THE RELATION BETWEEN NATIONAL LAW AND EU LAW: THE LITHUANIAN CASE

GEDIMINAS MESONIS*

I. INTRODUCTION

When analysing the relation between national law and EU law in the context of national law of the Republic of Lithuania, it is expedient, first of all, to mention the circumstances of Lithuania's accession to the European Union and the legal regulation valid at the time of accession.

On 16 September 2003, the Seimas (Parliament) of the Republic of Lithuania ratified the Treaty on Accession of the Republic of Lithuania and other states to the European Union that was signed on 16 April 2003 in Athens. Under this Treaty, on 1 May 2004, the Republic of Lithuania became a Member State of the European Union.

Before signing and ratifying this Treaty, as well as after its ratification, there occurred an academic discussion about the place that EU law would take in the legal system of Lithuania after its becoming an EU Member State and about whether amendments to the Constitution were necessary in order clearly to define the status of EU law.

From the very beginning of the discourse it is necessary to note that, under Paragraph 3 of Article 138 of the 1992 Constitution of the Republic of Lithuania, international treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania. While construing this norm, the Constitutional Court has held that the international treaties ratified by the Seimas acquire the power of the law (the Constitutional Court's conclusion of 24 January 1995, the ruling of 17 October 1995, the decisions of 25 April 2002 and 7 April 2004). In addition, it needs to be noted at once that this jurisprudential provision cannot be construed as meaning that, purportedly, the Republic of Lithuania may disregard its international treaties, if a different legal regulation is established in its laws or constitutional laws than that established by international treaties. Quite to the contrary, the principle entrenched in the Constitution that the Republic of Lithuania observes international obligations undertaken on its own free will and respects universally recognised principles of international law implies that in cases when national legal acts *(inter alia*

* Gediminas Mesonis, Justice of the Constitutional Court of the Republic of Lithuania.

laws or constitutional laws) establish the legal regulation which competes with that established in an international treaty, then the international treaty is to be applied (the Constitutional Court's ruling of 14 March 2006).

Thus, under the Constitution, the international treaties ratified by the Seimas acquire the power of law, whilst in the situations when there is an inconsistency between the national regal regulation and the legal regulation consolidated in an international treaty, the international treaty must be applied. Consequently, under the monistic doctrine of the relation between international and national law that was chosen in Lithuania, international treaties, including the ratified international treaties in connection with Lithuania's accession to the European Union, which constitute primary law of the European Union, were to become a constituent part of the legal system of Lithuania, whereas in case of an inconsistency between the legal norms consolidated in those treaties and national legal acts, the provisions of the international treaty had to be applied.

Irrespective of the aforesaid constitutional regulation that, among other things, took account of the specific character of the EU legal system. including the fact that the new legal order (EU) created on the grounds of the founding treaties is recognised as, by its nature, different from international law,[1] in some aspects was also not regarded as a sufficient one—neither the Constitution nor other national legal acts contained any provisions defining the place and power of EU secondary law, international agreements concluded by the EU and judgments of the EU Court of Justice in the system of national law. Therefore, it was resolved that in order properly to define the relation between EU law and national law, it is necessary to adopt corresponding amendments to the constitutional legal regulation.

II. THE CONSTITUTIONAL ACT ON MEMBERSHIP OF LITHUANIA IN THE EUROPEAN UNION

In the absolute majority of democratic states it is understood that the Constitution is a legal act of supreme power in the system of legal acts of each country.[2] Likewise, in Lithuania the Constitution has the supreme juridical power as well. Therefore, on 13 July 2004, in order to make the membership of the Republic of Lithuania in the EU legally faultless, the Seimas supplemented the Constitution by the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union by the Law on Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" and Supplementing Article 150 of the Constitution of the Republic of Lithuania (hereinafter—also the Constitutional Act). The Constitutional Court of the Republic of Lithuania has noted in its jurisprudence that namely by this Constitutional Act the membership of the Republic of Lithuania in the European Union was constitu-

[1] CRAIG, Paul – DE BURCA, Gráinne: *EU Law. Text, Cases and Materials*. Third edition. Oxford: Oxford University Press, 2011, p. 277.

[2] MESONIS, Gediminas: Presidents of the Baltic States in a Comparative Context: Elections and Powers. *Acta Universitatis Carolinae – Iuridica*, 2011, No. 4, p. 76.

tionally confirmed (the Constitutional Court's rulings of 13 December 2004,[3] 14 March 2006,[4] and 15 March 2011[5]).

