruling of 23 October 2002, the Constitutional Court held that the Constitution guarantees and safeguards the interest of the public to be informed, that the freedom of the media stems from the Constitution, and that the legislator has a duty to establish the guarantees of the freedom of the media by law.

13. It has been mentioned that needs of society are not a static phenomenon; their content is subject to change at various stages of social life. It has been held in this ruling of the Constitutional Court that the needs that at a certain stage of development of society and the state were regarded as needs of society may be considered to be not in line with the constitutional concept of the needs of society at a different stage of development of society and the state, and vice versa.

14. Upon the restoration of the independence of the Republic of Lithuania, the consolidation of freedom of information and, in particular, that of the media, was of utmost importance to the society which had lived under the conditions of the occupation totalitarian regime, therefore the ensuring of the material conditions to operate for independent media of information of society was an objective social need at that stage of development of society, since this was an essential precondition of consolidation of democracy.

14.1. It needs to be noted, that soon after the

restoration of the independence of the Republic of Lithuania, one adopted legal acts whereby it was attempted to create preconditions for the activities of independent media.

While creating the preconditions for the activities of independent media, the 7 November 1991 Republic of Lithuania Law "On the Seizure of Property of the CPL (CPSU) and That of Other Former Communist Organisations" was of importance, in which it was inter alia established that "the property of the CPL (CPSU) illegally operating in the territory of the Republic of Lithuania, also of the CPL and the Komsomol shall be gratuitously seized as property of the Republic of Lithuania". The law commissioned the Government to take over such property. Implementing the aforementioned law, on 6 December 1991, the Government adopted Resolution No. 534 "On the Former CPL (CPSU), CPL Organs (Town and District Newspapers)". The said Government resolution inter alia resolved to grant the right to the editorial boards of the former CPL (CPSU), CPL organs (town and district newspapers), upon the decision of their general meetings, "to take over the rights of the founder and publisher and to split the former property of the CPL (CPSU), CPL (save the right of ownership to the buildings) into shares, which are to be distributed among the permanent employees in equal parts".

14.2. In the context of the case at issue, it also needs to be noted that at the time of the adoption of the Government resolution the provision of which is disputed in the case at issue, the editorial boards of most of the periodicals were renting premises belonging to the sphere regulated by the state. Taking account of the importance of the independent media, for the development of a democratic society it was necessary to ensure freedom of further activities of information media of society. On 17 February 1994, the Seimas adopted the Resolution "On the Supplement of Item 8 of Republic of Lithuania Supreme Council Resolution 'On the Entry into Effect of the Law on Initial Privatisation of State-owned Property'" whereby preconditions were created for the publishing houses and editorial boards of independent periodicals which were establishing themselves at that time to acquire the rented (or otherwise lawfully used) premises.

Implementing this resolution of the Seimas, by its Resolution No. 571 "On the Privatisation of the State-owned Property of Publishing Houses of Periodicals (Newspapers, Magazines), Premises of Editorial Boards of Periodicals Which Rent (or Otherwise Actually Lawfully Use) the Premises Assigned to the Sphere Regulated by the State" the Government confirmed the list of publishing houses of periodicals (newspapers, magazines), premises of editorial boards of periodicals, which are privatised conforming to the procedure established in the first section of Item 8 of Republic of Lithuania Supreme Council Resolution "On the Entry into Effect of the Law on Initial Privatisation of State-owned Property", into which it included publishing houses and premises of editorial boards of periodicals, among them the premises of the editorial board of the daily "Kauno diena", which rented the building at Vytauto Ave. 27, Kaunas.

14.3. The provision of publishing houses and editorial boards of periodicals with premises at that time pointed to the resolute attempt by the state to ensure the material conditions of the activities of independent media that were establishing themselves at that time. In this context, the buying out of the residential house at Vytauto Ave. 27, Kaunas, was assessed at

that time period as guaranteeing the activity of an independent medium of mass communication, and, due to this, as means of ensuring a particular state necessity, i.e. as a need of society.

15. In the context of the case at issue, one is to note that a mere circumstance that the property seized is given to non-governmental establishment or organisation does not mean in itself that no public need exists for the seizure of such property. It has been held in this Ruling of the Constitutional Court that while deciding the question of whether property is seized for the needs of society is determined not what subject (the state, municipality, legal or natural person) will subsequently become the owner of this property but whether the property seized from the owner was really seized because it was necessary to satisfy the needs of society, i.e. socially important objectives which can only be achieved by making use of the particular property seized. As mentioned, by the said resolution the provision whereof is being disputed, the Government recognised that the building must be bought out so that the further activity of the editorial board of the daily "Kauno diena" would be ensured.

16. One must also pay attention to the fact that, as mentioned, the residential house at Vytauto Ave. 27, Kaunas, had undergone major repairs in 1987 and had been fitted to the work of the newspaper editorial board. Meanwhile, in Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 the said building is referred to as a residential house.

While the issue is decided whether the disputed provision of the Government resolution of 17 January 1994 is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities, the issue is of essential importance as to what purpose, i.e. for what state necessities as needs of society this building at a concrete time period was necessary, but not as to whether the building at Vytauto Ave. 27, Kaunas, is a residential house the purpose of which as a residential house had not been changed or whether it had been reconstructed into non-residential premises. It has been held in this Ruling of the Constitutional Court that the buying out of the aforesaid building was assessed at that time period as guaranteeing the activity of an independent medium of mass communication, and, due to this, as means of ensuring a particular state necessity, i.e. as a need of society.

Thus, in itself the circumstance that Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 refers to the building at Vytauto Ave. 27, Kaunas, as a residential house although it underwent major repairs and was fitted to the work of the editorial board of the newspaper does not constitute grounds to recognise the said provision of the Government resolution of 17 January 1994 to be in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

17. Taking account of the arguments set forth, one is to conclude that Government Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out is not in conflict with Article 23 of the Constitution and the provision of Article 14 of the Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

VI

On the compliance of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, with Articles 23 and 29 of the Constitution and the constitutional principle of a state under the rule of law.

1. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Article 23 of the Constitution, since it no longer contains the norm which used to be in Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the said law under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property.

2. Under Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), "the rights of ownership to the real property specified in Article 3 of this Law shall be restored to the citizens of the Republic of Lithuania to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property. These citizens (willing to restore their rights of ownership) must apply to court on the establishment of the juridically significant fact."

3. Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording 15 May 2002) provides:

"The rights of ownership to the real property specified in Article 3 of this Law shall be restored to the citizens of the Republic of Lithuania:

- 1) owner of the property;
- 2) persons who have been bequeathed by testament the property by the deceased owner of the property irrespective of the fact that the testament does not contain the data as to the fact of the bequeathal of land or other real property, while in case of the their death-to their spouse, parents (foster-parents), children (adopted children) or spouses and children of the said persons;
- 3) the spouse, parents (foster parents), children (adopted children), if these persons are citizens of the Republic of Lithuania, of the deceased owner of the property who did not draw up his will or emigrated abroad during the occupation years (1939-1990) and there, losing the citizenship of the Republic of Lithuania, adopted the citizenship of another country-to the part of the existing real property falling to their share;
- 4) the spouse, children (adopted children) of a deceased child (adopted child) of the owner of the property-to the part of the existing real property falling to the share of the deceased;
- 5) whose property was not sold by auction or mortgaged prior to the 15 June 1940 occupation."

4. Under Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), the rights of ownership to the real property specified in Article 3 of the said law shall be restored to the citizens of the Republic of Lithuania to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property. Thus, under the said norm, irrespective of the fact whether or not one followed the procedure of property transfer established in the laws effective during the time of the occupation, citizens of the Republic of Lithuania or successors to their rights enjoyed the right to the restoration of their rights of ownership. After Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) had been amended by Paragraph 1 of Article 1 of the 15 January 2002 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, the aforementioned norm was abolished and the legal regulation was changed.

After the said norm of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) had been abolished, the legal situation was created when the citizens of the Republic of Lithuania who had been transferred property by house testament or agreements (of purchase and sale, gift, or by another written document), also the citizens, who had been bequeathed property by testament by successors to the rights of the property, lost their rights to restore their rights to the existing real property specified in the law.

5. It needs to be noted that upon unlawful nationalisation or disseizin in other unlawful ways of citizens' property,

their rights of ownership were discontinued; the owners whose property was nationalised or disseized in other unlawful ways could not legally dispose of their property under the laws effective during the occupation years, they inter alia could not express their will creating legal effects as to the transfer of the property to another person. Under the laws of the occupation government, even the will expressed in the objective form of the owner of the property unlawfully nationalised or disseized in other unlawful ways regarding transfer of the rights of ownership to the said property would not cause any legal effects. The transactions of the owners regarding transfer of the rights of ownership to the property unlawfully nationalised or disseized in other unlawful ways could not be confirmed with the notary and legally registered; the said transactions used to be concluded while disregarding the obligatory notarial form established for real property transactions and would not be legally registered. The owners of the property unlawfully nationalised or disseized in other unlawful ways did not enjoy a legal opportunity to transfer this property by testament.

