QUESTIONNAIRE FOR THE XVIIIth CONGRESS OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

- **In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?**

Under the Constitution of the Republic of Lithuania (hereinafter referred to as the Constitution), in implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1 of Article 135); international treaties ratified by the Seimas of the Republic of Lithuania (hereinafter referred to as the Seimas) are a constituent part of the legal system of the Republic of Lithuania (Paragraph 3 of Article 138).

Interpreting these provisions of the Constitution, the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) has noted the following.

First, international treaties ratified by the Seimas acquire the legal force of a law (the conclusion of 24 January 1995 and the rulings of 17 October 1995, 14 March 2006, and 18 March 2014[1]). Analysing the compliance of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) with the Constitution, the Constitutional Court also noted that, after its ratification and entry into force, the ECHR would become a constituent part of the legal system of the Republic of Lithuania and would have to be applied in the same way as the laws of the Republic of Lithuania (the conclusion of 24 January 1995).

Second, the principle consolidated in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and respects the universally recognised principles of international law implies that, in cases where national legal acts (*inter alia*, laws or constitutional laws, with the exception of the Constitution itself) establish such a legal regulation that competes with a legal regulation established in an international treaty, the international treaty must be applied (the rulings of 14 March 2006, 21 December 2006, 5 September 2012, and 18 March 2014). The doctrinal provision that international treaties ratified by the Seimas acquire the legal force of a law may not be interpreted as meaning that, purportedly, it is permitted for the Republic of Lithuania not to observe its international treaties where its laws or constitutional laws establish a different legal regulation if compared to that established under international treaties (the rulings of 14 March 2006, 21 December 2006, 5 September 2012, and 18 March 2014).

Third, in the national legal system of Lithuania, ratified international treaties must be in line with the Constitution. Paragraph 1 of Article 7 of the Constitution prescribes: "Any law or other act

[1] These and other acts of the Constitutional Court are available in English on the website of the Constitutional Court at https://www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2018.

that contradicts the Constitution shall be invalid". The principle of the supremacy of the Constitution, which is consolidated in this constitutional provision, requires that the provisions of international treaties be not in conflict with the provisions of the Constitution (the ruling of 5 September 2012).

In this context, mention should also be made of the provisions of the official constitutional doctrine related to the constitutional principle of respect for international law.

First, the constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, means the imperative to fulfil, in good faith, the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties. Respect for international law is a constitutional value (the ruling of 24 January 2014) and it is an inseparable part of the constitutional principle of a state under the rule of law, whose essence is the rule of law (the rulings of 24 January 2014 and 18 March 2014, the decision of 16 May 2016, and the ruling of 22 December 2016).

Second, recognising the principles and norms of international law, the State of Lithuania may not apply essentially different standards with respect to the people of this country; considering itself as a full member of the international community, the State of Lithuania, of its own free will, recognises these principles and norms, as well as the customs of the international community, consistently integrates itself into the world culture, and becomes its natural part (the ruling of 9 December 1998). The laws of Lithuania may not establish any such standards that would be lower than those established under the universally recognised norms of international law (the ruling of 18 March 2014).

Third, in the event of the incompatibility between an international treaty of the Republic of Lithuania and the provisions of the Constitution, the duty arises from Paragraph 1 of Article 135 of the Constitution for the Republic of Lithuania to remove the said incompatibility, *inter alia*, either by renouncing the international obligations established under the international treaty in the manner prescribed by the norms of international law or by making relevant amendments to the Constitution (the ruling of 18 March 2014).

In addition, the Constitutional Court has held that, under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania and, at the same time, the constitutional principle of *pacta sunt servanda*, as long as the said international obligations have not been renounced in accordance with the norms of international law (the ruling of 24 January 2014).

In the context of this answer, it should also be noted that, on 12 March 1991, the Seimas adopted the resolution on the accession of the Republic of Lithuania to the documents of the International Bill of Human Rights. By this resolution, it was resolved to accede, among others, to the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR) and the obligation was assumed to adhere to the Universal Declaration of Human Rights (hereinafter referred to as the UDHR). It should likewise be mentioned that the Republic of Lithuania also expressed its commitment to the UDHR in the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949.[2]

[2] See the Republic of Lithuania's Law on the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949. For the text of the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 in English, see *Lithuanian Constitutionalism*. *The Past and the Present*, Vilnius, 2017, https://www.lrkt.lt/data/public/uploads/2017/12/lithuanian-constitutionalism.pdf, pp. 418–420.

On 27 April 1995, the Seimas adopted the Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Fourth, Seventh, and Eleventh Protocols Thereof.

Furthermore, attention should be drawn to the fact that, on 24 January 1995, the Constitutional Court adopted the conclusion on the compliance of the ECHR (prior to its ratification by the Seimas) with the Constitution. Having assessed the provisions of the ECHR and its protocol that were specified by the petitioner, the Constitutional Court drew the conclusion that they were not in conflict with the Constitution. In this conclusion, the Constitutional Court emphasised the significance of the ECHR, as a special source of international law, which fulfils the same function as the constitutional guarantees of human rights. In addition, the Constitutional Court has on more than one occasion held in its rulings that the jurisprudence of the European Court of Human Rights (hereinafter referred to as the ECtHR) interpreting the ECHR is, as a source of the interpretation of law, also important for the interpretation and application of Lithuanian law (*inter alia*, the rulings of 8 May 2000, 29 December 2004, and 29 September 2005).

- **What mechanism is used to invoke the international treaties in national court decision-making?**

As mentioned before, international treaties ratified by the Seimas are applied in the same way as the laws of the Republic of Lithuania; they are invoked by the ordinary courts (courts of general competence and administrative courts) of Lithuania.

- **Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.**

See the answers to the preceding two questions of this questionnaire.