According to Article 150 of the Constitution, the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" of 13 July 2004 is a constituent part of the Constitution of the Republic of Lithuania.

In this context it is noteworthy that the Constitutional Court of the Republic of Lithuania has held more than once that the Constitution is an integral legal act the principles and norms whereof constitute a harmonious system. Thus, the Constitutional Act has become a constituent part of the Constitution that is an integral legal act. As seen from its Preamble, this Constitutional Act was adopted while executing the will of the citizens of the Republic of Lithuania expressed in the referendum on the membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003. This Act was adopted while having assessed, among other things, that the European Union respects human rights and fundamental freedoms and that the Lithuanian membership in the European Union will contribute to a more efficient securing of human rights and freedoms, also seeking to ensure a fully-fledged participation of the Republic of Lithuania in the European integration as well as the security of the Republic of Lithuania and welfare of its citizens, thus, in essence, while assessing the integration into the European Union as a constitutional value. Attention is to be paid to the fact that the Preamble of the Constitutional Act takes account of the fact that the European Union respects national identity and constitutional traditions of its Member States. Thus, among other things, the importance of the constitutional traditions and national identity of Member States in the context of EU integration is also emphasised.

According to Paragraph 1 of the Constitutional Act, the Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its State institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas as well as enjoy the membership rights.

This provision is designated for defining, on the constitutional level, the relation of the Republic of Lithuania as a Member State of the European Union with the EU in the context of delegation of competencies of state institutions. One needs to emphasise that the formula "shall share with or confer on" used in the Constitutional Act essentially confirms that fact that one has chosen the model that in the legal literature is called the Belgian-German model, where part of the competence is delegated to EU institutions, however, the sovereign state powers are not limited, but the ultimate source of power rests on the national level.[6] In addition, the competence is delegated only in the areas clearly provided for in the EU founding treaties, by additionally emphasising that the delegation of competence is possible only inasmuch as it is necessary to carry out the common obligations of Member States in the areas provided for in the EU

[3] Available online: http://www.lrkt.lt/dokumentai/2004/r041213.htm [cit. 21. 8. 2013].
[4] Available online: http://www.lrkt.lt/dokumentai/2006/d060314c.htm [cit. 21. 8. 2013].
[5] Available online: http://www.lrkt.lt/dokumentai/2011/r110511.htm [cit. 21. 8. 2013].
[6] JARUKAITIS, Irmantas: Adoption of the Third Constitutional Act and Its Impact on National Constitutional System. *Teisė: mokslo darbai.* Vilnius: Vilniaus universiteto leidykla, 2006, pp. 22–37: 25.

founding treaties and to make use of the membership rights. Thus, this legal regulation consolidates the constitutional bases for sharing the competence of state institutions or conferring this competence on the EU.

In the context of the relation between national law and EU law, the provisions of Paragraph 2 of the Constitutional Act are of utmost importance. According to this paragraph, the norms of EU law shall be a constituent part of the legal system of the Republic of Lithuania; where it concerns the founding Treaties of the European Union, the norms of EU law shall be applied directly, while in the event of collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.

Thus, under Paragraph 2 of the Constitutional Act, EU law norms, i.e. both EU primary and secondary law became a constituent part of the national legal system. Namely by these provisions EU law was recognised, on a constitutional level, a part of the national legal system, i.e. EU law was incorporated into the national legal system. In this context it is important to note that the legitimising of EU law is to be derived namely from the Constitutional Act as a constituent part of the national Constitution, i.e. namely the provisions of the Constitution created the legal ground for application of EU law in Lithuania.

These provisions of the Constitutional Act recognised and consolidated on the constitutional level also the principles of EU law—those of direct application of norms of EU law and of superiority of EU law, thus, these principles were essentially awarded the status of constitutional principles. The relation between the norms of national law and those of EU law was defined as well—the rule of solution of collision of legal norms was consolidated: in case of collision between the EU law norms arising from the founding Treaties of the EU and the norms of national law, such norms of EU law have supremacy over the legal norms consolidated in laws and other legal acts of the Republic of Lithuania.

In Lithuania, the Constitutional Court formulates the official constitutional doctrine, namely this court has the right and duty to interpret the provisions of the national Constitution.[7] While interpreting the provisions of the Constitutional Act, the Constitutional Court has emphasised that the Constitution consolidates not only the principle that in cases when national legal acts establish the legal regulation which competes with that established in an international treaty, then the international treaty is to be applied, but also, in regard of European Union law, establishes *expressis verbis* the collision rule, which consolidates the priority of application of European Union legal acts in the cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of what their legal power is), save the Constitution itself (the ruling of 14 March 2006,[8] as well as the rulings of 21 December 2006,[9] 4 December 2008[10]).