6. The legislator, upon the supplement of Paragraph 1 of Article 2 of Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 1 July 1997), by the Law on the Amendment and Supplement of Articles 2, 4, 5, 10, 12, 13, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property adopted on 13 May 1999, with Item 5 under which the rights of ownership to the real property specified in Article 3 of the said law shall be restored to the citizens of the Republic of Lithuania to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property, took account of the will of the owners of the property unlawfully nationalised or disseized in other unlawful ways regarding the fate of the property unlawfully disseized.

It has been mentioned that Item 5 of Paragraph 1 of Article 2 of the said law (wording of 13 May 1999) established that "these citizens (willing to restore their rights of ownership) must apply to court on the establishment of the juridically significant fact".

Thus, under Item 5 of Paragraph 1 of Article 2 the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), the right to the restoration of the rights of ownership is also created by transactions, which were drawn up in writing, while disregarding the form and procedure established by law, of transfer of the property unlawfully nationalised or disseized in other unlawful ways; under Item 5 of Paragraph 1 of Article 2 the law, the fact of transfer of property by written transaction drawn up while disregarding the form and procedure established by law, which is juridically significant in the restoration of the rights of ownership, is established only by judicial procedure.

7. It has been held in this Ruling of the Constitutional Court that the legislator enjoys the discretion to establish the conditions and procedure of restoration of the rights of ownership to the existing real property, and that, while doing so, one must take account of the constitutional principles of

the right of ownership.

It also needs to be noted that the Constitution guarantees the right to succession, and that, under the Constitution, there may not be any established legal regulation which might deny the will of a testator to leave his property as inheritance to other persons (Constitutional Court ruling of 4 March 2002).

8. After Paragraph 1 of Article 1 of the Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had amended Item 5 of Paragraph 1 of Article 2 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property so that the norm which used to be in the latter was abolished which used to stipulate that the rights of ownership to the real property specified in Article 3 of this law were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, the said citizens, as mentioned, lost their right to restore their rights of ownership to the real property specified in the law.

Such legal regulation disregards the constitutional principles of the protection of the right of ownership and thus Article 23 of the Constitution is violated.

9. Taking account of the arguments set forth, one is to conclude that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with Article 23 of the Constitution.

10. The petitioner, a group of members of the Seimas, requests in its petition of 24 January 2002 to investigate as to whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with the constitutional principle of a state under the rule of law, since it no longer consolidates the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property.

11. The constitutional principle of a state under the rule of law is a universal one upon which the whole Lithuanian legal

system as well as the Constitution of the Republic of Lithuania itself are based. The content of the principle of a state under the rule of law reveals itself in various provisions of the Constitution and is to be construed inseparably from the striving for an open, just, and harmonious civil society, which is proclaimed in the Preamble to the Constitution. Along with the other requirements, the principle of a state under the rule of law, which is entrenched in the Constitution, also implies that one must ensure human rights and freedoms, that all institutions implementing state authority and other state institutions must act on the basis of law and in compliance with law, that the Constitution has the supreme legal power and that all legal acts must be in conformity with the Constitution. Inseparable elements of the principle of a state under the rule of law are protection of legitimate expectations, legal certainty and legal security. In case the protection of legitimate expectations, legal certainty and legal security were not ensured, the confidence of the person in the state and law would not be ensured (Constitutional Court rulings of 23 February 2000, 12 July 2001, 25 November 2002, 24 January 2003).

In its ruling of 12 July 2001, the Constitutional Court held that one of essential elements of the principle of a state under the rule of law established in the Constitution is the principle of legal security, meaning the duty of the state to ensure the certainty and stability of legal regulation, to protect the rights of entities of legal relations, including the acquired rights, and to respect legitimate interests and legitimate expectations.

It needs to be noted that under the Constitution not all expectations arising from a law or another legal act are protected and defended but only those that arise from the Constitution itself or the laws and legal acts that are not in conflict with the Constitution. Only such expectations may be regarded as legitimate, and only such legitimate expectations are protected and defended by the Constitution.

The principle of the protection of legitimate expectations implies the duty of the state and the institutions implementing state authority as well as other state institutions to observe the undertaken obligations. This principle also means the protection of the acquired rights, i.e. persons have the right to reasonably believe that their rights acquired under valid laws or other legal acts which are not in conflict with the Constitution will be retained for the established time and it will be possible to implement them in reality. In its ruling of 18 December 2001, the Constitutional Court held that it is impermissible to deny legitimate interests and legitimate expectations of persons by amendments of legal regulation, that continuance of jurisprudence must be guaranteed. In its ruling of 12 July 2001, the Constitutional Court held that under the principle of legitimate expectations, legal regulation may be amended only in pursuance with an earlier established procedure and without violating the principles and norms of the Constitution, and that it is impermissible to deny legitimate interests and legitimate expectations of persons by amendments of legal regulation. While regulating the implementation of the rights and freedoms of the person entrenched in the Constitution, the legislator cannot deny legitimate expectations of the person, as the principles of legal regulation and, first of all, the constitutional principle of a state under the rule of law, which are entrenched in the

Constitution, prohibit unreasonable aggravation of the legal situation of a person, as well as denial of the acquired rights and ignoring of legitimate interests of a person. In case legal certainty, stability and protection of legitimate expectations were denied, the constitutional principle of a state under the rule of law would be violated. If the legal situation of a person were unreasonably aggravated, Article 29 of the Constitution might be violated also, which establishes equality of rights of persons.

12. After it had been established in Item 5 Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) that the rights of ownership to the real property shall be restored to the citizens to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property, all citizens to whom property was transferred by way specified in Item 5 of Paragraph 1 of Article 2, acquired the right to restore the rights of ownership to the said property and could reasonably expect that provided they met the conditions established in the law, they would be restored the rights of ownership. Upon the abolishment of the aforesaid norm of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), the rights of part of citizens were denied to the specified existing real property, to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, while legal certainty and stability as well as the principle of the protection of legitimate expectations were disregarded.

Such legal regulation violated the constitutional principle of a state under the rule of law.

13. Taking account of the arguments set forth, one is to conclude that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with the constitutional principle of a state under the rule of law.

14. The petitioner, a group of members of the Seimas, requests in its petition of 24 January 2002 to investigate as to whether Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Article 29 of the Constitution, since it no longer contains the provision which used to be in Item 5

(wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property.

15. 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."

16. Article 29 consolidates the principle of equality of all persons before the law, the court, and other state institutions and officers. The constitutional principle of equality of persons is a constitutional guarantee of the innate human right to be treated in the same manner as the others are treated. This principle obligates to apply uniform legal assessment to homogeneous facts and prohibits to arbitrarily assess essentially homogeneous facts in a different manner (Constitutional Court ruling of 24 January 1996). In its rulings the Constitutional Court has held for more than once that this principle must be observed when passing as well as applying laws.

17. The constitutional principle of equality of persons of its own accord does not deny the fact that law may establish different legal regulation concerning certain categories of persons who are in different situations. Assessing the fact whether different legal regulation has been reasonably established, one must assess differences of legal situation of categories of such persons, also whether the legal norms establishing special conditions correspond the destination and purpose of the legal act (Constitutional Court ruling of 13 November 1997).

18. In the context of the case at issue, it needs to be noted that the principle of equality of persons enshrined in Article 29 of the Constitution also means that the legislator, while regulating the legal relations of restoration of the rights of ownership, may not establish any legal regulation whereby the persons who have the right to restore their rights of ownership are treated differently, even though there are not any such differences so that such an uneven treatment might be objectively justified (Constitutional Court ruling of 20 November 1996).

19. It has been held in this Ruling of the Constitutional Court that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by

testament by successors to the rights of the property, is in conflict with Article 23 of the Constitution and the constitutional principle of a state under the rule of law.

20. Under Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), the rights of ownership to the real property shall be restored to the citizens of the Republic of Lithuania to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property. After the provision that the rights of ownership to the real property shall be restored to the citizens of the Republic of Lithuania to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who were bequeathed property by testament by successors to the rights of the property had been deleted from Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), part of the persons who used to enjoy the right to restore their rights of ownership lost the said right, although the said persons had been transferred property by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, or had been bequeathed property by testament by successors to the rights of the property. By such legal regulation the persons seeking restoration of their rights of ownership are treated differently, although there are no such differences between these persons so that such treatment might be objectively justified.

Thus, by such legal regulation one disregarded the principle of equality of all persons before the law, which is established in Article 29 of the Constitution.

21. Taking account of the arguments set forth, one is to conclude that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with Article 29 of the Constitution.