I.II Supranational catalogues of human rights (the Charter)

- **Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by "radiating" through the national catalogues (a substantive point of reference in other states)?**

In response to this question, the constitutional grounds for membership of the Republic of Lithuania in the European Union (hereinafter referred to as the EU) are relevant. Membership of the Republic of Lithuania in the EU is constitutionally consolidated by the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union. On 13 July 2004, the Seimas adopted the law supplementing the Constitution with this constitutional act, as well as supplementing Article 150 of the Constitution. Under Article 150 of the Constitution, the said constitutional act is a constituent part of the Constitution.

Under Article 1 of the above-mentioned constitutional act, the Republic of Lithuania as a Member State of the EU shares with or confers on the EU the competences of its state institutions in the areas provided for in the founding Treaties of the EU and to the extent it would, together with the

other Member States of the EU, jointly meet its membership commitments in those areas, as well as enjoy membership rights. Under Paragraph 2 of this constitutional act, the norms of EU law are a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the EU, the norms of EU law are applied directly; in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

In view of these provisions of the above-mentioned constitutional act, in its ruling of 14 December 2018, the Constitutional Court noted that the duty, stemming from Paragraph 1 of Article 109 of the Constitution[3] and the constitutional principle of justice, for a court to follow law and apply it properly also includes the duty to follow EU law and apply it properly.

In this context, it should also be noted that, when interpreting the above-mentioned constitutional grounds for membership of the Republic of Lithuania in the EU, the Constitutional Court emphasises full participation by the Republic of Lithuania, as a Member State, in the EU. According to the Constitutional Court, full participation by the Republic of Lithuania, as a Member State, in the EU is a constitutional imperative based on the expression of the sovereign will of the People; full membership by the Republic of Lithuania in the EU is a constitutional value (the rulings of 24 January 2014 and 19 November 2015, the decision of 16 May 2016, and the ruling of 14 December 2018); the constitutional imperative of full participation by the Republic of Lithuania in the EU also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of EU law (the decision of 20 December 2017 and the ruling of 14 December 2018).

In its ruling of 14 December 2018, the Constitutional Court also noted that the Constitution, *inter alia*, Paragraph 1 of Article 109 thereof, the constitutional principle of justice, the constitutional imperative of full participation by the Republic of Lithuania in the EU, as well as Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, give rise to the duty of a court, in order to properly interpret the provisions of EU law that are applicable in a case under its consideration, to refer to the Court of Justice of the European Union (hereinafter referred to as the CJEU) with a request for a preliminary ruling in the event of doubts regarding the interpretation or validity of the said provisions of EU law. In this ruling, the Constitutional Court emphasised that, in order that the right of a person to the judicial defence of his/her violated constitutional rights and freedoms is effectively implemented, it is imperative that a court, with a view to adopting a fair, reasoned, and well-founded decision in a case before it, in the event that it has doubts regarding the interpretation or validity of the EU law applicable in the case concerned, properly fulfils its constitutional duty to refer to the CJEU for a preliminary ruling.[4]

The Constitutional Court has also held on more than one occasion that EU law is a source of the interpretation of the law of the Republic of Lithuania, *inter alia*, the Constitution, in those areas in which, under Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, the Republic of Lithuania shares with or confers on the EU the competences of its state institutions (the decision of 20 December 2017 and the ruling of 11 January 2019); the Constitutional Court has also noted that the jurisprudence of the CJEU, as a source of the

[3] Paragraph 1 of Article 109 of the Constitution prescribes: "In the Republic of Lithuania, justice is administered only by courts."

[4] In this context, it should be noted that, when assessing the constitutionality of national legal acts implementing EU legislation, the Constitutional Court has twice referred to the CJEU for a preliminary ruling. This was done by the Constitutional Court's decisions of 8 May 2007 and 20 December 2017.

interpretation of law, is important for the interpretation and application of Lithuanian law (*inter alia*, the ruling of 21 December 2006 and the decision of 20 December 2017).

In this context, it should be noted that, when interpreting the provisions of the Constitution in its final acts, the Constitutional Court invokes EU law, including the Charter of Fundamental Rights of the European Union and the case law of the CJEU interpreting the provisions of this Charter.

- **Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogues in your country by general courts, or as a source for judicial law-making?**

See the answer to the preceding question.

- **Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is conditioned by making a request for preliminary ruling with the Court of Justice of the EU?**

See the answer to the preceding question.

I.III National human rights catalogues

- **Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?**

The catalogue of human rights and freedoms is part of the Constitution. Human rights and freedoms are consolidated in various chapters of the Constitution, *inter alia*, in the Preamble to the Constitution, Chapter II ("The Human Being and the State"), Chapter III ("Society and the State"), Chapter IV ("The National Economy and Labour"), and Chapter XIII ("Foreign Policy and National Defence"). The Constitutional Court has noted that the human rights and freedoms consolidated in the Constitution comprise a single and harmonious system; the Constitution consolidates such a concept of human rights and freedoms under which the rights and freedoms of some persons coexist with the rights and freedoms of other persons (the ruling of 29 December 2004). The Constitutional Court has also held that the Constitution does not contain the exhaustive and final list of human rights and freedoms; no legal act may establish the final list of innate human rights and freedoms (the conclusion of 24 January 1995).

In this context, it should be noted that Article 18 of the Constitution, with which Chapter II "The Human Being and the State" of the Constitution begins, provides that "human rights and freedoms shall be innate". As noted by the Constitutional Court, this article consolidates the principle of the recognition of the innate nature of human rights and freedoms (the ruling of 29 December 2004); the innate nature of human rights means that they are inseparable from an individual and that they are linked with neither a territory nor the people; an individual holds his/her innate rights regardless of whether or not they are consolidated in the legal acts of the state (the rulings of 9 December 1998 and 29 December 2004); the initial source of the innate human rights and freedoms

is the human nature itself (the ruling of 20 November 1996). According to the Constitutional Court, the principle of the recognition of the innate nature of human rights and freedoms also reveals itself in various articles (parts of the articles) of the Constitution that consolidate certain human rights and freedoms; this principle is also one of the foundations of the constitutional order of the Republic of Lithuania as a democratic state under the rule of law: one of the major tasks of a democratic state under the rule of law is to defend and protect these rights and freedoms; the consolidation of innate human rights and freedoms in the Constitution implies the duty of the legislature and other law-making subjects, when they pass legal acts that regulate the relationships of a person and the state, to observe the priority of human rights and freedoms, to establish the sufficient measures of protecting and defending human rights and freedoms, not to violate these rights and freedoms by any means, and not to allow others to violate them (the ruling of 29 December 2004).