One needs to emphasise that Paragraph 2 of the Constitutional Act does not consolidate any absolute supremacy of EU law over the norms of national law (when one

[7] MESONIS, Gediminas: *Konstitucijos interpretavimo metodologiniai pagrindai* [The Methodological Grounds of Interpretation of the Constitution]. Vilnius: Registrų centras, 2010, pp. 75–88.
[8] Available online: http://www.lrkt.lt/dokumentai/2006/d060314c.htm [cit. 21. 8. 2013].
[9] Available online: http://www.lrkt.lt/dokumentai/2006/r061221.htm [cit. 21. 8. 2013].
[10] Available online: http://www.lrkt.lt/dokumentai/2008/r081204.htm [cit. 21. 8. 2013].

takes account of the fact that Paragraph 1 of the Act enshrines the principle of partial transfer of competence of state institution to or sharing this competence with the EU): the supremacy of norms of EU law is to be related only with those norms of EU law, which arise from the founding Treaties of the EU, i.e. the norms adopted only in the areas in which the Republic of Lithuania, as a Member State of the EU, to certain extent shares with or confers on the European Union the competences of its state institutions.

While assessing the legal significance of the provisions of the Constitutional Act, especially those of Paragraph 2 thereof, from the perspectives of the relation between national law and EU law, one is to emphasise that these provisions not only defined the relation between the EU law and national law, the rule of solution of collision between the legal norms of the EU and those of national law, but also created the ground for incorporating EU law, including the main principles of the latter, into the national legal system. Meanwhile, after the Constitutional Act had been adopted, state institutions not only had a duty to apply EU legal acts, but also a duty to adopt national legal acts harmonised with norms of EU law and to interpret the norms of national law in harmony with the legal regulation of the EU, whereas courts had the right and, in certain cases, a duty, when there were doubts regarding interpretation and validity of EU secondary law, to apply to the EU Court of Justice, also, in case of collision between national law and norms of EU law, to apply EU law.

Thus, upon adoption of the Constitutional Act, which is a constituent part of the Constitution, EU law became a part of the Lithuanian legal system, however, even though the principles of EU law as well as the rule of collision of legal norms had been consolidated, however, in reality there occurred some problematic aspects of legal technique and legal adjustment in the course of implementing EU law in Lithuania and continually deciding on the relation between national law and EU law.

On the other hand, it is possible to pay attention to the fact that namely the unique character of the European integration changes Kelsen's concept of the pyramid of law, which is well-known to every lawyer, where the constitution, because of its legal power, is on the top. However, even the constitutional courts that recognise this fact must seek an interpretational balance. For example, the Constitutional Court of Germany, while deciding on the compliance of the Lisbon Treaty with the Constitution of Germany, showed its own attitude to the subordination of those legal acts. On the other hand, the scientific legal doctrine noticed that a formal recognition of the supremacy of the Constitution did not allow unconditionally to ignore the Lisbon Treaty, but made the Constitutional Court of Germany to look for a balance.[11] The aforesaid Belgian-German model is not the only one. In this context it is possible to mention the experience in this sphere gained by another Baltic State, Estonia, a Member State of the European Union. The Republic of Estonia established the priority of the primary and secondary law of the European Union over national law.[12] In 2006, the Supreme Court of the Republic of Estonia held that divides or inconsistencies between national law and EU law

[11] DOUKAS, Dimitrios: The verdict of the German Federal Constitutional Court on the Lisbon Treaty: Not guilty, but don't do it again! *European Law Review*, 2009, Vol. 34, No. 6, p. 888.

[12] KERIKMÄE, Tanel: *Estonia in the European Legal System: Protection of the Rule of Law Through Constitutional Dialogue.* Available online: http://e-ait.tlulib.ee/51/2/kerikmae_tanel2.pdf [cit. 21. 8. 2013], pp. 34–35.

were possible only in the form of grammatical expression. It means that even in case of a clear difference of grammatical expression of norms, Estonia obligated to eliminate that grammatical "conflict" by interpretation of law. It is possible to recognise that it is not only a rather rational method of solution of legal problems, but also the fact that Estonia, having chosen such a model, in no way lost its national dignity, nor did it become less sovereign than, for instance, Belgium. When the problem of the relation between national law and EU law is decided, then, in fact, the issue of the hierarchy of legal acts is tackled. Meanwhile, the scientific legal doctrine unequivocally states that the hierarchy debate, which has been going on for decades, has not yet lead to any final answers.[13] However, this issue has not yet had any final and non-appealable conclusions both in the scientific legal doctrine and in various EU countries.