22. The Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, adopted on 29 October 2002, does not establish, either, that the rights of ownership are to be restored to the citizens to whom the property was transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the

citizens, who were bequeathed property by testament by successors to the rights of the property.

23. The citizens who have the right to the restoration of the rights of ownership are specified in Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002).

24. It has been held in this Ruling of the Constitutional Court that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with Article 23 of the Constitution, the constitutional principle of a state under the rule of law, and Article 29 of the Constitution.

25. On the grounds of the same arguments, one is to conclude that Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with Article 23 of the Constitution, the constitutional principle of a state under the rule of law, and Article 29 of the Constitution.

VII

On the compliance of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Articles 23 and 29 of the Constitution.

1. The petitioner, a group of members of the Seimas, requests in its petition of 24 January 2002 to investigate as to whether Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Articles 23 and 29 of the Constitution.

2. It needs to be noted that by Article 2 of the 29 October 2002 Law on the Amendment and Supplement of the Preamble, Articles 2, 12, 13, 15, 16, and 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property Item 5 of Article 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was recognised as no longer valid.

3. Under Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the rights of ownership to the real property specified in Article 3 of this law shall be restored to the citizens of the Republic of Lithuania whose property was not sold by auction or mortgaged prior to the 15 June 1940 occupation.

This provision of the law means that the citizens whose property was sold by auction or mortgaged prior to the 15 June 1940 occupation do not have the right to restore their rights of ownership.

4. While deciding whether Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Articles 23 and 29 of the Constitution, which are pointed out by the petitioner, one must find out whether a person whose property was sold by auction or mortgaged prior to the 15 June 1940 occupation remained the owner of the property.

5. Under the valid legal acts in Lithuania until 15 June 1940, mortgage of property was regarded as one of the ways of ensuring fulfilment of liabilities. For instance, in the 1936 Hypothec Law the mortgage right is referred to as a cumbersome right, i.e. the right which encumbers the right of ownership. Mortgaging of real property did not mean termination of the right of ownership. Even when the liability secured by the mortgage happened not to be fulfilled, the right of ownership to the mortgaged property would not appear to the creditor.

6. It has been held in this Ruling of the Constitutional Court that the legislator enjoys the discretion to establish the conditions and procedure of restoration of the right of ownership, however, when establishing the conditions and procedure of restoration of the right of ownership, he must take account of the constitutional principles of ownership protection.

7. Under the provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the rights of ownership to the real property specified in Article 3 of this law shall be restored to the citizens of the Republic of Lithuania whose property was not sold by auction or mortgaged prior to the 15 June 1940 occupation, thus the persons whose property was mortgaged lose the right to restore their rights of ownership, although they remained the owners of the property mortgaged. This is not in line with the constitutional protection of the right of ownership.

8. Taking account of the arguments set forth, one is to conclude that the provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the rights of ownership to the real property specified in Article 3 of this law shall be restored to the citizens of the Republic of Lithuania whose property was not mortgaged prior to the 15 June 1940 occupation was in conflict with Article 23 of the Constitution.

9. The provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), under which the rights of ownership shall not be restored to the citizens whose property was sold by auction prior to the 15 June 1940 occupation, is to be assessed in a

different manner.

Under the legal acts valid in Lithuania until the 15 June 1940 occupation, claims of creditors might be met by way of sale of the property of the debtor by auction. Selling of property by auction is one of the grounds of termination of the right of ownership: the person whose property has been sold by auction is no longer the owner of the property.

Under the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, the rights of ownership are restored to the owner of the property, while if he has deceased—to the heirs of the owner, who are specified in the law. The fact that the rights of ownership are not restored to the citizens, who lost their right of ownership after their property was sold by auction, cannot be regarded as a violation of the rights of ownership.

10. Taking account of the arguments set forth, one is to conclude that the provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) that the rights of ownership to the real property shall be restored to the citizens whose property was not sold by auction prior to the 15 June 1940 occupation was not in conflict with Articles 23 and 29 of the Constitution.

11. Until the 15 January 2002 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property went into effect, by Article 1 whereof Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 May 1999) was amended, the citizens whose property was mortgaged had the right to restore the rights of ownership.

12. It has been held in this Ruling of the Constitutional Court that the provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the rights of ownership to the real property shall be restored to the citizens whose property was not mortgaged prior to the 15 June 1940 occupation is in conflict with Article 23 of the Constitution. After Article 1 of the 15 January 2002 Law on the Amendment and Supplement of Articles 2, 8, 12, 15, 16, 18, 20, and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property had amended Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 May 1999), and after it had been established therein that the rights of ownership shall be restored to the citizens of the Republic of Lithuania whose property was not mortgaged prior to the 15 June 1940 occupation, there appeared a legal situation that part of citizens whose property was mortgaged until the 15 June 1940 occupation lost their right to restore the rights of ownership, although they had enjoyed that right before. Thus, the situation of part of the owners whose property until the 15 June 1940 occupation was mortgaged, and who had enjoyed the rights of ownership, was deteriorated: they found themselves in the situation of non-equal rights if compared with the persons who either had restored their rights of ownership or had enjoyed the right to restore it until the entry into effect of said Item 5 of Paragraph 1 of Article 2 (wording of 15 January 2002).

By such legal regulation one disregarded the principle of equality of all persons before the law, which is entrenched in Article 29 of the Constitution.

13. Taking account of the arguments set forth, one is to conclude that the provision of Item 5 of Paragraph 1 of Article 2 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) that the rights of ownership to the real property shall be restored to the citizens whose property was not mortgaged prior to the 15 June 1940 occupation was in conflict with Article 29 of the Constitution.

VIII

On the compliance of Items 2 and 3 of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Articles 23 and 29 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether the following provisions of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) are not in conflict with Articles 23 and 29 of the Constitution: "Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

2. Until 15 January 2002, when Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) was amended and supplemented, the said article used to run as follows:

"Article 15. Residential Houses, Parts thereof, Flats Bought out by the State

Residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and they shall be compensated for according to Article 16 of this Law, provided they:

1) have been reconstructed into non-residential premises and are used for educational, health care, cultural, scientific needs, and by communal care residences. The list of these premises shall be confirmed by the Government;

2) have substantially been reconstructed to such an extent that more than 50 per cent of the main constructions have been altered and it is impossible to separate the created new gross floor area from the former one, if the total gross floor area exceeds the former by 30 per cent;

3) have been acquired as private ownership according to laws."

3. The conditions and procedure of restoration of the

rights of ownership to the residential houses, parts thereof, flats was established in Article 8 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 1 July 1997).

Until 15 January 2002, when Article 8 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 1 July 1997) was amended and supplemented, the said article used to run as follows:

"Article 8. Conditions and Procedure for the Restoration of the rights of ownership to Residential Houses, Parts Thereof, Flats

1. Ownership rights to residential houses, parts thereof, flats shall be restored to the citizens specified in Article 2 of this Law by returning them in kind, except the residential houses, parts thereof, flats which are subject to the State buy-out pursuant to Article 15 of this Law.

2. The State shall compensate, according to Article 16 of this Law, citizens for residential houses, parts thereof, flats which are subject to the State buy-out, as well as for the residential houses, parts thereof, flats, specified in Article 3 of this Law, which have not survived after 1 August 1991 due to the decisions adopted by the State, or municipal institutions.

3. Upon giving back the residential houses, parts thereof, flats in kind, the right of ownership to the land on which the given back houses are built, shall be restored under the procedure prescribed by Articles 4 and 5 of this Law, irrespective of whether a separate request for giving back this land has been filed.

4. Upon giving back residential houses, parts thereof or flats in kind or upon transfer of the ownership of other residential premises to the persons specified in Article 2 of this Law, these citizens together with their family members and subtenants must, within two months of the day of transferring the empty residential premises to them, vacate the premises of the State or municipal housing stock rented by them.

5. If citizens do not desire to get back the houses in kind where tenants reside or do not agree with the conditions laid down in Article 20, they shall receive compensation according to Article 16 of this Law."

4. Thus, under the (prior) legal regulation established in Article 15 (wording of 13 May 1999) and Paragraph 1 of Article 8 (wording of 1 July 1997) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, citizens had the right to restore their rights of ownership by getting back the residential houses, parts thereof and flats in kind which were not specified in Article 15 of the law.

5. The residential houses, parts thereof and flats which were specified in Article 15 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property were bought out by the state and compensated for under Article 16 (wording of 13 May 1999) of the same law.