- **What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?**

The catalogue of human rights and freedoms that is consolidated in the Constitution is, first of all, based on the historical and constitutional tradition of Lithuania. For instance, it is declared in the Preamble to the Constitution that the legal foundations of the People of Lithuania are based on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania. The formation of the catalogue of human rights and freedoms was also influenced by the international context. In 1992, upon the approval of the procedure for organising the work of the *ad hoc* Commission for Drafting the Constitution, it was provided that, when preparing the draft Constitution, this commission would have to take into account not only the constitutions of the State of Lithuania of the inter-war period, but also the democratic beginnings of the constitutions of European states and other countries.[5]

I.IV The mutual relationship between different catalogues of human rights

- **Can you give examples from the case law of your court related to the use of any of the international catalogues?**

In this respect, mention can be made of the Constitutional Court's ruling of 28 September 2011, in which the Constitutional Court assessed the constitutionality of the provisions of the State Family Policy Concept, which had to be followed when adopting relevant legal acts regulating family relationships in the future. The impugned provisions consolidated the concept of the family based exclusively on marriage. For instance, under these provisions, a man and a woman living together, though being not married to each other, who may also be raising children (adopted children), were not regarded as a family. The Constitutional Court declared this legal regulation to be in conflict with Paragraphs 1 and 2 of Article 38 of the Constitution, consolidating the concept of the family as a constitutional value that may be founded not exclusively on the basis of marriage. Under this concept, the Constitution also protects and defends the relationships of families other than those founded on

[5] The resolution of the Supreme Council of 22 January 1992 on the organisation of the work of the *ad hoc* Commission for Drafting the Constitution, The Collection of Documents, Vol. 4, pp. 588–590.

the basis of marriage, *inter alia*, the relationships of the common life of a man and a woman who are not and were not married, including their children (adopted children), in cases where such relationships are based on permanent bonds, characteristic of the family as a constitutional institution, such as emotional affection, reciprocal understanding, responsibility, respect, shared upbringing of the children and similar bonds, as well as on the voluntary determination to take on certain rights and duties.

When interpreting the constitutional concept of the family, the Constitutional Court took into account the international obligations assumed by the State of Lithuania upon the ratification of the ECHR. Article 8 of the ECHR guarantees the right to respect for family life.

The Constitutional Court noted that the concept of the family, which is analysed in the jurisprudence of the ECtHR, is not, in the context of Article 8 of the ECHR, limited to the notion of the traditional family founded on the basis of marriage. According to the Constitutional Court, the ECtHR has on more than one occasion held that other types of the relationships of living together are also defended in the sense of Article 8 of the ECHR, as those which are characterised by the permanence of mutual relationships between persons, the character of assumed obligations, common children, etc. The Constitutional Court pointed out that the jurisprudence of the ECtHR does not provide any exhaustive list of the criteria for defining the family.

Another ruling of the Constitutional Court that can be mentioned in the context of this question was adopted on 11 January 2019.

In this ruling, the Constitutional Court assessed the constitutionality of the provisions of the Republic of Lithuania's Law on the Legal Status of Aliens. The Constitutional Court held that, under the impugned legal regulation, in the event of family reunification, a temporary residence permit in the Republic of Lithuania (hereinafter referred to as a temporary residence permit) may be issued to a foreign national who is not a citizen of a Member State of the EU or the European Free Trade Association, however, contrary to what had been maintained by the petitioner, not exclusively in cases where an opposite-sex family member of such a foreign national resides in the Republic of Lithuania, i.e. a person with whom a marriage or registered partnership has lawfully been concluded in another state and who is a citizen of the Republic of Lithuania or a foreign national (not a citizen of a Member State of the EU or the European Free Trade Association) holding a residence permit. Under the impugned legal regulation, a temporary residence permit may also be issued in cases where a same-sex family member of such a foreign national resides in the Republic of Lithuania, i.e. a person with whom a marriage or registered partnership has lawfully been concluded in another state and who is a citizen of the Republic of Lithuania or a foreign national (not a citizen of a Member State of the EU or the European Free Trade Association) holding a residence permit. The Constitutional Court noted that, in the event of family reunification, a temporary residence permit may be refused to a foreign national on the general grounds established in the law for refusal to grant a foreign national a residence permit, such as a possible threat to national security, public order, or human health, or non-compliance with the general conditions for granting a temporary residence permit, or the conclusion of a marriage of convenience or a registered partnership of convenience. However, a refusal to issue such a permit may not be based solely on the gender identity and/or sexual orientation of the foreign national.

The Constitutional Court emphasised that, only if the impugned legal regulation is interpreted in the way indicated above, it is to be assessed as not violating the requirements arising from the Constitution.

In the said ruling, while interpreting the provisions of the Constitution related to the free movement of EU citizens, *inter alia*, citizens of the Republic of Lithuania, within the EU, *inter alia*, the Republic of Lithuania, the Constitutional Court invoked the respective EU legal provisions and the case law of the CJEU interpreting them.

