News

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The resolution of the Seimas on changing the commission for impeachment against Seimas member Artūras Skardžius is unconstitutional and contrary to the Statute of the Seimas

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In its ruling passed today, the Constitutional Court has recognised that the resolution (No XIII-1227) of the Seimas of 31 May 2018 amending the resolution (No XIII-1036) of the Seimas of the Republic of Lithuania of 20 March 2018 on forming a special investigation commission of the Seimas of the Republic of Lithuania for an investigation into the reasonableness of the motion submitted by a group of members of the Seimas of the Republic of Lithuania to institute impeachment proceedings against Artūras Skardžius, a member of the Seimas of the Republic of Lithuania, and for drawing up a conclusion regarding the grounds for instituting the impeachment proceedings is in conflict with Article 76 of the Constitution and the constitutional principle of a state under the rule of law, as well as with Paragraph 3 of Article 71, the provisions “The Seimas shall vote on the list of candidates thus obtained. Should it fail to be approved, the procedure shall be repeated” of Paragraph 5 of the same article, and Paragraph 3 of Article 232 of the Statute of the Seimas.

By this ruling, the Constitutional Court has also recognised that Paragraph 7 of Article 71 of the Statute of the Seimas, under which, in certain instances, the Seimas may establish a procedure for forming commissions that is different from that established in Paragraphs 3–6 of Article 71 of the Statute of the Seimas, is in conflict with the constitutional principle of a state under the rule of law.

The impugned resolution of the Seimas changed the composition of the special investigation commission of the Seimas for an investigation into the reasonableness of the motion submitted by a group of members of the Seimas to institute impeachment proceedings against Seimas member Artūras Skardžius and for drawing up a conclusion regarding the grounds for instituting the impeachment proceedings (hereinafter referred to as the Commission), from which one member, Seimas member Andrius Kubilius, was removed. No other member of the Seimas was appointed instead of him and the remaining composition of the Commission was unchanged.

The Constitutional Court has noted in this ruling that the Constitution, in particular Article 74 thereof, requires that the Statute of the Seimas govern, among other things, the actions prior to the beginning of impeachment, i.e. prior to the adoption by the Seimas of a resolution on beginning an impeachment against a specific person in the Seimas, among other things, that the Statute of the Seimas govern the procedure for forming a commission of the Seimas examining the reasonableness of the charges

against that person. The Constitutional Court has stated that Article 76 of the Constitution, according to which the Statute of the Seimas, which has the force of a law, establishes the structure and procedure of activities of the Seimas, cannot be interpreted in isolation from the other norms and principles of the Constitution, among other things, from the constitutional principle of a state under the rule of law and the concept of democracy, which is enshrined in the Constitution. The provision of Article 1 of the Constitution that the State of Lithuania is democratic implies, among other things, that the supremacy of the Constitution, the democratic decision-making process, and political pluralism must be ensured in the state.

The Constitutional Court has noted that the model of parliamentary democracy enshrined in the Constitution is rational and moderate. The Constitutional Court has also noted that, under the Constitution, Lithuania is a pluralistic democracy and that the recognition of the parliamentary opposition is a necessary element of a pluralistic democracy. The Constitution presupposes the defence of the parliamentary minority and the minimum requirements for the protection of the opposition of the Seimas; therefore, the Statute of the Seimas must lay down guarantees for the functioning of the opposition.

In the context of this constitutional justice case, the Constitutional Court noted that, under the Constitution, Lithuania is a pluralistic parliamentary democracy, the necessary condition (conditio sine qua non) of which is the parliamentary minority, including the parliamentary opposition, whose purpose is to reflect the diversity of political views in parliament, thus ensuring political pluralism in the parliament of a democratic state under the rule of law and creating the preconditions for such a parliament to fulfil its functions; the mission of the parliamentary opposition is also to propose an alternative political programme to the parliamentary majority and the political decisions based on it, to oversee the political activities of the parliamentary majority, among other things, to criticise it.

In the context of this constitutional justice case, the Constitutional Court has noted that the Constitution, among other things, the principles of the organisation and operation of the State of Lithuania and the concept of a pluralistic parliamentary democracy, which are implied by the constitutional principle of a state under the rule of law, require, in accordance with Article 76 of the Constitution, the establishment of such a structure and procedure of activities of the Seimas that would ensure the effective protection of the rights of the parliamentary minority, including those of the parliamentary opposition, and guarantees for its activities. This means, among other things, that the principle of proportional representation must be ensured in the formation of the structural units of the Seimas (including committees and commissions of the Seimas), and that the composition of such structural units of the Seimas, as well as changes in the said composition, must not depend solely on the discretion of the parliamentary majority.