It was established in Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999), that the state shall compensate citizens for the residential houses, parts thereof, flats which are bought out by the state in the following ways:

"1) by transferring gratis for their ownership the flats, rented by them, from the state or municipal housing stock, the

difference in values whereof shall be paid under procedure established by the Government;

2) by transferring gratis, under procedure established by the Government, the ownership of the flats which are equal in value to the previously held houses, parts thereof, flats;

3) by transferring gratis the ownership of a new plot of land for individual construction, equal in value to the houses, parts thereof, flats held previously, in the locality where they were situated. At the request of the citizen, an equivalent new plot of land for individual construction may be, under procedure established by the Government, transferred gratis for ownership in the towns and rural areas other than those where the residential houses, parts thereof, flats were situated, except the towns of Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas, and Neringa;

4) by transferring gratis the ownership of vacant, not rented buildings, facilities or parts thereof equal in value to the houses, parts thereof, flats held previously. The procedure for the transfer of these buildings, structures and parts thereof shall be established by the Government;

5) by making void a citizen's liabilities to the State by way of inclusion, which occurred after the seizure of the real property up to the passing a decision to restore the rights of ownership, in accordance with the procedure established by the Government;

6) by transferring gratis the ownership of other property under procedure established by the Government;

7) in cash and/or in securities."

6. On 15 January 2002, the Seimas amended and supplemented Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, and in Paragraph 2 of the same article it established new provisions: "Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

7. On 15 January 2002, the Seimas amended and supplemented Article 8 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property by abolishing Paragraph 5 of the same article; Paragraph 1 of Article 8 in which it was provided that "ownership rights to residential houses, parts thereof, flats shall be restored to the citizens specified in Article 2 of this Law by returning them in kind, except the residential houses, parts thereof, flats which are subject to the State buy-out pursuant to Article 15 of this Law" remained unchanged.

8. On 15 January 2002, the Seimas supplemented Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of

Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) by entering a provision therein that the state shall compensate citizens for the residential houses, parts thereof, flats which are bought out by the state "by justly compensating for, while deducting the expenses of their improvement and reconstruction". The ways by which the state compensates citizens for the residential houses, parts thereof, flats which are bought out by the state were not changed.

9. Thus, after Article 15 (wording of 13 May 1999) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was amended and supplemented on 15 January 2002, the following new provisions were consolidated in Paragraph 2 of the said article: (1) the residential houses, parts thereof, flats specified in the law are seized for the needs of society and are compensated for; (2) the residential houses, parts thereof, flats are seized from the citizens who restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the residential houses, parts thereof, flats are seized for needs of society in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (4) the residential houses, parts thereof, flats are seized for the needs of society not from all citizens specified in Article 2 of the law: the residential houses, parts thereof, flats are not seized for the needs of society from the citizens specified in Paragraph 1 of Article 20 of the law.

10. Paragraph 1 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) provides: "When a citizen is returned a residential house, part thereof, flat in kind, and one flat is rented to persons residing therein according to the agreement of tenancy by the municipality, the institution which has adopted a decision to return the citizen the residential house, part thereof, must, within one year of the entry into force of this Law, issue the tenants residing therein a State guarantee certificate on the State guarantee established for the tenant. Such a guarantee certificate is also issued to the owner of the house, part thereof, which is being returned. The State guarantees, execution thereof, the rights and duties of those enjoying the said guarantees shall be established by the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property."

Thus, it is clear from Paragraph 1 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) that the citizens from whom the residential houses, parts thereof, flats are not seized for the needs of society are defined in the first sentence of the said paragraph: these are the citizens who have been returned a residential house, part

thereof, flat in kind, and one flat is rented to persons residing therein according to the agreement of tenancy by the municipality.

11. The seizure of residential houses, parts thereof, flats for the needs of society, which is consolidated in the disputed provision of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), is linked with the fact that the tenants are residing therein, who were unable to implement their right to privatise them. This is the main condition under which residential houses, parts thereof, flats are seized for the needs of society.

It needs to be noted that the condition "the tenants reside therein, who were unable to implement their right to privatise them" established in the law is legally groundless. Interpreted in a linguistic manner, this condition would mean that the said tenants enjoyed the right to privatise the said residential houses, parts thereof, flats which belonged to the owners and to which the rights of ownership are being restored. However, according to the laws, the tenants never enjoyed such a right. The right of citizens to privatise the rented residential houses, parts thereof, flats was established in the 28 May 1991 Law on the Privatisation of Flats. It was established in Article 3 of the said law that under this law, one is prohibited from selling (privatising) "the residential houses, flats, which were seized, confiscated or nationalised by administrative acts or in other ways from the citizens of Lithuania who have the right to the restoration of the rights of ownership under Article 2 of the Republic of Lithuania Law 'On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property'" (Item 4 of Paragraph 1 of Article 3). Although the Law on the Privatisation of Flats used to be amended and supplemented for more than once, however, neither the said law, nor other laws ever consolidated a provision whereby the tenants residing in the houses, parts thereof, flats subject to being returned (already returned) to the owners would enjoy the right to privatise the residential premises rented by them.

The person may implement any right only provided he enjoys such a right. It is evident that if the persons did not have the right to privatise residential houses, parts thereof, flats, they could not have any right to implement the aforementioned right. Therefore, the condition "the tenants reside therein, who were unable to implement their right to privatise them" established in Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is grounded on legally deficient preconditions.

12. It needs to be noted that the state, having chosen the model of privatisation of flats in 1991, when part of the persons, who, as well as the other tenants, rented premises assigned to the state (public) housing stock, were unable to buy (privatise) them, since these were residential houses, parts thereof, flats that had been unlawfully nationalised or disseized in other unlawful ways, also undertook an obligation to allot other residential premises of equal value to the tenants residing in residential houses, parts thereof, flats subject to being returned (already returned) to the owners, to allot them gratis land plots for construction of residential houses or to compensate the acquisition of residential premises. Until the state has not fulfilled this obligation,

the legal expectations of the tenants, which are protected by the Constitution and laws, will not be met. It is clear from the case material as well as testimonies of the witnesses in this case that the state has not fulfilled its obligations before the tenants residing in residential houses, parts thereof, flats subject to being returned (already returned) to the owners. It is also clear from the case material that a concrete state programme has not been designed and confirmed yet in order to solve this problem, which should be supported with necessary financial and other resources.

It has been mentioned that, under the Constitution, the state has a duty to fulfil the obligations that it has undertaken. Since the obligations undertaken by the state in regard of the tenants have not been fulfilled yet, one is to hold that the legal expectations of the tenants residing in residential houses, parts thereof, flats subject to being returned (already returned) to the owners are being violated.

13. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether the following provisions of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) are not in conflict with Article 23 of the Constitution: "Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

14. It needs to be noted that the provisions of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), which are disputed by the petitioner, a group of members of the Seimas, are linked with different legal situations: the provision "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" is linked with the legal situation when citizens have already been restored their rights of ownership to residential houses, parts thereof, flats subject to being returned in kind.

Another provision of Paragraph 2 of Article 15 (wording of 15 January 2002) of the said law, which reads: "Residential

houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" is linked with the legal situation when citizens have not been restored completely yet their rights of ownership by returning residential houses, parts thereof, flats in kind.

15. While deciding whether the provision "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Article 23 of the Constitution, the fact is of essential importance as to from what moment the citizen who has been restored the right of ownership acquires the rights to particular property. In its ruling of 15 July 1994, the Constitutional Court held that "after the state authorised institution adopts a decision to return the property in kind or to compensate for it, it has the juridical meaning that from that moment the former owner acquires the rights of the owner". It needs to be noted that when the rights of ownership are restored on the grounds of law, for their protection the norms of Article 23 of the Constitution are applied in full extent (Constitutional Court ruling of 20 June 1995). Thus, after a state authorised institution adopts a decision to restore the right of ownership to a person to residential houses, parts thereof, flats subject to being returned in kind, such a person acquires the rights of ownership protected and safeguarded by Article 23 of the Constitution.

16. Under Paragraph 3 of Article 23 of the Constitution, property may only be seized for the needs of society in accordance with the procedure established by law and shall be justly compensated for.

It has been mentioned that the needs of society indicated in Paragraph 3 of Article 23 of the Constitution, for which property may be seized according to the procedure established by law and must be adequately compensated for, are interests of either the whole or part of society, which the state, while implementing its functions, is constitutionally obligated to secure and satisfy; the needs of society, for which property is seized, are always particular and clearly expressed needs of society for a concrete object of property; it is permitted to seize property (by adequately compensating for) only for such public needs which would not be objectively met if a certain concrete object of property were not seized; the person whose property is being seized for the needs of society has the right

to demand that the established compensation be equivalent in value for the property seized. It has also been mentioned that the seizure of property established in Paragraph 3 of Article 23 of the Constitution is an individual decision concerning seizure of private property held as private ownership which is made in every concrete case according to the procedure established by law; that, while adopting a decision on seizure of property for the needs of society, one must, at the same time, establish concrete amount of compensation for the property seized, the procedure of payment of the compensation to the owner; that the owner must be notified about the seizure of his property and the amount of the compensation for it as well as other conditions prior to the adoption of a decision on seizure of the property for the needs of society; that until the institution which intends to adopt a decision on the seizure of property and the owner do not reach an agreement over the compensation for the property seized, or until their dispute is settled by court, property may not be seized from the owner.