Summing up the EU legal regulation from the aspect relevant in this constitutional justice case, the Constitutional Court noted that, under this legal regulation:

– the EU is founded on such fundamental values as respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities;

– a legal regulation governing the conditions for concluding marriage and registered partnerships is an area falling within the competence of the Member States;

– one of the rights of EU citizens is the right to move and reside freely in the territory of the Member States;

– in order to ensure the free movement of persons, the private and family life of EU citizens must be respected and regard must be paid to the prohibition of any discrimination, *inter alia*, on the grounds of gender and sexual orientation;

– the right of an EU citizen to move and reside freely in the territory of the Member States is also granted to his/her family members, who are considered to include, *inter alia*, the spouse or the partner with whom the EU citizen has concluded a registered partnership on the basis of the legislation of a Member State, if the host Member State treats registered partnerships as equivalent to marriage, and in accordance with the requirements laid down in the relevant legal acts of the host Member State;

– the Member States are under the obligation to take account of a marriage or registered partnership (if the legislation of the host Member State treats registered partnerships as equivalent to marriage) lawfully concluded between same-sex persons in another Member State, to the extent necessary to ensure the exercise of the rights that these persons enjoy under EU law, *inter alia*, the right to move and reside freely in the territory of the Member States;

– such an obligation does not undermine the national identity and does not pose a threat to the public policy of the Member State concerned; in the context of the restriction of freedom of the movement of persons, the concept of the public policy as a justification for a derogation from a fundamental freedom is interpreted strictly: the public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.

- **Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?**

As mentioned before, in its conclusion of 24 January 1995, the Constitutional Court decided on the compatibility of the ECHR with the Constitution. Having assessed the provisions of the ECHR and its protocol that were specified by the petitioner, the Constitutional Court concluded that they were not in conflict with the Constitution. The Constitutional Court emphasised in this conclusion that the requirement that the norms of the domestic law must literally comply with the content of the norms of the ECHR is not directly formulated in the ECHR, as the implementation of this requirement

would not be possible. Neither does the ECHR strictly specify which ways should be employed for the implementation of human rights established in the ECHR. A state itself establishes the ways it will use to ensure the application of the provisions of the ECHR. The interpretation of the compatibility (relationship) of the norms of the Constitution and the ECHR must be semantic, logical, and not only literal. An exclusively literal interpretation of human rights is not acceptable for the nature of the protection of human rights. In stating this, the Constitutional Court invoked the second paragraph of Article 5 of the ICCPR, which stipulates: "There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent."

As underlined by the Constitutional Court, the fact that the fundamental human rights, freedoms, and their guarantees are, in one or another verbal form, formulated in the Constitution does not yet allow the assertion that these wordings are in all cases absolute in the sense of their application. A law may provide for a more extensive formulation of human rights, freedoms, and their guarantees than their literal expression in the concrete article or its part in the Constitution. Therefore, their broader application is possible if it is provided for by another legal act that has the force of a law (in this case, the ECHR and its Protocols). In this respect, Paragraph 3 of Article 138 of the Constitution is of decisive significance, as it lays down the principle of the incorporation of international treaties ratified by the Seimas, thus also their equal application alongside laws, in the legal system of the Republic of Lithuania. The Constitutional Court declared that the provisions of the ECHR that define human rights and freedoms may be applied along with the provisions of the Constitution provided they do not contradict the latter.

In the context of this question, it should also be recalled that, as noted by the Constitutional Court, the laws of Lithuania may not establish any such standards that would be lower than those established under the universally recognised norms of international law (the ruling of 18 March 2014).

- **Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)**

As mentioned before, in the course of considering constitutional justice cases related to human rights and freedoms, the Constitutional Court invokes international law and EU law. In doing so, the Constitutional Court takes into account the matter of the constitutional justice case under consideration and the international obligations assumed by the State of Lithuania.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 19 of the Constitution provides that "The right to life of a human being shall be protected by law."

- **Is it possible to restrict the right? If so, how and under what conditions?**

In the ruling of 9 December 1998, in which it was recognised that the death penalty provided for in the criminal law was incompatible with the Constitution, the Constitutional Court noted that Article 19 of the Constitution does not establish any exceptions that would allow depriving individuals of their life on behalf of the state.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

In the above-mentioned ruling of 9 December 1998, the Constitutional Court pointed out that, under the Constitution, human rights and freedoms are innate. The innate nature of human rights means that they are inseparable from an individual and that they are linked with neither a territory nor the people. An individual holds his/her innate rights regardless of whether or not they are consolidated in the legal acts of the state. Every individual has these rights and this means that the best and worst people have them. In the said ruling, the Constitutional Court singled out human life and dignity among innate rights and noted that human life and dignity constitute the integrity of a personality and denote the essence of an individual. Life and dignity are inalienable properties of an individual; therefore, they may not be treated separately. Human life and dignity, as expressing the integrity and unique essence of an individual, are above the law. In view of this, human life and dignity should be regarded as exceptional values. In this respect, the purpose of the Constitution is to ensure the protection of and respect for these values. These requirements are, first of all, applicable to the state itself.

In its ruling of 9 December 1998, the Constitutional Court also held that the human right to life is ensured by a rather broad system of legal measures, which is established in the Constitution itself and in numerous other laws. The legal regulation, together with moral, religious, and other social norms, is, first of all, aimed at the protection of the human right to life. The right to life is an innate right of every individual. It is indivisible. Either there is life or there is no life. A court sentence may deprive a person being sentenced of his/her life or may not. In the latter case, another punishment is imposed. Once the death penalty is imposed and executed, the life of the individual ceases. At the same time, the innate right of that individual to life, which is protected under the Constitution, is denied.

Assessing the constitutionality of the death penalty provided for in the criminal law, the Constitutional Court also indicated that, where the death penalty is imposed on a person being sentenced, the only option that the court has is that it may either impose this penalty or not impose it. However, the law does not and cannot unequivocally indicate as to when the death penalty must be imposed. Therefore, in this case, the final decision concerning the imposition of the death penalty

depends not only on the law, but also on the court. Consequently, the decision whether or not to impose the death penalty may depend on the psychological state of the judges (compassion or, on the contrary, strictness, the fear to adopt an unjust decision, etc.), on the professionalism or activeness of the defence or the prosecution, as well as on many other subjective circumstances. Finally, the court may face the difficulty in judging on the basis of objective criteria as to which individual deserves to be punished by the death penalty and which deserves to be imprisoned for life. Besides, whatever guarantees are ensured in the criminal procedure of a state governed by the rule of law, the possibility of a mistake is not excluded. Courts cannot be protected from this mistake; and, once the death penalty is carried out, there are no possibilities of rectifying such a mistake. The possibility itself that a person who does not deserve the death penalty or who is completely innocent may be sentenced to the death penalty is not in line with the right to life that is guaranteed by the Constitution.