III. EU LAW IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

In the course of ensuring the supremacy of the Constitution in the Lithuanian legal system, an exceptional role falls upon the Constitutional Court which, after the European model of constitutional review had been chosen, was assigned with a task to decide whether laws and other acts are not in conflict with the Constitution and to submit a corresponding conclusion in case of finding a conflict.[14] Under Paragraph 1 of Article 102 of the Constitution, the Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. Since the constitutional review is an exceptional jurisdiction exercised by an independent constitutional body and the Constitutional Court ensures the supremacy of the Constitution in the legal system and administers constitutional justice,[15] while analysing the place of EU law in the Lithuanian legal system, including the aforesaid problematic aspects of definition of this relation, it becomes especially important to take account of the doctrine of the Constitutional Court.

First of all, it needs to be noted that Paragraph 1 of Article 6 of the Constitution provides that the Constitution shall be an integral and directly applicable act, whereas under Paragraph 1 of Article 7 of the Constitution, any law or other act, which is contrary to the Constitution, shall be invalid. While assessing the relation of these provisions of the Constitution with the norms entrenched in the Constitutional Act, one is to pay attention to the fact that Article 7 of the Constitution, which consolidates *expressis verbis*

---

[13] BOSSUYT, Marc – VERRIJDT, Willem: The Full Effect of EU Law and Constitutional Review in Belgium and France after the Melki Judgment. *European Constitutional Law Review*, 2011, Vol. 7, Iss. 3., p. 363.

[14] JARAŠIŪNAS, Egidijus: The Control of Constitutionality of Legal Acts and the Establishment of the Constitutional Court in Lithuania. *Constitutional Justice in Lithuania*. Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, pp. 3–39: 25.

[15] LAPINSKAS, Kęstutis: The Constitutional Court of the Republic of Lithuania in the System of State Institutions. *Constitutional Justice in Lithuania.* Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, pp. 40–73: 49.

the supreme power of the Constitution in the Lithuanian legal system, is in Chapter I of the Constitution, the provisions whereof, under Paragraph 2 of Article 148 of the Constitution, may be altered only by referendum, whereas the Constitutional Act was adopted by the Seimas.

One can recall the fact that the Constitutional Court of the Republic of Lithuania has held that the Constitution is a legal act of supreme legal power, it is supreme law and the measure of lawfulness and legitimacy of all other legal acts (the Constitutional Court's ruling of 13 December 2004[16]). Thus, in view of such jurisprudence formulated by the Constitutional Court, it would be logical to state that the principle of supremacy of the Constitution must be interpreted as meaning that the juridical power of the Constitution always has a priority over other legal acts, therefore, any other legal act may be assessed in the context of its compliance with the Constitution.

Thus, the Constitution is the legal act of supreme legal power, which lays the foundations for the legal system of the country, whilst any legal regulation, thus, in such a case EU law as well, must be in line with the Constitution. In this context one is also to note that, when the Constitutional Court investigates whether a certain act (part thereof) is not in conflict with the Constitution, it investigates the compliance of that act (part thereof) not only with a certain provision of the Constitution, but with the Constitution as a whole.[17] Consequently, according to the aforesaid rule, the legal regulation must be in compliance with the overall constitutional legal regulation.

It has been mentioned that the Constitutional Court of the Republic of Lithuania, while interpreting the provisions of Paragraph 2 of the Constitutional Act, also held that, with regard to EU law the collision rule was established *expressis verbis* entrenching the priority of application of legal acts of the European Union in cases when the provisions of EU law, arising from the founding Treaties of the European Union, compete with the legal regulation established in national legal acts of Lithuania (regardless of their legal power), with the exception of the Constitution itself.

Thus, while assessing the place of EU law in the Lithuanian legal system, the Constitutional Court emphasised the supremacy of the Constitution as a legal act of supreme legal power over *inter alia* EU law as well. In this context it needs to be emphasised that, according to the constitutional doctrine, the Constitutional Court's rulings are sources of law which *de facto* (since it is not concretely specified *expressis verbis*) are of the same importance as provisions of the Constitution itself.[18] Consequently, even though the EU Court of Justice has emphasised that the Community law enjoys supremacy over national law, including the Constitution of a respective country, and the basic rights entrenched in that Constitution (e.g., *Internationale Handelsgesellschaft*, C-11/70), however, the Constitutional Court's doctrine has not confirmed any unconditional supremacy of EU law, but underlined the status of the national Constitution as a legal act of supreme legal power. It is noteworthy that this practice of the Constitutional Court of Lithuania is not very much different from that of other Constitutional Courts

---

[16] Available online: http://www.lrkt.lt/dokumentai/2004/r041213.htm [cit. 21. 8. 2013].