17. It has been mentioned that under Item 2 of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who, as it is pointed out in the law "were unable to implement their right to privatise them", when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats. It means that from the persons pointed out in Item 2 of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), who are, as of the adoption of the decision of the state authorised institution to restore the rights of ownership, the owners of the residential houses, parts thereof, flats, then the said residential houses, parts thereof, flats, are seized not in every individual case while deciding on an individual basis, under procedure established by law, whether the property under private ownership in question must be seized for the needs of society, however, the property is seized as the law obligates to seize such property. Thus, property is seized from the owner without deciding whether or not there exists a particular need of society for the residential house, part thereof, flat belonging to a concrete person by right of ownership, and without any prior agreement with the owner on the compensation for the property seized. The condition pointed out in Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) under which residential houses, parts thereof, flats are not returned in kind but are seized, i.e. when the tenants reside therein who, as it is pointed out in the law, "were unable to implement their right to privatise them", may not be regarded as one expressing the need of society for a particular object of property. In itself, the circumstance that the tenants reside in the said residential houses, parts thereof, flats, who, as it is pointed

out in the law, "were unable to implement their right to privatise them", does not constitute a ground to seize the said residential houses, parts thereof, flats, from the citizens, though compensating them for this.

18. Taking account of the arguments set forth, one is to conclude that the provision "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was in conflict with Article 23 of the Constitution.

19. Another provision of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), which reads: "Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats", which is disputed in the petition of 24 January 2002 of the petitioner, a group of Seimas members, is linked with the legal situation when citizens have not been restored completely yet their rights of ownership by returning residential houses, parts thereof, flats in kind.

20. It has been mentioned that although the legislator enjoys the discretion to establish the conditions and procedure of restoration of the rights of ownership, however, when establishing, by laws, the conditions and procedure of the rights of ownership to the existing real property, one is to take account of the constitutional principles of the protection of the right of ownership.

21. It has also been mentioned that the condition established in Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) when the residential houses, parts thereof, flats are seized and compensated for in case the tenants are residing therein who, as it is pointed out in the law, "were unable to implement their right to privatise them" is legally groundless, and it cannot be regarded as one expressing a need of society for a particular object of property. In itself, the circumstance that the tenants reside in the said residential houses, parts thereof, flats, who, as it is pointed out in the law, "were unable to implement their right to privatise them", does not constitute a ground to seize the said residential houses, parts thereof, flats, from the citizens, though compensating them for this.

22. After it has been established in Paragraph 2 of

Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats", the constitutional principles of the protection of the right of ownership are disregarded.

Such legal regulation is not in line with Article 23 of the Constitution.

23. Taking account of the arguments set forth, one is to conclude that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it provides that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" was in conflict with Article 23 of the Constitution.

24. It needs to be noted that the state may not solve the problem of provision of the tenants with residential premises which would belong to them by right of ownership at the expense of the persons to whom the rights of ownership have already been restored to the residential houses, parts thereof, flats subject to being returned in kind. This problem may not be solved at the expense of the persons who have not been restored completely the rights of ownership by returning the residential houses, parts thereof, flats in kind, either. The legitimate interest of the tenants residing in the residential houses, parts thereof, flats subject to being returned (already returned) in kind to the owners to acquire residential premises of equal value by right of ownership must be ensured by other ways.

25. The petitioner, a group of members of the Seimas, requests to investigate whether the following provisions of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) are not in conflict with Article 29 of the Constitution: "Residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein,

who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats."

26. It has been mentioned that under the legal regulation established in Article 15 and Paragraph 1 of Article 8 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, which was in effect until the entry into effect of the law adopted on 15 January 2002, citizens had the right to restore their rights of ownership by getting back the residential houses, parts thereof, and flats in kind which were not specified in Article 15.

27. If compared with the former legal regulation, Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) establishes new features, characterising residential houses, parts thereof, flats that are subject to state buy-out. Thus, new grounds are established in Paragraph 2 of Article 15 of the law, when residential houses, parts thereof, flats are not returned to the owners in kind. Consequently, these citizens, from the viewpoint of the protection of the rights of ownership, have been placed in a worse legal situation if compared with those citizens that had the right to restore their rights of ownership under Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) which used to be in force until then.

Such legal regulation disregards the principle of equality of rights of persons, which is entrenched in Article 29 of the Constitution.

28. Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property provides that residential houses, parts thereof, flats are seized not from all the citizens specified in Article 2 of the said law: they are not seized from the citizens specified in Paragraph 1 of Article 20 of the same law. It has been mentioned, that such citizens are defined in Paragraph 1 of Article 20 as follows: citizens who have been "returned a residential house, part thereof, flat in kind, and one flat is rented to persons residing therein according to the agreement of tenancy by the municipality".

Thus, Paragraph 2 of Article 15 of the law (wording of 15 January 2002) establishes the legal regulation when the owners themselves are differentiated: both from the aspect of the right of ownership to residential houses, parts thereof, flats by returning them in kind, and from the aspect of seizure of residential houses, parts thereof, flats, from the owners, the latter are in unequal legal situation, although there are not any such differences between them, which might objectively justify such an unequal treatment.

Such legal regulation is not in line with the constitutional principle of equality of rights of persons, entrenched in Article 29 of the Constitution.

29. Taking account of the arguments set forth, one is to conclude that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it is established that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of

Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" was in conflict with Article 29 of the Constitution.

IX

On the compliance of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "until that time the owner shall be prohibited <...> from evicting the tenants" which used to be in Paragraph 1 of the same article (wording of 13 May 1999) is not in conflict with Article 29 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision prohibiting the owner from evicting the tenants until the state fulfils the guarantees granted to them, which used to be in Paragraph 1 of the same article (wording of 13 May 1999), is not in conflict with Article 29 of the Constitution.

2. Paragraph 1 of Article 20 of the Law (wording of 13 May 1999) established: "When a residential house, part thereof, flat in which tenants reside, is given back to a citizen in kind, all the tenants' rights and duties, according to the agreement of tenancy of residential premises, shall, in the manner prescribed by the Government, be taken over by the municipality until the time when the State fulfils the guarantees granted to them. Until that time the owner shall be prohibited from terminating the agreement of tenancy with the municipality and shall be prohibited from evicting the tenants, with the exception of the cases provided for in the Civil Code".

3. After Article 20 of the said Law had been amended by Article 7 of 15 January 2002 Law on the Amendment and Supplement of Article 2, 8, 12, 15, 16, 18, 20, 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, it ran as follows:

"1. When a citizen is returned a residential house, part thereof, flat in kind, and one flat is rented to persons residing therein according to the agreement of tenancy by the municipality, the institution which has adopted a decision to return the citizen the residential house, part thereof, must, within one year of the entry into force of this Law, issue the tenants residing therein a State guarantee certificate on the State guarantee established for the tenant. Such a guarantee certificate is also issued to the owner of the house, part

thereof, which is being returned. The State guarantees, execution thereof, the rights and duties of those enjoying the said guarantees shall be established by the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property.

2. If the owner of a residential house sells the returned residential house, part thereof, flat, the tenants have the priority right to buy it."

4. It needs to be noted that the fact itself that Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) does not literary establish the provision prohibiting the owner to evict the tenants until the state fulfils the guarantees granted to them does not mean that the prohibition does not exist in Article 20 of the law (wording of 15 January 2002) at all and the owners, according to this article, acquired the right to evict the tenants before the state fulfils the guarantees granted to the tenants.

Under Paragraph 1 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), the institution which has adopted a decision to return the citizen the residential house, part thereof, must, within one year of the entry into force of this law, issue the tenants residing therein a state guarantee certificate on the state guarantee established for the tenant; Paragraph 1 of this article also establishes that the state guarantees, execution thereof, the rights and duties of those enjoying the said guarantees shall be established by the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property.

In the state guarantee certificate (guarantee), the state undertakes an obligation that the tenants, who reside in a house, part thereof, flat which is given back to a citizen, within the time period indicated in this document: 1) will be transferred the ownership to other residential premises gratis, or 2) will be provided residential premises of higher value, while transferring them gratis the ownership to the part the value of which corresponds to the value of the rented premises, while they will have to buy out the remaining part according to the procedure and terms established by the Government, or 3) will be transferred gratis the ownership to other residential premises of lower value, while being compensated the difference in value of the rented and transferred premises according to the procedure and terms established by the Government, or 4) will be transferred gratis the ownership to a land plot for the construction of a residential house and will be given a credit under preferential conditions for this construction, or 5) will be given a credit under preferential conditions for the construction or purchasing of residential premises, or 6) will be compensated the expenses of acquisition of other residential premises. The tenants of the house, part thereof, flat which is returned to a citizen in kind have the right only to one of the indicated guarantees.

