On the right to apply to a court of appeal instance without the assistance of a lawyer

Case no 1/2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA
IN THE NAME OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF PARAGRAPH 3 OF ARTICLE 360 OF THE CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

1 March 2019, no KT9-N3/2019
Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Elvyra Baltutytė, Gintaras Goda, Vytautas Greičius, Danutė Jočienė, Gediminas Mesonis, Vytas Milius, Daiva Petrylaitė, Janina Stripeikienė, and Dainius Žalimas

The court reporter – Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1 and 53^1 of the Law on the Constitutional Court of the Republic of Lithuania, on 26 February 2019, at the hearing of the Constitutional Court, considered, under written procedure, constitutional justice case no 1/2018 subsequent to the petition (no 1B-4/2018) of the District Court of Vilnius City, the petitioner, requesting an investigation into whether Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure of the Republic of Lithuania is in conflict with Paragraph 1 of Article 30 of the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

I

The arguments of the petitioner

1. The District Court of Vilnius City, the petitioner, considered a civil case on the compensation for non-material damage in which it adopted a ruling ordering the applicant to remove the deficiencies of the appeal, among other things, to lodge an appeal signed by a lawyer or another person specified as relevant under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure. Having doubts over the compliance of the said provision of the Code of Civil Procedure with the Constitution, the District Court of Vilnius City suspended the consideration of the civil case and applied to the Constitutional Court.

2. The petition of the District Court of Vilnius City, the petitioner, is substantiated by the following arguments.

2.1. The right to judicial defence, which is consolidated in Paragraph 1 of Article 30 of the Constitution, is absolute; it may not be denied or excessively limited. In the jurisprudence of the Constitutional Court, it was interpreted that, under the Constitution, a final act of a court of general jurisdiction or a specialised court of first instance must be subject to appeal with at least one court of higher instance; there must be established such an appeal procedure that would allow for a court of higher instance to correct potential mistakes of a court of first instance. Thus, the right of appeal is a constituent part of the constitutional right to judicial defence.

2.2. By the impugned legal regulation consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, under which an appeal must be drawn up by a lawyer or other specified entity, *inter alia*, a person having university education in law, the above-mentioned right of a person is excessively limited. In those cases when a person does not have a possibility of access to a lawyer (*inter alia*, does not have sufficient funds for doing that or serves his/her punishment in imprisonment facility and this limits his/her possibilities to find a representative) and state-guaranteed legal aid is not to be granted to this person, the impugned legal regulation denies the right of appeal of a person. Therefore, such a limitation consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure when a person himself/herself may not draw up an appeal violates the right of a person to apply to a court, which is guaranteed in Paragraph 1 of Article 30 of the Constitution.

II

The arguments of the representatives of the party concerned

3. In the course of the preparation of the case for the hearing of the Constitutional Court, written explanations were received from Stasys Šedbaras and Julius Sabatauskas, the members of the Seimas, acting as the representatives of the Seimas, the party concerned, in which it is maintained that the impugned legal regulation is not in conflict with the Constitution. The position of the representatives of the Seimas, the party concerned, is based on the following arguments.

3.1. In civil proceedings, the right of appeal is one of the main rights of the participants of the civil proceedings and the fact that each person has the right to require for its case to be reviewed by a court of higher instance may not be denied. Thus, the Code of Civil Procedure consolidates the instance system of courts, which guarantees the right of appeal to the persons who meet the requirements established in the Code of Civil Procedure.

In the official constitutional doctrine, the right of appeal is linked to the possibilities of lodging an appeal with a court of higher instance against a decision of a court and of correcting mistakes made by a court of first instance. However, no means of the implementation of this right are analysed in the official constitutional doctrine. Therefore, the Seimas has certain discretion to choose how the right of appeal should be implemented. The legal regulation impugned by the petitioner, which is consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, complies with provisions of the official constitutional doctrine, which are formulated by the Constitutional Court and linked to the implementation of the right to appeal.

3.2. In civil proceedings, the institution of representation creates favourable conditions for the proper implementation of the objectives set in a case and helps a court to administer justice; representation is considered to be one of the guarantees of the right to due process.

The significance of the profession of a lawyer, who must, under the impugned legal regulation, represent the parties of a case in civil proceedings, has been emphasised by the Constitutional Court in its rulings on more than one occasion. Based on relative official constitutional doctrine and other criteria substantiating the legal significance of the profession of a lawyer, high requirements are established for the education, work experience, training, reputation, etc. of lawyers. These requirements ensure that persons are properly represented in appeal proceedings and their rights and interests are properly defended, the principle of cooperation in civil procedure is implemented. The existing legal regulation ensures that, when having the necessary competence, lawyers will represent persons during legal proceedings and their services will be provided properly and on time.