Taking account of the entirety of the norms of the Constitution that protect the human right to life and dignity, the Constitutional Court held that the Constitution does not contain any prerequisites for establishing the death penalty in a norm of a law.

The official constitutional doctrine related to the human right to life was also developed by the Constitutional Court in its ruling of 16 May 2013, in which the Constitutional Court assessed the obligations laid down in laws to pay state social insurance contributions and compulsory health insurance contributions. In this ruling, the Constitutional Court pointed to the connection of human life and dignity with the human right to the best possible health. The Constitutional Court noted in this ruling that human life and dignity are exceptional values expressing the integrity and unique essence of an individual and that the state is under the constitutional obligation to protect and defend these values. Human dignity, the right to life, and the right to the best possible health are so closely interrelated that, on the one hand, if the proper protection of health is not ensured, the protection of the human right to life and human dignity will not be fully fledged either; on the other hand, the right to preserving and saving life in the event when the life of a person is in danger is an inseparable and fundamental part of the innate human right to the best possible health. Thus, the innate human right to the best possible health (given that this right is inseparable from human dignity and the right to life) and the social right to healthcare determine the constitutional obligation of the state to take care of the health of people, *inter alia*, including the duty of the state to ensure medical aid and services for an individual in the event of sickness. In order to implement this constitutional obligation of the state, an efficient healthcare system and the proper conditions for its operation must be created.

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to the human right to life:

– the UDHR (Article 3);
– the ICCPR (Article 6);
– the ECHR (Article 2).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

At the time when the ruling of 9 December 1998 was adopted by the Constitutional Court, the then case law of the ECtHR interpreted the ECHR as not consolidating the general prohibition of the

death penalty. However, in its ruling of 9 December 1998, the Constitutional Court emphasised that the ECHR and its Article 2 guided the Member States of the Council of Europe towards the abolition of the death penalty, while Protocol No 6 to the ECHR, which demands that the death penalty be abolished without reservations, had already directly consolidated the abolition of the death penalty (although, at that time, Lithuania was one of the five states of the Council of Europe that had not yet signed Protocol No 6). Moreover, the Council of Europe had increasingly more strictly called for the death penalty to be abolished. Having regard to these circumstances, the Constitutional Court drew the conclusion that the abolition of the death penalty had been becoming a universally recognised norm in Europe.

II.II Freedom of expression

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 25 of the Constitution stipulates:

"Everyone shall have the right to have his own convictions and freely express them.

No one must be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

Citizens shall have the right to receive, according to the procedure established by law, any information held about them by state institutions."

- **Is it possible to restrict the right? If so, how and under what conditions?**

See the answer to the following question.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court started to develop the constitutional doctrine of freedom of the expression of convictions and freedom of information in its ruling of 20 April 1995, in which it was noted that the right to have convictions and to freely express them is one of the fundamental human rights. The possibility for everyone to freely form their opinion and views and to freely impart them is a necessary condition for building and preserving democracy.

Interpreting the content of the constitutionally consolidated freedom of convictions and their expression, the Constitutional Court has held the following: "convictions" is a broad and diverse constitutional notion, including political and economic convictions, religious feelings, cultural attitudes, ethical and aesthetic views, etc.; the freedom to have convictions means that an individual

is free to form his/her own convictions, to form and express his/her views, and to choose world-view values; an individual is protected from any coercion and it is not permitted to exert control over his/her views; the duty of state institutions is to ensure and protect this freedom of individuals; the content of convictions is the private matter of an individual; the freedom of convictions and their expression consolidates ideological, cultural, and political pluralism; no views or ideology may be declared mandatory and imposed on an individual; the state must be neutral in matters of convictions; it has no right to establish any mandatory system of views; the right to freely express convictions is inseparable from the freedom to have convictions; freedom of the expression of convictions is the possibility of expressing, without hindrance, one's thoughts, views, and convictions orally, in writing, through signs, or by other ways and means of communicating information; freedom of the expression of convictions also includes the freedom not to disclose one's convictions and not to be forced to disclose them (e.g. the rulings of 13 June 2000 and 8 July 2005).

The Constitutional Court has also revealed in its rulings the relationship between the constitutional freedom of convictions and their expression and the constitutional freedom of information. As noted by the Constitutional Court, the constitutional freedom of information is inseparable from the constitutional freedom of convictions and their expression; in addition, the constitutional freedom of information is a condition of the constitutional freedom of convictions and their expression (the ruling of 19 September 2005). When interpreting the content of the constitutionally consolidated freedom of information as the innate freedom of an individual, the Constitutional Court has held that this freedom constitutes one of the foundations for an open, fair, and harmonious civil society and a democratic state, also that this freedom constitutes an important precondition for implementing various rights and freedoms of a person that are consolidated in the Constitution, since a person can implement most of his/her constitutional rights and freedoms in a fully fledged manner only if he/she has the freedom to seek, receive, and impart information unhindered (the rulings of 23 October 2002, 26 January 2004, 8 July 2005, and 19 September 2005).

In addition, the Constitutional Court has noted that Article 25 of the Constitution and other provisions of the Constitution that consolidate and guarantee the freedom of an individual to seek, receive, and impart information also give rise to freedom of the media, as well as the freedom to advertise goods and services, i.e. freedom of advertising (the rulings of 23 October 2002, 21 December 2006, and 16 May 2019).