Paragraph 4 of Article 9 of the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for

the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 21 March 2000) provides that the state guarantee for the tenant shall be a certificate issued under established procedure whereby the state (guarantor) shall obligate itself to fulfil the guarantee specified in Paragraph 1 of this Article for the tenant (possessor of the guarantee) of the house, part thereof, flat which is returned, while the tenant (possessor of the guarantee) shall obligate himself, after the guarantee is fulfilled, to vacate the held residential premises during the time period established in Paragraph 7 of this article. The provision that the tenant shall obligate himself, only after the guarantee is fulfilled, to vacate the held residential premises, means that, before such a state guarantee is granted and actually fulfilled, the tenant may not be evicted from the residential house, part thereof, flat which is returned to the owner only because the rights of ownership of the owner have been restored by giving back the residential house, part thereof in kind.

It also needs to be noted in the context of the case at issue that after the state guarantee has been fulfilled, the tenant must vacate the held residential premises. The Constitutional Court in its ruling of 15 June 1994 held that "in cases when restoring the rights of ownership of former owners to residential houses, the tenants occupying these houses are allotted other dwelling units, which comply with the requirements prescribed by laws, it is considered a sufficient measure employed to protect the tenants' rights". In the said ruling the Constitutional Court also held that "the condition that, in cases when the tenants do not agree to change the agreement of tenancy, residential houses shall not be returned, set forth in the Law, is not in conformity with the provisions of property protection established in Article 23 of the Constitution".

Having held that Article 20 of the Law contains a reference to the Law on the Amount, Sources, Terms and Procedure of Payment of Compensations for the Real Property Bought Out by the State as well as the Guarantees and Preferences Provided for in the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), Article 9 of which establishes a guarantee for the tenants not to be evicted from the rented premises before the state fulfils the guarantees granted to them, one is also to hold that the situation of these persons was not deteriorated, and their status was not made unequal if compared to those, who had been granted the above-mentioned guarantees by Article 20 of the law (wording of 13 May 1999), which had been in force before it was amended and supplemented by the law of 15 January 2002.

5. Taking account of the arguments set forth, one is to conclude that Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent considered in this case is not in conflict with Article 29 of the Constitution.

X

On the compliance of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the

extent that this article no longer contains the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) with Article 29 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) is not in conflict with Article 29 of the Constitution.

2. In Paragraph 6 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) was inter alia established: "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises".

3. After Article 20 of the said Law (wording of 13 May 1999) had been amended by Article 7 of the 15 January 2002 Law on the Amendment and Supplement of Article 2, 8, 12, 15, 16, 18, 20, 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property, the former provision that "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" was eliminated. This provision was not established in other articles of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), either.

4. Therefore, after Article 20 the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 13 May 1999) was amended on 15 January 2002, the tenants, who continued to reside in the residential houses, parts thereof, flats, the owners of which did not wish to retrieve them, lost the right to buy out these premises. The legal situation of these tenants was deteriorated if compared to the tenants who had the right to buy out specified rented premises under the former legal regulation. Thus, the principle of equality of persons, established in Article 29 of the Constitution, was violated.

5. Taking account of the arguments set forth, one is to conclude that Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) is in conflict with Article 29 of the Constitution.

XI

On the compliance of the provision "if the implementation of the decision has begun, it may be abolished by the procedure

established by the Government" of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) with Paragraph 1 of Article 30 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 24 January 2002 requests to investigate whether the provision "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Paragraph 1 of Article 30 of the Constitution.

2. Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) provides: "Until 1 July 2002 a citizen may change his will concerning the way employed by the State for compensation of the bought out real property, if the decision on restoration of the rights of ownership has not been adopted. If the decision has been adopted, but its implementation has not begun yet, it shall, on the request of a citizen, be changed by institutions specified in Article 17 of this Law under the administrative procedure, while if the implementation of the decision has begun, it may be abolished by the procedure established by the Government. Citizens must submit requests on the amendment or abolishment of the adopted decisions until 1 July 2002."

3. Article 2 of the Law on the Amendment of Article 10 and 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property adopted by the Seimas on 15 January 2002 amended Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002), however, the provision of this article, which is disputed by the petitioner, remained unchanged.

4. Paragraph 1 of Article 30 of the Constitution provides: "The person whose constitutional rights or freedoms are violated shall have the right to apply to court."

The constitutional right to apply to court means that every person in a state under the rule of law is ensured an opportunity to defend his rights in court from actions of other persons and of state institutions and their officials. The provision of Paragraph 1 of Article 30 of the Constitution that the person whose constitutional rights and freedoms are violated shall have the right to apply to court consolidates the constitutional right of the person to an impartial arbiter of the dispute (Constitutional Court rulings of 1 October 1997 and 12 July 2001). Paragraph 1 of Article 30 of the Constitution establishes the constitutional principle of priority and universality of judicial protection, the effectiveness of which is directly related to the provision of Article 29 of the Constitution that all persons shall be equal before the law (Constitutional Court ruling of 18 April 1996). The person's right to apply to court may not be restricted or limited, for it would threaten one of the most significant values of a state under the rule of law. The Constitutional Court in its ruling of 8 May 2000 held that the person is guaranteed the protection of his violated rights in court irrespective of his legal status, and that violated rights and legal interests of persons should be protected by courts irrespective of the fact whether they are directly established in the Constitution or not. It needs to be noted that, according to the Constitution,

the legislator is obligated to establish the legal regulation which would make it possible to decide in courts all disputes concerning violations of rights and freedoms of persons. The out-of-court procedure for settlement of disputes may be established as well. However, it is not permitted to establish any such legal regulation, which would deny the right of the person, who considers that his rights and freedoms have been violated, to protect his rights and freedom in court (Constitutional Court ruling of 2 July 2002).

5. While deciding whether the provision of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" is not in conflict with Paragraph 1 of Article 30 of the Constitution, it should be pointed out that, according to Paragraph 3 of Article 21 of the said law, if the implementation of a decision on restitution of the rights of ownership has begun, this decision may be abolished by the procedure established by the Government only in case a citizen, whose rights of ownership have been restored, requests so himself. Therefore, the disputed provision of the law establishes the right of the person to request to change his former will concerning the way employed by the state for compensation of the bought out real property: if the implementation of the decision has begun, such a decision may be abolished, upon a request of the citizen, by the procedure established by the Government.

The disputed provision of Paragraph 3 of Article 21 of the Law (wording 15 January 2002) does not mean that it contains prohibition for a citizen to apply to court concerning protection of his violated rights.

6. Taking account of the arguments set forth, one is to conclude that the provision "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" of Paragraph 3 of Article 21 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with Paragraph 1 of Article 30 of the Constitution.

XII

On the compliance of Item 2 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Article 29 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003 requests to investigate whether the provision of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (2) private ownership to them has been acquired according to the laws".

2. Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) contains the provision that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this

Law if: <...> (2) private ownership to them has been acquired according to the laws".

3. It needs to be noted that lawful state property could not and did not appear on the grounds of illegal nationalisation carried out by the occupation government, and other illegal administrative acts, and the property disseized from the people was factually only state managed property, but, according to the laws, which were in force at that time, and the procedure prescribed thereby, public, co-operative organisations (enterprises) or collective farms were permitted to transfer the right of ownership to their factually managed residential houses, parts thereof, flats to natural persons. The natural persons, while acquiring residential houses, parts thereof, flats on contracts, did so according to legal acts and conformed to the rules of conclusion of contracts which were in force at that time, as well as performed the obligations ensuing from the contracts. The Constitutional Court in its ruling of 15 June 1994 held that "upon denial of the rights of ownership which appeared on the basis of lawful contracts, the contents of existing legal relations would be changed. Therefore, while restoring the rights of ownership to residential houses transferred for natural persons by the state, public and co-operative organisations (enterprises) or collective farms, the rights of natural persons, who have acquired such property, should be protected along with the rights of the former owners". The Constitutional Court also held in the said ruling that "it would not be fair to seize the residential house (or a part thereof) against the will of the natural person, who has acquired it on the contract, without violation of normative acts that were in effect at the time of acquisition, and which is under the management and disposition of this natural person, and to return it to the former owner".

4. Taking account of the arguments set forth, one is to conclude that the provision of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) "residential houses, parts thereof, flats shall be bought out by the State from the citizens indicated in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> 2) private ownership of them has been acquired according to the laws" is not in conflict with Article 29 of the Constitution.

XIII

On the compliance of Items 4, 5, 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Article 23 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003 requests to investigate whether Items 4, 5, 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) are not in conflict with Article 23 of the Constitution.

2. Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) stipulates:

"Residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...>

4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats;

5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats;

6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of this Law in kind."