[17] SINKEVIČIUS, Vytautas: *The Jurisdiction of the Constitutional Court. Constitutional Justice in Lithuania.* Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, pp. 91–122: 92.

[18] KŪRIS, Egidijus: The Constitutional Court and Interpretation of the Constitution. *Constitutional Justice in Lithuania.* Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, pp. 205–321: 223.

of EU Member, therefore, sometimes dual nature of supremacy of EU law is recognised, regardless of the monistic approach of the EU Court of Justice.[19]

Consequently, based upon the provisions of the Constitution and the relevant constitutional doctrine, the supremacy of EU legal provisions, *inter alia* also those arising from the founding Treaties of the EU, is possible only in respect of laws and other legal acts of the Republic of Lithuania, but not in respect of the Constitution thereof. However, when analysing, in that regard, the relationship between EU law and national law, it is also important to take into consideration the influence of EU law on the interpretation of the Constitution and on the constitutional doctrine formulated by the Constitutional Court.

As mentioned, the Constitutional Act is a constituent part of the Constitution, by means of which EU law is incorporated into the Lithuanian national legal system, whereas the Constitution is an integral legal act, the provisions and principles enshrined wherein constitute a harmonious system; thus, the provisions and principles of the Constitution are to be interpreted also in the context of EU law. The Constitutional Court has likewise noted more than once that the jurisprudence of the EU Court of Justice, as a source of construction of law, is equally important for the construction and application of Lithuanian law *(inter alia* the Constitutional Court's rulings of 21 December 2006,[20] 15 May 2007,[21] 4 December 2008[22] and 27 March 2009[23]).

It needs to be noted that from the Constitutional Court's doctrine it is clear that, while deciding regarding the constitutionality of provisions of national legal acts, account is also taken of the related EU legal regulation. It is true that the provisions of EU legal acts are, as a rule, cited as a context, elucidating the national legal regulation, or as certain aspects, supplementing the reasoning concerning the constitutionality of respective national legal norms. Nonetheless, the said practice of referring to EU legal norms may not be exceptionally assessed as having no influence on the investigation into constitutionality of national legal regulation. Such a conclusion can be partly proved by the fact that in the course of considering the constitutional justice case regarding the compliance of the provisions of the Republic of Lithuania Law on Electricity with the Constitution, by its decision of 8 May 2007,[24] the Constitutional Court applied to the EU Court of Justice (at that time referred to as the Court of Justice of European Communities) for a preliminary ruling on the interpretation of the provisions of the directive. The Constitutional Court, while applying to the EU Court of Justice, noted that the impugned provision of the law, which had been passed while implementing the directive, must be interpreted in the context of the legal regulation established in that directive. Thus, the said application to the EU Court of Justice confirms the significance of EU legal norms in deciding on the constitutionality of provisions of national legal acts as well as the fact that the application and interpretation of EU law is of great importance in the course of

---

[19] CRAIG, Paul – DE BURCA, Gráinne: *EU Law. Text, Cases and Materials*. Third edition. Oxford: Oxford University Press, p. 315.
[20] Available online: http://www.lrkt.lt/dokumentai/2006/r061221.htm [cit. 21. 8. 2013].
[21] Available online: http://www.lrkt.lt/dokumentai/2007/r070515.htm [cit. 21. 8. 2013].
[22] Available online: http://www.lrkt.lt/dokumentai/2008/r081204.htm [cit. 21. 8. 2013].
[23] Available online: http://www.lrkt.lt/dokumentai/2009/d090325.htm [cit. 21. 8. 2013].
[24] Available online: http://www.lrkt.lt/dokumentai/2007/d070508.htm [cit. 21. 8. 2013].

conducting the review of constitutionality of national legal norms by the Constitutional Court. It is recognised that the Constitutional Court's case law shows the Court's positive attitude towards EU law, making it possible to maintain that the Court's case-law recognises at least relative autonomy of EU law.[25]

Alongside, it needs to be noted that the official constitutional doctrine formulated previously, prior to the incorporation of EU law into the national legal system, may be corrected, while its provisions—reinterpreted. Change of constitutional jurisprudence is a form of expression of the concept "living Constitution"[26]. The practice of constitutional justice in other foreign states has undergone that type of change.