Moreover, the official constitutional doctrine indicates that the constitutional freedom of creative activity, which comprises freedom of the creative process and freedom of the dissemination of creative activity, has a lot in common with the constitutional freedom of convictions and their expression and the constitutional freedom of information. Thus, freedom of creative activity is one of the most important manifestations of freedom of self-expression, which is one of the universally recognised innate human freedoms and is entrenched, protected, and defended by the Constitution; on the other hand, the content of freedom of self-expression is broader than that of freedom of creative activity and is not limited to freedom of creative activity. Freedom of creative activity (as freedom of self-expression in general) is also inseparably related to the human right, entrenched in Article 25 of the Constitution, to have convictions and freely express them (freedom of convictions and their expression) and the freedom to seek, receive, and impart information and ideas (freedom of information), which are, in their turn, directly interrelated with one another (see the ruling of 8 July 2005).

Interpreting the conditions for limiting freedom of the expression of convictions and freedom of information, the Constitutional Court has held that the freedom to have convictions may not be limited at all, while the freedom to express convictions may be limited only under the procedure provided for by law and only in cases where this is necessary to protect the values referred to in Paragraph 3 of Article 25 of the Constitution, i.e. human health, honour, dignity, private life, or morals, or to protect the constitutional order; under Article 145 of the Constitution, freedom of the expression of convictions may also be temporarily limited upon the imposition of martial law or a state of emergency (the rulings of 13 June 2000 and 8 July 2005). It is important that the list of the values that are enumerated in Paragraph 3 of Article 25 of the Constitution and whose protection can justify limitations on freedom of information may not be regarded as exhaustive and final; thus, it may not be regarded as precluding limitations on the freedom to receive and impart information in cases where this is necessary to protect other constitutional values, which are not *expressis verbis* mentioned in Paragraph 3 of Article 25 of the Constitution (the ruling of 21 December 2006). In its rulings, the Constitutional Court has also held more than once that, according to the Constitution, it is permitted to impose limitations on human rights and freedoms provided that the following conditions are observed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, as well as the constitutionally important objectives; the limitations do not deny the nature and essence of the rights and freedoms; and the constitutional principle of proportionality is observed (the ruling of 8 July 2005).

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to freedom of the expression of convictions:

– the ECHR (Article 10).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No such differences have been identified.

II.III Right to privacy/right to respect for private life/right to private life

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 22 of the Constitution prescribes:

“Private life shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity.”

- **Is it possible to restrict the right? If so, how and under what conditions?**

As noted by the Constitutional Court, under the Constitution, the right of a person to privacy is not absolute (the rulings of 29 December 2004 and 11 January 2019). Limitations on this right must be based on the same constitutional criteria as in cases of limitations on other fundamental human rights and freedoms: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, as well as the constitutionally important objectives; and the constitutional principle of proportionality is observed (*inter alia*, the rulings of 26 January 2004, 21 June 2011, and 9 May 2014), according to which the rights and freedoms of a person may not be limited by means of a law more than necessary in order to reach the legitimate objectives that are important to society (*inter alia*, the rulings of 7 July 2011, 14 April 2014, and 17 February 2016); the protection of common interests in a democratic state under the rule of law may not deny a specific human right or freedom as such (*inter alia*, the rulings of 9 December 1998, 24 March 2003, and 26 February 2015).

In one of its most recent rulings, the Constitutional Court emphasised that, when providing by means of a law that the exercise of the right to private and family life is subject to certain limitations, which are necessary in a democratic society in order to reach the constitutionally important objectives, the legislature must also observe the constitutional principles of the equality of the rights of persons and proportionality; otherwise, human dignity, protected under Paragraphs 2 and 3 of Article 21 of the Constitution, would be violated, i.e. the preconditions would be created for degrading human dignity while denying the free personality of the person and his/her inherent equality with other people in terms of human dignity (the ruling of 11 January 2019).

The Constitutional Court has on more than one occasion noted that persons may not expect privacy if they perform acts of a public nature, or they violate legal norms, commit crimes or other violations of law (the rulings of 8 May 2000 and 23 October 2002).

In its ruling of 29 December 2004, the Constitutional Court noted that, in cases where data, received in accordance with the procedure established by law, about the relations of persons with organised criminal groups, criminal syndicates, or their members constitute a sufficient ground for considering that these persons may commit most dangerous crimes, i.e. in cases where a particular activity of persons or their relations bear evidence of a threat to constitutional values, *inter alia*, human rights and freedoms, the constitutional order, the security of society and the state, as well as public order, it is allowed to establish, by means of a law, preventive measures that provide for certain control over the behaviour of such persons. As such, preventive measures that are aimed at restricting and reducing organised crime should not be considered a constitutionally unjustifiable limitation on the human right to privacy, but only on the condition that such preventive measures are established by means of a law, are necessary in a democratic society in order to protect the values defended and protected by the Constitution, do not deny the nature and essence of the human right to privacy, and are proportionate to the sought objective, which cannot be attained by any other means.

According to the case law of the Constitutional Court, it is allowed to limit the right to the inviolability of correspondence with respect to persons sentenced to the deprivation of liberty; however, the legislature must establish such a legal regulation that would create the preconditions for the sufficient individualisation of the limitations on this right of sentenced persons, once the

individual situation of the sentenced persons concerned and other important circumstances have been assessed (the ruling of 26 February 2015).

Under Article 145 of the Constitution, the right to privacy may also be temporarily limited upon the imposition of martial law or a state of emergency.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court has held that private life means the personal life of an individual: the way of life, marital status, living surroundings, relationships with other people, views, convictions, habits, physical and psychological state, health, honour, dignity, etc. (the rulings of 19 September 2002 and 24 March 2003 and the conclusion of 19 December 2017). The inviolability of private life, which is consolidated in the Constitution, gives rise to the right of an individual to privacy (the ruling of 19 September 2002); this right includes private, family, and house life, the physical and psychological inviolability of an individual, his/her honour and reputation, the secrecy of personal facts, the prohibition of publicising the received or collected confidential information, etc. (*inter alia*, the rulings of 21 October 1999 and 23 October 2002 and the conclusion of 19 December 2017).