3. In the context of the case at issue, having compared the legal regulation established in Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with that established by Paragraph 2 of Article 15 of the said law (wording of 15 January 2002), one can see that Article 15 of the law (wording of 29 October 2002) was inter alia amended and supplemented in the following way:

1) instead of the former provision of this article (wording of 15 January 2002) that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law" it was established that "the State shall buy out residential houses, parts thereof, flats from the citizens specified in Article 2 of this Law, and compensate for according to Article 16 of this Law". The essence of this amendment is that the former formula "seized for the needs of society" was changed by the formula "bought out by the State".

2) this article (wording of 15 January 2002) contained the provision "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats"; this article (wording of 29 October 2002) provides that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this

Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of this Law in kind."

Therefore the amendments and supplements of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property made by the Law of 29 October 2002 did not establish essentially different legal regulation from the one established in Article 15 (wording 15 January 2002):

1) upon changing the former formula of Article 15 (15 January 2002) "seized for the needs of society" by the formula "bought out by the State", there remained the former legal regulation establishing that the State shall buy out residential houses, parts thereof, flats from the citizens, whose ownership rights to residential houses, parts thereof, flats have been restored;

2) the legal regulation which was established by Article 15 (wording of 15 January 2002) of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property remained in this article (wording 29 October 2002) as well, stipulating that the rights of ownership of the citizens may not be restored by giving back residential houses, parts thereof, flats in kind, because, as indicated by the Law, the tenants "who were unable to implement their right to privatise them" reside there.

4. It has been held in this Ruling of the Constitutional Court that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording 15 January 2002) to the extent that it is established that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in

kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" was in conflict with Article 23 and 29 of the Constitution.

5. On the grounds of the same arguments, one is to conclude that Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) to the extent that it provides that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of the Law in kind" is in conflict with Article 23 and 29 of the Constitution.

XIV

On the compliance of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Articles 23, 29 and Paragraph 1 of Article 30 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003 requests to investigate whether Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29 and Paragraph 1 of Article 30 of the Constitution.

2. Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) stipulates: "Institutions indicated in Article 17 of this Law, within 30 days, shall inform the persons specified in Items 4, 5 and 6 of Paragraph 1 of this Article by registered mail about the adopted decision to buy out the residential houses, parts thereof, flats and register the property in the Real Property Register as state or municipal property".

3. Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) provides for the types of actions that the institutions specified in Article 17 of the Law must carry out after the decision to buy out the residential houses, parts thereof, flats has been adopted. This

means that Paragraph 2 of this article regulates the implementation of the adopted decisions to buy out residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of this law.

The wording "about the adopted decision to buy out the residential houses, parts thereof, flats" means that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) also establishes the right of the state to buy out the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of this Law (wording of 29 October 2002) from citizens.

4. While deciding, whether Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution, one should take account of the fact that the provisions of this paragraph are inseparable from the provisions of Paragraph 1 of Article 15 of the said law (wording of 29 October 2002), which provide that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of the Law in kind".

It is obvious that according to Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), information about the adopted decision to buy out the residential houses, parts thereof, flats can be delivered only after adoption of the decision to buy out residential houses, parts thereof, flats.

5. It has been held in this Ruling of the Constitutional Court that the provisions of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) stipulating that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof,

flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of the Law in kind" are in conflict with Articles 23 and 29 of the Constitution.

6. Taking account of the fact that this Ruling of the Constitutional Court has recognised the provisions of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), establishing the buying out of residential houses, parts thereof, flats indicated in Items 4, 5 and 6 of this paragraph, to be in conflict with Articles 23 and 29 of the Constitution, also taking account of the fact that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) regulates the implementation of the said provisions, which are in conflict with the Constitution, one is to hold that Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is in conflict with Articles 23 and 29 of the Constitution.

7. While deciding, whether Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Paragraph 1 of Article 30 of the Constitution, it should be noted that, upon establishing in Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) the provisions concerning the buying out of residential houses, parts thereof, flats, specified therein, the law did not establish the duty of institutions, which adopt decisions to buy out the said residential houses, parts thereof, flats, to inform the citizen, from whom the said residential houses, parts thereof, flats are bought out, about such a decision before its adoption. Paragraph 2 of Article 15 of the law (wording of 29 October 2002) establishes a duty of institutions to inform the citizens about the adopted decision to buy out residential houses, parts thereof, flats; this paragraph also provides that information must be delivered within 30 days. Therefore, Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) establishes a duty of institutions to inform the citizens about a legal fact that has occurred, i.e. that their residential houses, parts thereof, flats have already been bought out; under Paragraph 2 of Article 15 of the said law (wording of 29 October 2002), the citizen may be

informed about the said legal fact not immediately after the adoption of such a decision, but much later-within 30 days.

8. Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) also establishes a duty to the institutions to register the bought out residential houses, parts thereof, flats as state or municipal property in the Real Property Register within three months. It needs to be noted that the law does not provide from which moment one begins to calculate the said three month period-whether from the adoption of the decision to buy out the residential houses, parts thereof, flats, or the day of delivering the information to the citizens, whose premises have been bought out. Therefore, according to the legal regulation established in Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), there exists a possibility for a legal situation when the residential houses, parts thereof, flats bought out from a citizen, will be registered in the Real Property Register as state or municipal property without informing the citizens that the residential houses, parts thereof, flats have been bought out from them.

Attention should be paid to the fact that, according to Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register. Thus, the legal regulation established by Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) creates preconditions for a legal situation, which will allow to sell the residential houses, parts thereof, flats, bought out from the citizens, to the tenants without even informing the citizens that their residential houses, parts thereof, flats have been bought out.

9. It needs to be noted that though the provisions of Paragraph 2 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) do not formally deprive a person of the right to apply to court for the protection of violated rights, however, taking account of the fact that they are directly related with the provisions of Items 4, 5 and 6 of Article 15 of the Law (wording of 29 October 2002), which, as has been stated in this ruling of the Constitutional Court, are in conflict with Articles 23 and 29 of the Constitution, also taking account of the fact that the provisions of Paragraph 2 of Article 15 of the Law (wording of 29 October 2002) regulate the implementation of Items 4,5 and 6 of Paragraph 1 of Article 15 of the law (wording of 29 October 2002), which are in conflict with the Constitution, one is to conclude that the legal regulation established in Paragraph 2 of Article 15 (wording 29 October 2002) is one which virtually interferes with the person's opportunity to make use of his constitutional right to the real judicial protection.

10. Taking account of the arguments set forth, one is to conclude that Paragraph 2 of Article 15 of the Law on the

Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is in conflict with Paragraph 1 of Article 30 of the Constitution.

XV

On the compliance of Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Article 23 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003 requests to investigate whether Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution.

2. Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) provides: "The executive institution of the municipality shall rent residential houses, parts thereof, flats seized from the citizens, to the tenants, who reside there."

3. The provision of Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) that the executive institution of the municipality rents residential houses, parts thereof, flats, seized from the citizens, to the tenants residing there, means that this article regulates the implementation of the adopted decisions to seize residential houses, parts thereof, flats indicated in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the Law (wording of 29 October 2002) from the citizens.

4. The formula "residential houses, parts thereof, flats seized from the citizens" means that this paragraph also establishes the right of the state to seize the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the said law (wording of 29 October 2002) from the citizens.

5. While deciding whether Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution, one should take account of the fact that the provisions of Paragraph 4 of Article 15 of the Law (wording of 29 October 2002) are inseparable from the provisions of Paragraph 1 of Article 15 (wording of 29 October 2002) stipulating that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof,

flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of the Law in kind".

6. It has been held in this Ruling of the Constitutional Court that the said provisions of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) are in conflict with Articles 23 and 29 of the Constitution.

7. Taking account of the fact that this Ruling of the Constitutional Court has recognised the provisions of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), which establish buying out of the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of this paragraph, to be in conflict with Articles 23 and 29 of the Constitution, as well as of the fact that Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) regulates the implementation of the above-mentioned provisions, which are in conflict with the Constitution, one is to hold that Paragraph 4 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is in conflict with Articles 23 and 29 of the Constitution.

XVI

On the compliance of Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Article 23 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003 requests to investigate whether Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution.

2. Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) stipulates:

"The State shall reimburse citizens for the residential houses, parts thereof, flats which are bought out by the State, by fairly compensating according to the market value, pursuant the Law on the Basis for Evaluation of Property and Business, in the following ways:

1) by transferring gratis for their ownership the flats, rented by them, from the state or municipal housing stock, the difference in values whereof shall be paid under procedure established by the Government;

2) by transferring gratis, under procedure established by the Government, the ownership of the flats which are equal in value to the previously held houses, parts thereof, flats;

3) by transferring gratis the ownership of a new plot of land for individual construction, equal in value to the houses, parts thereof, flats held previously, in the locality where they were situated. At the request of the citizen, an

equivalent new plot of land for individual construction may be, under procedure established by the Government, transferred gratis for ownership in the towns and rural areas other than those where the residential houses, parts thereof, flats were situated, except the towns of Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Alytus, Marijampolė, Druskininkai, Palanga, Birštonas, and Neringa;

4) by transferring gratis the ownership of vacant, not rented buildings, facilities or parts thereof equal in value to the houses, parts thereof, flats held previously. The procedure for the transfer of these buildings, structures and parts thereof shall be established by the Government;

5) by making void a citizen's liabilities to the State by way of inclusion, which occurred after the seizure of the real property up to the passing a decision to restore the rights of ownership, in accordance with the procedure established by the Government;

6) by transferring gratis the ownership of other property under procedure established by the Government;

7) in cash and/or in securities."

3. Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) only establishes possible ways of compensation for the bought out residential houses, parts thereof, flats to the citizens. The fact that the law establishes possible ways of compensation for the bought out residential houses, parts thereof, flats to the citizens cannot be considered inconsistent with Article 23 of the Constitution, because just compensation also ensures restoration of the rights of ownership, if there is no possibility to give back residential houses, parts thereof, flats to the owners in kind (Constitutional Court rulings of 27 May 1994, 22 December 1995, 18 June 1998).

4. Taking account of the arguments set forth, one is to conclude that Paragraph 10 of Article 16 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Article 23 of the Constitution.

XVII

On the compliance of the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution.

1. The petitioner, a group of members of the Seimas, in its petition of 6 January 2003, requests to investigate whether the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of

Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution.

2. Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) provides: "The tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register."

3. Paragraph 3 of Article 20 of the aforesaid law (wording of 29 October 2002) establishes the right of the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register. It needs to be noted that this right of the tenants to buy out the said premises under preferential conditions is linked with the right of the state provided for in Paragraph 1 of Article 15 of the law (wording of 29 October 2002) to buy out the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the same law, i.e., it is such residential houses, parts thereof, flats bought out by the state that the residents have the right to buy out under procedure established by the Government.

4. It has been held in this Ruling of the Constitutional Court that the provisions of Items 4, 5 and 6 of Paragraph 1 of Article 15 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) establishing the right of the state to buy out the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the same law (wording of 29 October 2002) are in conflict with Articles 23 and 29 of the Constitution, that Paragraph 2 of Article 15 of the same law (wording of 29 October 2002) is in conflict with Articles 23 and 29 as well as Paragraph 1 of Article 30 of the Constitution, that Paragraph 4 of Article 15 of the same law (wording of 29 October 2002) is in conflict with Articles 23 and 29 of the Constitution.

Having held this, one is also to hold that the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of Paragraph 3 of Article 20 of the Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), to the extent that it establishes the right of the tenants to buy out under preferential conditions also the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the same law is in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 54, 55, 56, Item 2 of Paragraph 1 of Article 69 and Paragraph 3 of the same article 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 of Article 14 of the Republic of Lithuania Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses from the persons specified in Article 2 of this law provided they are indispensable for state necessities was not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that Government of the Republic of Lithuania Resolution No. 27 "On the Buying Out of the Residential Houses Which are Indispensable for State Necessities" of 17 January 1994 to the extent that it confirmed that the residential house at Vytauto Ave. 27, Kaunas, was indispensable for state necessities and was to be bought out is not in conflict with the Constitution of the Republic of Lithuania and the provision of Article 14 of the Republic of Lithuania Law "On the Procedure and Conditions of Restoration of the Rights of Ownership of Citizens to the Existing Real Property" (wording of 12 January 1993) permitting the state to buy out the residential houses which are indispensable for state necessities.

3. To recognise that Paragraph 1 of Article 2 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002 and wording of 29 October 2002) to the extent that it no longer contains the provision which used to be in Item 5 (wording of 13 May 1999) of the same paragraph, under which it used to be established that the rights of ownership to the real property were to be restored to the citizens of the Republic of Lithuania to whom the property had been transferred by testament (house testament) or agreements (of purchase and sale, gift, or by another written document) while disregarding the form and procedure established by the law, also the citizens, who had been bequeathed property by testament by successors to the rights of the property, is in conflict with Articles 23 and 29 of the Constitution of the Republic of Lithuania as well as the constitutional principle of a state under the rule of law.

4. To recognise that that the provision "the rights of ownership to the real property specified in Article 3 of this law shall be restored to the citizens of the Republic of Lithuania whose property was not <...> mortgaged prior to the 15 June 1940 occupation" of Item 5 of Paragraph 1 of Article 2 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was in conflict with Articles 23 and 29 of the Constitution of the Republic of Lithuania.

5. To recognise that that the provision "the rights of ownership to the real property specified in Article 3 of this law shall be restored to the citizens of the Republic of Lithuania whose property was not sold by auction <...> prior to

the 15 June 1940 occupation" of Item 5 of Paragraph 1 of Article 2 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) was not in conflict with the Constitution of the Republic of Lithuania.

6. To recognise that Paragraph 2 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that it provides that "residential houses, parts thereof, flats shall be seized from the citizens specified in Article 2 of this Law, save those specified in Paragraph 1 of Article 20, for the needs of society and they shall be compensated under Article 16 of this Law, if: <...> (2) the citizens have been restored the rights of ownership to the residential houses, parts thereof, flats subject to being returned in kind, in which the tenants reside, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (3) the tenants reside therein, who were unable to implement their right to privatise them, when the citizens have been returned parts of the houses in kind, in which they reside, or they have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats" was in conflict with Articles 23 and 29 of the Constitution of the Republic of Lithuania.

7. To recognise that Article 20 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "until that time the owner shall be prohibited <...> from evicting the tenants" which used to be in Paragraph 1 of the same article (wording of 13 May 1999) is not in conflict with the Constitution of the Republic of Lithuania.

8. To recognise that Article 20 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) to the extent that this article no longer contains the provision "the tenants who continue to reside in the residential houses, parts thereof, flats the owners of which do not wish to retrieve them, shall acquire the right to buy out these premises" which used to be in Paragraph 6 of the same article (wording of 13 May 1999) is in conflict with Article 29 of the Constitution of the Republic of Lithuania.

9. To recognise that the provision "if the implementation of the decision has begun, it may be abolished by the procedure established by the Government" of Paragraph 3 of Article 21 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 15 January 2002) is not in conflict with the Constitution of the Republic of Lithuania.

10. To recognise that the provision of Paragraph 1 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) "residential houses, parts thereof, flats shall be bought out by the State from the citizens indicated in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> 2) private ownership of them has been acquired according to the laws" is not in conflict with the Constitution of the Republic of

Lithuania.

11. To recognise that Paragraph 1 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) to the extent that it provides that "residential houses, parts thereof, flats shall be bought out by the State from the citizens specified in Article 2 of this Law and compensated for according to Article 16 of this Law if: <...> (4) the tenants, who were unable to implement their right to privatise them, reside there, if at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (5) the rights of ownership of residential houses, parts thereof, flats, where tenants, who were unable to implement their right to privatise them, reside, have been restored to the citizens, and the State did not fulfil the state guarantee provided by legal acts in force to vacate the returned premises, in case at least one of the citizens specified in Article 2 of this Law has already been given back residential houses, parts thereof, flats in kind or these citizens have acquired the ownership of certain premises privatised under the Law on Privatisation of Flats; (6) the tenants, who were unable to implement their right to privatise them, reside there, if in the course of restoration or after the restoration of the rights of ownership to residential houses, parts thereof, one flat is given back to the citizens specified in Article 2 of the Law in kind" is in conflict with Article 23 and 29 of the Constitution of the Republic of Lithuania.

12. To recognise that Paragraph 2 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of the Constitution of the Republic of Lithuania.

13. To recognise that Paragraph 4 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is in conflict with Articles 23 and 29 of the Constitution of the Republic of Lithuania.

14. To recognise that Paragraph 10 of Article 16 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) is not in conflict with the Constitution of the Republic of Lithuania.

15. To recognise that the provision "the tenants who reside in the residential houses, parts thereof, flats subject to being bought out by the state shall acquire the right to buy out the said premises under preferential conditions according to the procedure established by the Government after the legal registration of the residential house, part thereof, flat under the name of the state or the municipality in the Real Property Register" of Paragraph 3 of Article 20 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002), to the extent that it establishes the right of the tenants to buy out under preferential conditions also the residential houses, parts thereof, flats specified in Items 4, 5 and 6 of Paragraph 1 of Article 15 of the same law is in conflict with Articles 23, 29, and Paragraph 1 of Article 30 of

the Constitution of the Republic of Lithuania.

16. To dismiss the case in the part concerning the compliance of the provision "the special legal norms of this Law shall regulate the legal relations of the restoration of the rights of ownership to the existing real property" of the Preamble of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with the Constitution of the Republic of Lithuania.

17. To dismiss the case in the part concerning the compliance of Item 1 of Paragraph 1 of Article 15 of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property (wording of 29 October 2002) with the Constitution of the Republic of Lithuania.

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