As stated by the Constitutional Court, the Seimas, when it sets up ad hoc investigation commissions, must also respect the constitutional imperative for the protection of the rights of the minority of the Seimas and the minimum requirements, stemming from the Constitution, for the protection of the opposition of the Seimas. These requirements presuppose, among other things, that ad hoc investigation commissions of the Seimas cannot be composed solely of representatives of the political majority of the Seimas, without involving representatives of the minority of the Seimas, including those of the parliamentary opposition, if they so wish. In the context of this constitutional justice case, the Constitutional Court has noted that, under the Constitution, among other things, Article 76 thereof, and the constitutional principle of the rule of law, the composition of an ad hoc investigation commission of the Seimas, as well as of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person, cannot be changed solely at the discretion of the parliamentary majority in the absence of clear and constitutionally justified reasons. Such reasons could include, among other things, the situation where a member of the ad hoc investigation commission of the Seimas, in the exercise of his/her functions, uses the free mandate of a member of the Seimas not in the interests of the People and of the State of Lithuania, but uses that mandate, among other things, in his/her own personal or group interests.

In this context, the Constitutional Court recalled that it had noted that one of the methods of the parliamentary activities of the opposition based on the views of the opposition and political objectives could consist of demonstrative non-participation by members of the Seimas in meetings of the Seimas, of the committees of the Seimas, or of other units to which they were appointed as members in accordance with the procedure laid down in the Statute of the Seimas. The Constitutional Court also noted that one of the methods of parliamentary activity may include the refusal of the members of the Seimas belonging to the parliamentary minority, including the parliamentary opposition, to take part in the work of ad hoc structural units (including ad hoc investigation commissions), thus expressing a political protest that, in their view, the decisions of the parliamentary majority unjustifiably restrict the rights and guarantees of the functioning of the parliamentary minority, including those of the parliamentary opposition. The methods of parliamentary activity referred to above do not, in themselves, constitute an obstacle to the exercise by the Seimas of its functions as a parliament of a democratic state under the rule of law.

The Constitutional Court held that the material of this constitutional justice case shows that the impugned resolution of the Seimas of 31 May 2018 was adopted in accordance with Paragraph 7 of Article 71 of the Statute of the Seimas, under which, as mentioned above, in certain instances, the Seimas may establish a procedure for forming commissions that is different from that established in Paragraphs 3–6 of Article 71 of the Statute of the Seimas. The Constitutional Court assessed the compliance of this part of the Statute of the Seimas with the Constitution in the light of the fact that the implementation of constitutional justice presupposes that a legal act (part thereof) contrary to the Constitution must be removed from the legal system; therefore, having found the unconstitutionality of a law whose compliance with the Constitution is not impugned by the petitioner, but on which the

impugned substatutory legal act is based, the Constitutional Court must state that such a law is unconstitutional. Such an obligation of the Constitutional Court stems from the Constitution and the supremacy of the Constitution is thus ensured.

The Constitutional Court noted that the legal regulation laid down in Paragraph 7 of Article 71 of the Statute of the Seimas, which stipulates that, “in certain instances”, the Seimas may establish a procedure for forming commissions that is different from that established in Paragraphs 3–6 of Article 71 of the Statute of the Seimas, but which does not specify in which cases such a different procedure for the formation of commissions may be established, and which does not provide in which legal form (by means of which legal act), under which procedures, and which specific rules for the formation of commissions may be established by the Seimas, does not meet one of the essential elements of the constitutional principle of a state under the rule of law, namely the requirements of legal certainty and legal clarity, i.e. the mandatory requirements for a legal regulation such as its clarity and precision, as well as the requirement to ensure the consistency and internal coherence of the legal system through a legal regulation.

When deciding on the compliance of the resolution of the Seimas of 31 May 2018 with Paragraph 3 of Article 71, the provisions “The Seimas shall vote on the list of candidates thus obtained. Should it fail to be approved, the procedure shall be repeated” of Paragraph 5 of the same article, and Paragraph 3 of Article 232 of the Statute of the Seimas, the Constitutional Court noted that neither Articles 71 and 232 of the Statute of the Seimas nor other provisions of the Statute of the Seimas contain a special legal regulation that would provide for the possibility of changing the composition of a special investigation commission.