According to the Constitutional Court, the provisions of Paragraphs 3 and 4 of Article 22 of the Constitution are among the most important guarantees of the inviolability of the private life of a person: these provisions protect the private life of a person against unlawful interference by state or other institutions, their officials, or other persons (the rulings of 19 September 2002, 29 December 2004, and 11 January 2019). An arbitrary and unlawful interference with the private life of a person is, at the same time, an infringement on his/her honour and dignity (*inter alia*, the rulings of 29 December 2004 and 21 December 2006 and the conclusion of 19 December 2017); the protection of the private life of a person is inseparable from the protection of his/her dignity (the conclusion of 19 December 2017 and the ruling of 11 January 2019).

In its ruling of 23 October 2002, the Constitutional Court noted that the provisions of Article 22 of the Constitution, which consolidate the inviolability of private life, are related to other provisions of the Constitution and should be interpreted while taking account of them. There is a balance among the values entrenched in Articles 22 and 25 of the Constitution. In regulating the relations connected with informing the public, the legislature has the duty to pay regard to the balance of the said constitutional values. There are such areas of private life (e.g. intimate life) about which information may not be collected or publicised at all without the consent of a person, unless (and only inasmuch as) this helps to detect a crime committed by that person.

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to the right to privacy:

– the UDHR (Article 12);

– the ECHR (Article 8);

– the Charter of Fundamental Rights of the European Union (Article 7).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No such differences have been identified.

II.IV Freedom of religion

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 26 of the Constitution prescribes:

"Freedom of thought, conscience, and religion shall not be restricted.

Everyone shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious ceremonies, as well as to practise and teach his belief.

No one may compel another person or be compelled to choose or profess any religion or belief.

The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person.

Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions."

- **Is it possible to restrict the right? If so, how and under what conditions?**

As mentioned, under Paragraph 4 of Article 26 of the Constitution, the freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person.

In its ruling of 13 June 2000, the Constitutional Court also noted that freedom of thought, conscience, and religion is not restricted. Freedom of thought, conscience, and religion becomes a matter of a legal regulation only to the extent that an individual expresses his/her thoughts or belief while acting. As long as an individual just professes his/her religion or belief, this is a sphere of his/her inviolable private life. This state of an individual may not be limited in any way. In this respect, freedom of belief is an absolute freedom of individuals. The freedom of an individual not to disclose his/her approach to matters of belief or non-belief is indisputable, either.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

In its rulings of 13 June 2000 and 4 July 2017, the Constitutional Court held that the constitutional freedom of thought, conscience, and religion is one of the fundamental freedoms of individuals; it ensures the possibility for people holding various views to live in an open, just, and harmonious civil society; this freedom is not only an intrinsic value of democracy, but it is also an

important guarantee that other constitutional human rights and freedoms will be implemented in a fully fledged manner; in terms of its content, freedom of thought, conscience, and religion is a more specific expression of the broader human freedom, entrenched in Article 25 of the Constitution, to have convictions and freely express them.

Under the Constitution, the state has the duty to ensure that no one infringes on the spiritual matters of a person, i.e. that no one restricts his/her innate freedom to choose a religion acceptable to him/her or not to choose any, or to change his/her chosen religion or renounce it. The state may not establish any mandatory requirements that a person must indicate his/her belief or his/her approach to matters of belief. On the other hand, the state has the duty to ensure that a believer or non-believer (either alone or with others) would exercise freedom of thought, conscience, and religion, as guaranteed to him/her, in such a way that the rights and freedoms of other persons are not violated: under Article 28 of the Constitution, while implementing his/her rights and exercising his/her freedoms, everyone must observe the Constitution and laws and may not restrict the rights and freedoms of other people; in addition, Article 27 of the Constitution stipulates that the convictions, practised religion, or belief of an individual may not serve as a justification for a crime or failure to observe laws (the ruling of 13 June 2000).

In the ruling of 13 June 2000, the Constitutional Court pointed out that the provision of Paragraph 3 of Article 26 of the Constitution, under which no one may compel another person or be compelled to choose or profess any religion or belief, means that no religious or materialistic ideas may be imposed on an individual against his/her wish and will. As guaranteed under Paragraph 5 of Article 26 of the Constitution, the right of parents and guardians, according to their own convictions, to take care of the religious education of their children and wards should not be regarded as the imposition of the convictions of parents or guardians on their children or wards. Under Paragraph 2 of Article 26 of the Constitution, everyone is free to choose the religion or belief that is acceptable to him/her; at the same time, everyone has the right not to choose any religion or belief.

The Constitutional Court has held that the Constitution consolidates the principle of the separateness of the state and the church. This principle, together with the constitutionally consolidated freedom of convictions, thought, conscience, and religion, as well as the constitutional principle of the equality of persons, together with other constitutional provisions, determines the neutrality of the state in matters of world view and religion; the fact that the State of Lithuania and its institutions are neutral as regards matters of world view and religion means the separation of the areas of the state and religion, as well as the separation of the mission, functions, and activities of the state and those of churches and religious organisations (the ruling of 13 June 2000).

The neutrality and secularity of the state also means that, under the Constitution, the religion professed by a person may not constitute a basis for exempting the person from the constitutional duties of a citizen to the state, including the duty to perform military or alternative national defence service, consolidated in Paragraph 2 of Article 139 of the Constitution (the ruling of 4 July 2017).

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to freedom of religion:

– the ECHR (Article 9);

– the Charter of Fundamental Rights of the European Union (Article 10);

– the United Nations Convention on the Rights of the Child (Article 14(1)).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No such differences have been identified.

II.V Prohibition of discrimination

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 29 of the Constitution prescribes:
"All persons shall be equal before the law, courts, and other state institutions and officials.
Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views."