The Constitutional Court of the Republic of Lithuania has noted that reinterpretation of provisions of the official constitutional doctrine (correction of the official constitutional doctrine) is (or can be) necessary *inter alia* in those case when amendments to respective articles (paragraphs thereof) of the Constitution have been made. Upon the entry into force of an amendment to the Constitution, which alters (or repeals) any of the provisions of the Constitution on the basis of which (i.e. in the course of interpretation of which) the previous official constitutional doctrine was formulated (in respect of the respective issue of the constitutional legal regulation), the Constitutional Court enjoys, under the Constitution, the exceptional powers to hold as to whether, while interpreting the Constitution, one may still refer (and to what extent), or may no longer refer (and to what extent), to the official constitutional doctrine formulated on the basis of the previous provisions of the Constitution (the Constitutional Court's rulings of 13 May 2004,[27] 16 January 2006[28] and 24 January 2006[29]). In addition, reinterpretation of statements of the official constitutional doctrine (correction of the official constitutional doctrine) may also be necessary when such an amendment to the Constitution is made (a certain provision of the Constitution is changed or repealed, or a new provision is consolidated in the Constitution) so that the content of the overall constitutional legal regulation is corrected in substance, although the specific provision of the Constitution, on the basis (i.e. in the course of interpretation) of which the previous official doctrine was formulated in respect of a certain issue of the constitutional legal regulation, is formally not changed.

Thus, if, in the course of deciding regarding the constitutionality of national legal provisions a necessity emerged to reinterpret the previously formulated provisions of the constitutional doctrine, a possibility of doing so would exist provided that the said necessity emerged as a result of the amendment to the Constitution whereby the content of the overall constitutional regulation would be corrected.

Consequently, although the Constitution is the legal act of supreme power, which enjoys superiority *inter alia* over EU law, the provisions of the Constitution are to be in-

---

[25] JARUKAITIS, Irmantas: *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai* [The European Union and the Republic of Lithuania: The Constitutional Grounds of the Membership]. Vilnius: Justitia, 2011, p. 508.

[26] MESONIS, Gediminas: The Lessons of the Development of the Concept of the First Amendment of the United States Constitution in Constitutional Jurisprudence. *Konstitucinė jurisprudencija*, 2012, Vol. 26, No. 2, pp. 308–309.

[27] Available online: http://www.lrkt.lt/dokumentai/2004/r040513.htm [cit. 21. 8. 2013].

[28] Available online: http://www.lrkt.lt/dokumentai/2006/r060116.htm [cit. 21. 8. 2013].

[29] Available online: http://www.lrkt.lt/dokumentai/2006/r060124.htm [cit. 21. 8. 2013].

terpreted not only in the context of all provisions of the Constitution, as an integral legal act, including the Constitutional Act as well, but also, to a certain extent, in the context of EU law. It is, however, of importance to note that the scope and legal significance of that interpretation are not clearly defined.

IV. THE INCORPORATION OF EU SECONDARY LAW INTO THE LEGAL SYSTEM OF LITHUANIA

While analysing the relationship between the national law and EU law, it is also expedient to discuss, at least in brief, the problems arising in the course of transferring the provisions of acts of EU secondary law to the national legal system and aligning national legal norms with the directly applied acts of EU secondary law. The said problems manifest themselves most clearly upon assessing the jurisprudence of the EU Court of Justice in the cases partly related to the alignment of provisions of the Lithuanian national law with EU legal norms, i.e. in cases wherein Lithuanian courts applied for preliminary rulings as well as in cases against Lithuania regarding its failure to fulfil a certain obligation.

As it is clear from the procedural decisions of the EU Court of Justice adopted subsequent to applications of Lithuanian courts for preliminary rulings, while deciding cases, the national courts experience problems as regards the interpretation of national legal norms in line with the norms of EU law. It needs to be noted that national courts, as a rule, apply to the EU Court of Justice for a preliminary ruling in the cases where national legal norms consolidate a different legal regulation if compared to EU legal norms, therefore, while seeking to interpret the differing regulation in line with EU law, it is necessary to take into account an interpretation of respective EU legal norms provided by the EU Court of Justice. It needs to be noted that the Court of Justice of the EU more often than not, while answering the questions referred to it and while indirectly pronouncing its view on the alignment of national legal norms with EU law, discloses the non-alignment of Lithuanian national legal norms with EU law.