Thus, under the legal regulation enshrined in the Statute of the Seimas, among others, in Articles 71 and 232 thereof, if it becomes necessary to change the composition of a commission the Seimas, including that of a special investigation commission, the relevant commission of the Seimas must be formed anew in accordance with the procedure established in the Statute of the Seimas. After the removal of one of the members from the Commission by the impugned resolution of the Seimas of 31 May 2018, the Commission was not formed anew, but only a change in its composition was made. Therefore, the Constitutional Court stated that the impugned resolution of the Seimas of 31 May 2018 had been adopted without the completion of one of the procedures (established in Paragraph 3 of Article 71, the provisions “The Seimas shall vote on the list of candidates thus obtained. Should it fail to be approved, the procedure shall be repeated” of Paragraph 5 of the same article, and Paragraph 3 of Article 232 of the Statute of the Seimas) for the formation of special investigation commissions of the Seimas, i.e. since the majority of the Seimas or the minority of the Seimas did not propose candidates for all the seats of the Commission, the requirement, laid down by the legal regulation enshrined in the Statute of the Seimas, that, if it becomes necessary to change the composition of a commission the Seimas, among others, that of a special investigation commission, the relevant commission of the

Seimas must be formed anew in accordance with the procedure established in the Statute of the Seimas, had thus been disregarded.

In the light of the principle of the supremacy of the Constitution, the Constitutional Court, when examining, subsequent to the petition filed by a petitioner, whether an impugned substatutory legal act (part thereof) is in conflict with legal acts that have the force of a law, after it finds that the impugned substatutory legal act (part thereof) is in conflict with the Constitution, has the power to state that such a substatutory legal act (part thereof) is unconstitutional. Therefore, the Constitutional Court assessed the compliance of the resolution of the Seimas of 31 May 2018 with the Constitution. The Constitutional Court noted that the removal of Seimas member Andrius Kubilius from the Commission had reduced the number of the representatives of the minority of the Seimas, including those of the opposition political groups, and the failure to change the number of members of the Commission had changed the proportion of the representation of the political groups of the Seimas in the Commission. Moreover, the adoption of the resolution of the Seimas of 31 May 2018, which changed the composition of the Commission, was based solely on information that had appeared in the press, i.e. it was based on the failure to examine, in accordance with the procedure laid down by law, the information on the basis of which it was presumed that there was a potential conflict between public and private interests of the member of the Commission Andrius Kubilius, thus, in the absence of clear and constitutionally justified reasons.

In view of this, the Constitutional Court held that, when adopting the impugned resolution of the Seimas of 31 May 2018, the Seimas had disregarded the following requirements, arising from the Constitution, among others, from Article 76 thereof and the constitutional principle of a state under the rule of law: (1) to ensure the proportional representation of the parliamentary majority and the parliamentary minority, including parliamentary opposition, in the formation of structural units of the Seimas (including the committees and commissions of the Seimas); (2) not to change, at the sole discretion of the parliamentary majority and in the absence of clear and constitutionally justified reasons, the composition of an ad hoc investigation commission of the Seimas, among other things, the composition of a commission of the Seimas set up before the beginning of impeachment proceedings in order to investigate the reasonableness of charges brought against a specific person.

The Constitutional Court noted that, by means of the resolution of the Seimas of 30 June 2018, the Seimas upheld the Commission’s conclusion that there were no grounds to begin impeachment proceedings against Seimas member Artūras Skardžius. In this context, the Constitutional Court recalled that it had held that the provision of Paragraph 1 of Article 107 of the Constitution, under which a law (part thereof) may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (part thereof) is in conflict with the Constitution, means that, as long as the Constitutional Court has not officially published such a decision, it is presumed that the said legal act (part thereof) is in compliance with the Constitution and that the legal consequences that have appeared on the basis of that act are lawful.

Thus, the presumption of the lawfulness of the legal consequences resulting from the resolution of the Seimas of 31 May 2018, which by this ruling of the Constitutional Court has been declared to be unconstitutional and contrary to the Statute of the Seimas, among other things, the presumption of the lawfulness of the legal consequences resulting from the resolution of the Seimas of 30 June 2018, is not negated. In particular, the fact that one of the 12 members was removed from the Commission in violation of the Constitution is not such as to create grounds for calling into question the constitutionality of the resolution of the Seimas of 30 June 2018, insofar as the said resolution upheld the Commission's conclusions.

Consequently, the fact that it was held in this ruling of the Constitutional Court that the resolution of the Seimas of 31 May 2018 is unconstitutional and contrary to the Statute of the Seimas does not, in itself, justify calling into question the constitutionality of the resolution of 30 June 2018 of the Seimas, by which the Seimas upheld the Commission's conclusion that there were no grounds to begin impeachment proceedings against Seimas member Artūras Skardžius. Therefore, this ruling of the Constitutional Court does not constitute grounds for challenging the decision of the Seimas not to begin impeachment proceedings against Seimas member Artūras Skardžius.