- **Is it possible to restrict the right? If so, how and under what conditions?**

The Constitutional Court has noted that the principle of the equality of the rights of persons does not in itself deny the possibility of establishing, by means of a law, a varying and differentiated legal regulation with respect to certain persons that belong to different categories if there are such differences between the said persons that make such a differentiated regulation objectively justifiable (*inter alia*, the rulings of 13 May 2005, 6 February 2012, and 1 December 2017).

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

Interpreting the provisions of Article 29 of the Constitution, the Constitutional Court has more than once noted that the constitutional principle of the equality of all persons, which must be observed in adopting laws and applying them, as well as in administering justice, imposes the obligation to legally assess the same facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner; the Constitutional Court has also held that the constitutional principle of the equality of all persons consolidates the formal equality of all persons and that persons may not be discriminated against, nor may they be granted any privileges. The constitutional principle of the equality of the rights of persons would be violated if certain persons or groups of such persons were treated in a different manner even though there are no differences of such a nature and to such an extent between them so that their unequal treatment could be objectively justified (*inter alia*, the rulings of 27 February 2012, 20 June 2016, and 25 January 2017).

The Constitutional Court has held that discrimination is generally understood as restrictions on human rights in terms of gender, race, nationality, language, origin, social status, belief, convictions, views, or other indications (*inter alia*, the rulings of 4 July 2003, 17 November 2003, and 3 December 2003). Paragraph 2 of Article 29 of the Constitution is a derivative of Paragraph 1 of the same article, as it does not allow the violations of the equality of the rights of persons – the general rule set out in Paragraph 1 of Article 29 of the Constitution: "All persons shall be equal before

the law, courts, and other state institutions and officials" (the conclusion of 24 January 1995 and the ruling of 11 January 2019). In view of this, the content of the constitutional principle of the equality of the rights of persons may be revealed only if Paragraphs 1 and 2 of Article 29 of the Constitution are interpreted in conjunction with one another. Therefore, Paragraph 2 of Article 29 of the Constitution may not be understood as consolidating the exhaustive list of the grounds of non-discrimination; otherwise, the preconditions would be created for denying the equality of all persons before the law, courts, and other state institutions, i.e. the very essence of the constitutional principle of the equality of the rights of persons, as guaranteed under Paragraph 1 of Article 29 of the Constitution (the ruling of 11 January 2019).

In its conclusion of 19 December 2017, the Constitutional Court recognised that one of the forms of discrimination (and, at the same time, the degrading of human dignity), prohibited under Article 29 of the Constitution, is harassment, which is understood as offensive, unacceptable, or unwanted conduct that has the purpose or effect of degrading the dignity of a person or creating a hostile, intimidating, humiliating, or offensive environment for him/her on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as well as other attributes such as disability, age, or sexual orientation.

In the ruling of 11 January 2019, the Constitutional Court also declared the restriction of human rights on the grounds of gender identity and/or sexual orientation to be one of the forms of discrimination prohibited under Article 29 of the Constitution.

An important provision of the doctrine formulated by the Constitutional Court in its ruling of 11 January 2019 is that, in a democratic state under the rule of law, the attitudes or stereotypes prevailing in a certain period of time among the majority of the members of society may not, based on the constitutionally important objectives, serve as constitutionally justifiable grounds for discriminating against persons solely on the basis of their gender identity and/or sexual orientation.

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to the prohibition of discrimination:

– the ECHR (Article 14);

– the Charter of Fundamental Rights of the European Union (Article 21(1)).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No such differences have been identified. In the majority of constitutional justice cases related to the prohibition of discrimination, the Constitutional Court invokes the case law of the ECtHR.

II.VI Right to liberty

- **What is the original wording of the provision protecting this right in your national catalogue?**

Article 20 of the Constitution prescribes:

"Human liberty shall be inviolable.

No one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law.

A person apprehended *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately."

- **Is it possible to restrict the right? If so, how and under what conditions?**

In its ruling of 8 May 2000, the Constitutional Court emphasised that the human right to liberty and to the inviolability of the human person may be subject to limitation where necessary. This may be done only on the grounds and under the procedure established by law.

Under the Constitution, the liberty of persons who have committed crimes may be restricted on the grounds and under the procedure established by law. Upon the restriction of the liberty of such persons, their rights and freedoms may be limited, including the inviolability of correspondence (the rulings of 24 March 2003 and 26 February 2015).

In its ruling of 5 February 1999, the Constitutional Court noted that pretrial custody (detention), which is applied in criminal procedure, is one of the types of the restriction of liberty. The imposition of this pretrial measure, its duration, the right of the detained person and his/her defence to lodge a complaint against the order to impose pretrial custody (detention) or the order to extend the time limit of pretrial custody (detention), as well as other circumstances related to pretrial detention, are regulated by means of a law.

- **Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.**

The Constitutional Court has noted that the human right to physical liberty is particularly closely connected with the human right to the inviolability of the human person. The inviolability of the liberty of an individual is a prerequisite for freedom of decision making; it creates the conditions for performing any lawful actions and implementing legal possibilities in various spheres of life (the ruling of 8 May 2000).

The constitutionally consolidated human right to liberty is, first of all, the protection of a person against arbitrary apprehension or detention. Paragraph 2 of Article 20 of the Constitution consolidates the principle of the lawfulness of the apprehension of a person: a person may not be deprived of his/her liberty otherwise than on the grounds and according to the procedures established by law (the ruling of 5 February 1999).

In its conclusion of 24 January 1995, the Constitutional Court also held that the essential purpose of the provision of Paragraph 3 of Article 20 of the Constitution is to guarantee that a person apprehended *in flagrante delicto* is, within 48 hours, brought before a court and this is nothing other than the guarantee of the prompt bringing of such a person before a court. According to the Constitution, a court must assess both the lawfulness and validity of the apprehension of a person.

The catalogues of human rights that have been applied (invoked) in the course of considering cases related to the human right to liberty:

– the ECHR (Article 5).

- **Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?**

No such differences have been identified.