For example, in its judgement of 11 July 2008 (case No. C-2007/08), the EU Court of Justice, when ruling as to how the provisions of a certain regulation concerning cultivation of hemp must be interpreted, pointed out that certain provisions consolidated in the Lithuanian national legal regulation violate the common organisation of the market in the hemp sector and that, by means of them, one seeks no common objective other than one sought by the common organisation of the market in that sector. In that judgement, while giving answers to the questions indicated by the national court, it was held that the regulation under interpretation precludes such a national act that was at that time adopted and applied in Lithuania. In another case, the EU Court of Justice, while giving answers to the questions referred to it regarding the interpretation of the provisions of certain directives, emphasised that such legal regulation that was established in Lithuania, upon transferring the provisions of the directive in question concerning the assessment of the effects of certain plans and programmes on the environment, is not possible, also that it denies the general principles consolidated in the directive and jeop-

ardizes the fundamental objective of the directive, whereas the Member State, by having adopted such legal regulation as established in the national law, has possibly exceeded the limits of its discretion to choose means of legal regulation (judgement of 22 September 2011 in case No. C-295/10). Meanwhile, in its judgement of 11 September 2008 (case No. C-274/07), the EU Court of Justice, while deciding, subsequent to the action brought by the European Commission (at that time referred to as the Commission of European Communities), regarding the failure of Lithuania to fulfil its obligations, declared that, by not ensuring in practice that authorities handling emergencies are, to the extent technically feasible, given caller location information for all callers to the single European emergency call number "112" when public telephone networks are used, the Republic of Lithuania failed to fulfil its obligations under the provisions of the Universal Service Directive.

The indicated examples attest to the problems that arise in the course of transferring the provisions of directives into the Lithuanian national law and aligning the national legal acts with the directly applied EU secondary law. In this context it also needs to be noted that, besides the aforementioned aspects, one more problem occurs—the provisions of directives are, more often than not, transferred into national law by being directly copied, i.e. not only without using the discretion granted to the state, but also without taking any account of the specific features of the already applied national legal regulation, although such a possibility is provided for by the provisions of a directive, as a result of which additional problems arise in applying the provisions of EU legal acts and interpreting the provisions of the national legal acts in line with EU law.

Thus, although the provisions of acts of EU secondary law are transferred into national law and the norms of national law are sought to be aligned with the directly applicable acts of EU secondary law, the desired objective is, nonetheless, in practice, often not achieved when carrying out those actions, which is, in part, also proved by the jurisprudence of the EU Court of Justice.

V. NATIONAL LAW V. EU LAW: ASPECTS OPEN TO DEBATE

It needs to be noted that, in addition to the already mentioned debatable aspects of the relationship of EU law with national law, and particularly—with the provisions of the Constitution and the extent of interpretation of provisions of the Constitution with respect to EU law, there are more problematic aspects pertaining to the relationship between EU law and national law, the most important of which are to be linked with the separation of the review of constitutionality of national legal acts from the review of lawfulness (constitutionality) of EU legal acts as well as with the relationship between these two latter issues.

First of all, attention is to be drawn to the fact that even based on the provision that the review of lawfulness of EU legal acts is ascribed to the jurisdiction of the EU Court of Justice, whereas the constitutionality of national legal acts is investigated by the Constitutional Court, the jurisdiction of both these courts may not be entirely separated. Although it is generally outside any dispute that the Constitutional Court does not carry

out the *ex ante* review of constitutionality of EU law (in this case we speak only about *ex post* constitutional review) and in the majority of cases it is accepted that the review of secondary EU law is not ascribed to the jurisdiction of the Constitutional Court either, the Constitutional Court, while exercising the review of national legal acts implementing EU legal acts, virtually conveys its views not only as regards the constitutionality of the said provisions of a national legal act, but, in part and indirectly, also as regards the constitutionality of EU legal acts.

In this context it also needs to be noted that even the provisions consolidated in the constitutions of democratic states and related to fundamental human rights may vary, with constitutional systems being different, respectively, so, as a result, it may be even impossible to compare them.[30] Therefore, the aforementioned aspects related to the review of constitutionality of national legal acts and lawfulness of EU legal acts, respectively, may, in certain cases and in the context of the Lithuanian legal system so far only at the theoretical level, be of particular importance while seeking to ensure an adequate relationship between the national law and EU law.

It needs to be noticed that the said circumstance is of topical concern when EU legal acts are implemented (i.e. directives are transferred into the national legal system) literally—by directly transferring the text of an EU legal act into a national legal act. Since in Lithuania, as mentioned before, the provisions of directives are particularly often transferred into the legal system by copying them literally, a question arises as to whether, when the Constitutional Court carries out the review of constitutionality of provisions of such national legal acts, one does not at the same time assess the compliance of respective norms of EU legal acts with the Constitution, either. Such an assessment, where it is made, is definitely an indirect one; however, taking account of a rather strict separation between the jurisdictions of national constitutional courts and the EU Court of Justice, a doubt may, nonetheless, arise as regards the feasibility of such an assessment.

At the same time, it needs to be noted that, as the circle of the legal relations regulated by EU law is widening and the area of application of EU legal acts is expanding, more national legal acts are being increasingly adopted to implement EU secondary law (only those legal acts that are not applied directly and must be implemented upon transferring the provisions thereof into the national legal system), therefore, if the Constitutional Court's jurisdiction to investigate the constitutionality of such legal acts was denied, the Constitutional Court's powers would be extremely limited. It also needs to be emphasised that in the situation at issue we speak specifically about an investigation into the compliance of provisions consolidated in a national legal act with the Constitution, which in all cases falls namely under the national Constitutional Court's jurisdiction.

In this context it needs to be noted that in the course of exercising the jurisdiction ascribed to it and giving preliminary decisions as well as procedural decisions regarding non-fulfilment of a certain obligation, the EU Court of Justice, also, in part, pronounces its position regarding the alignment of national legal norms with EU legal provisions

[30] ZUCCA, Lorenzo: Constitutional Dilemmas. *Conflicts of Fundamentals Legal Rights in Europe and the USA*. Oxford: Oxford University Press, 2007, p. 69.

and the interpretation of those norms, which, in principle, falls under the jurisdiction of national courts. Thus, there is a ground to believe that even in the event of strict separation between the jurisdictions of the EU Court of Justice and the Constitutional Court, these jurisdictions may not, in this regard, be entirely separated.

It is also obvious that, although national courts have a duty to interpret law in line with EU legal norms and, in circumstances of establishing that a national legal act is in conflict with EU legal norms, to apply an EU legal norm, the said national legal provisions must be removed from the national legal system. However, a situation is possible where, upon establishing by a national court that a particular national legal norm is not applicable, whereas a respective EU legal norm is applicable, the said national legal norm is not removed from the national legal system and there is a possibility that it will continue to be applied. In that case, legal debates may arise as to the procedure for removing the said legal norms from the national legal system if the legislator undertakes no active measures.

It is also important that the inconsistency of a national legal norm with EU legal norms may become evident not only in the circumstances when a court considers a concrete dispute. Meanwhile, in the absence of a concrete legal dispute, with the legislator undertaking no active measures to remove certain national legal norms that are not in line with EU law from the legal system of Lithuania, a situation would occur where the said legal norms would remain valid, though this would be compatible with neither EU law, nor the principles consolidated in the Constitutional Act. The problem under discussion turns to be of particular topical concern when one considers that the Constitutional Court may not decide on the constitutionality of a national legal norm in the aspect that it is incompatible with EU legal norms.

The present discussion has distinguished only certain more topical aspects, which are open to debate, in respect of the relationship between EU law and national law, however, the forthcoming application of EU law will, as it is likely, reveal more new problems of no lesser importance.

VZTAH MEZI VNITROSTÁTNÍM A EVROPSKÝM PRÁVEM: LITEVSKÝ PŘÍPAD

Shrnutí

I když byly vztahy mezi národním právem a právem EU v Litvě vyřešeny přijetím ústavního zákona, v praxi nicméně pokračují diskuze a sporné situace se neustále objevují. Ve své judikatuře Ústavní soud Litevské republiky uznal důležitost evropského práva, ale současně uvedl, že přednost norem evropského práva (včetně zakládacích smluv) platí pouze ve vztahu k zákonům a předpisům nižší právní síly, nikoliv ve vztahu k ústavě. Ustanovení sekundárního práva EU jsou implementována do národního práva. V praxi se objevují nejenom drobnější, ale i zásadní problémy v rámci tohoto procesu, když se objevuje nutnost rušit zásadní právní normy pro jejich nesoulad s právem EU. I když tedy poté, co se Litva stala členským státem EU, byl vztah mezi národním a evropským státem upraven na ústavní úrovni a důležitost evropského práva byla opakovaně zdůrazněna Ústavním soudem Litevské republiky, prochází tento vztah neustálými změnami a stále pokračují doktrinální a interdisciplinární diskuze o tom, jakým způsobem aplikovat evropské smlouvy lépe a přesněji.

Klíčová slova: Evropská unie, Litva, evropské právo, přednost, národní právo, integrace, ústava

Key words: European Union, Lithuania, European law, priority, national law, integration, constitution