3.3. The legal regulation impugned by the petitioner has been established upon the assessment of negative consequences of the legal regulation that had been effective previously and the official constitutional doctrine. The previously effective legal regulation in most cases meant that procedural documents would be drawn up inappropriately; therefore, the procedure would last longer. In such a case, court proceedings would become ineffective and non-economic and it would make negative influence both on the protection of the rights and legitimate interests of the parties to the proceedings and on the public interest. Where the appeal is drawn up inappropriately, the rights and interests of persons are defended improperly. A court of appeal instance may not exceed the limits established in the appeal and correct all the potential mistakes of a court of first instance if no violations of substantive law are provided in the appeal. This does not comply with the official constitutional doctrine under which the purpose of a court of appeal instance is to correct the mistakes made by a court of first instance. Only a lawyer having the necessary qualification may ensure that the mistakes made by a court of first instance (which could not be assessed properly by the participant to a case who does not have necessary education) be specified in the appeal and corrected by a court of appeal.

3.4. The Recommendation of the Committee of Ministers of the Council of Europe concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases and the explanatory memorandum of this recommendation have not formulated the obligations for the states related to the representation in civil proceedings; however, it is recommended and encouraged to establish such a regulation that the parties would be properly represented, only if it is possible.

3.5. In order that the persons, who do not have sufficient funds and thus are not able to defend their violated rights themselves, could, nevertheless, defend their rights and interests properly, the law provides for the possibility of accessing state-guaranteed legal aid. In the system of legal aid established by the legislature, the state pays the state-guaranteed legal aid for socially sensitive (vulnerable) persons to whom, in a general market of legal services, it would otherwise be fictitious or its access would be extremely difficult due to financial reasons, as well as in those cases when it is necessary for the interests of justice. Upon the assessment of objective criteria, according to which it must be considered that state-guaranteed legal aid of one or another extent has to be provided to the persons taken into account the amount of their property and income, the Government establishes the level of property and income under which persons are provided with the legal aid paid by the state. If, under the law, a person falls under the category of persons who are provided with legal aid by the state only partially and this person must cover a part of expenses himself/herself, therefore, it should be considered that, according to the property and income this person has, he/she may cover part of the expenses, which belong to him/her.

The possibility of persons imprisoned in the deprivation of liberty facilities to find a lawyer is not restricted only due to the fact that they are deprived of their liberty, as they are guaranteed freedom of correspondence, so they may find a lawyer.

III

The material received in the case

4. In the course of the preparation of the case for the hearing of the Constitutional Court, a written opinion from Giedrius Ruseckas, Vice-Minister of Justice, and the conclusion from Prof. Habil. Dr. Vytautas Nekrošius, which was submitted by Prof. Dr. Tomas Davulis, Dean of the Faculty of Law of Vilnius University, were received; written opinions from Dr. Virginijus Bitė, professor of the Institute of Private Law of Mykolas Romeris Law School, and Dr. Rokas Uscila, Deputy Director and acting Director of the Law Institute of Lithuania, as well as the information submitted by Reda Molienė, Director of the National Courts Administration, were also received.

The Constitutional Court

holds that:

I

The impugned and related legal regulation

5. On 08 November 2016, the Seimas adopted the Republic of Lithuania's Law Amending the Code of Civil Procedure, which came into force (with certain exceptions) on 1 July 2017, whose Article 46 supplemented Article 306 of the Code of Civil Procedure with a new Paragraph 3, which is impugned in the constitutional justice case at issue.

6. Paragraph 3 (wording of 8 November 2016) of Article 306 "The Content of an Appeal" of the Code of Civil Procedure prescribes: "An appeal shall be drawn up by a lawyer. An appeal of a legal person may also be drawn up by the employees of that legal person or state servants who have university education in law. If an appellant is a natural person with university education in law, he/she shall have the right to draw up an appeal himself/herself. In addition, an appeal may be drawn up by the persons specified in Items 4, 5, 6, and 7 of Paragraph 1 of Article 56 of this Code. An appeal shall be signed by the person, who lodges it and by the person who has drawn up this appeal."

6.1. Thus, Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure consolidates the general rule that, in a civil case, an appeal must be drawn up by a lawyer. It should be noted that this requirement for drawing up an appeal is applicable to all natural and legal persons in civil cases of all categories, irrespective of the complexity and (or) scope of a case.

Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure also establishes the exceptions to this rule when an appeal may be drawn up by another person: the said requirements may be not fulfilled if an appeal is drawn up by a person with university education in law, when this person represents his/her own interests or he/she is an employee of the legal person or a state servant. Other subjects who may, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, draw up an appeal without the assistance of a lawyer are specified in Items 4–7 of Paragraph 1 of Article 56 of the Code of Civil Procedure.

6.2. Items 4–7 of Paragraph 1 of Article 56 (wording of 8 November 2016) of the Code of Civil Procedure prescribe that the following may act as the delegated representatives of natural persons in court: persons with university education in law when they represent their close relatives or a spouse (cohabiting partner)(Item 4); the respective representatives of trade unions, if these unions represent their members in proceedings on legal relationships of employment (Item 5); the respective representative of an association or another public legal person whose founding documents provide for the legal defence of the persons of a certain group and their representation in a court as one of the aims of activity, if this association or legal person represents, free of charge, the participants of the association or another legal person in proceedings on legal relationships directly linked to the aims and sphere of activity specified in the founding documents of this legal person (Item 6); assistants to bailiffs who have university education in law and authorisation from a bailiff to represent him/her in proceedings on the functions carried out by the bailiff (Item 7).

6.2.1. When interpreting Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, which is impugned by the petitioner, together with the provisions of Items 4–7 of Paragraph 1 of Article 56 (wording of 8 November 2016) of the Code of Civil Procedure specified in the said impugned paragraph, it should be held that the subjects specified in the provisions of the said Items 4–7 may also draw up an appeal of a natural person. Thus, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, in addition to a lawyer, an appeal of a natural person may also be drawn up by the following:

– a person having university education in law; however, not in any civil cases but only in those where he/she represents himself/herself or his/her close relative or spouse (cohabiting partner) (Item 4 of Paragraph 1 of Article 56 (wording of 8 November 2016));

– the representative of the trade union whose member is a person who wishes to lodge an appeal in proceedings on legal relationships of employment (Item 5 of Paragraph 1 of Article 56 (wording of 8 November 2016)); the specified representative of an association or another public legal person whose one of the aims is the legal defence of the persons of a certain group in a court, in proceedings on legal relationships directly linked to the aims and sphere of activity (Item 6 of Paragraph 1 of Article 56 (wording of 8 November 2016)); assistants to bailiffs who are also subject to the requirement to have university education in law and to be authorised by a bailiff to represent him/her in proceedings on the functions carried out by the bailiff (Item 7 of Paragraph 1 of Article 56 (wording of 8 November 2016)).

6.2.2. Thus, the legal regulation established in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, when interpreted in conjunction with the legal regulation established in Items 4–7 of Paragraph 1 of Article 56 (wording of 8 November 2016), is based on the assumption that, in order to draw up an appeal in civil cases, certain legal knowledge that can only be possessed by lawyers or other persons with university education in law or, in individual cases, certain special knowledge (in cases concerning employment relationships and in cases concerning activity of association or other public legal person) is necessary. It should be stated that, under the impugned Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, a natural person himself/herself, who does not have university education in law, may not draw up an appeal in his/her case irrespective of the difficulty and/or extent of the case.

6.3. It should be noted that, by means of Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, the requirement of an appeal to be drawn up by a lawyer in a civil case (with the exception of cases established in this paragraph) was, for the first time, consolidated in the Code of Civil Procedure by the Law Amending the Code of Civil Procedure, which was adopted on 8 November 2016 and has been applied since 1 July 2017. Until then, the Code of Civil Procedure had not regulated the subjects authorised to draw up an appeal in civil cases, therefore, such an appeal could be drawn up by a person himself/herself in his case, irrespective of his/her education, or by his delegated representative (Paragraph 1 of Article 51 and Article 56 (wording of 21 June 2011) of the Code of Civil Procedure).

7. The legal regulation impugned by the petitioner, which is consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, should be interpreted in the context of other provisions of this article, as well as other provisions of the Code of Civil Procedure, which are linked to lodging of an appeal in civil cases.

7.1. The Code of Civil Procedure establishes that the parties to the proceedings shall be entitled to lodge an appeal against the decision of a court of first instance that have not yet come into force within thirty days of the day the decision of a court of first instance was passed (Paragraph 1 of Article 301 (wording of 21 June 2011), Article 305, and Paragraph 1 of Article 307 (wording of 21 June 2011)).

Thus, the provisions of Paragraph 1 of Article 301 (wording of 21 June 2011), Article 305, and Paragraph 1 of Article 307 (wording of 21 June 2011) regulate who may lodge an appeal and for what reason. In the light of the legal regulation consolidated in these provisions of the Code of Civil Procedure, it should be noted that namely when lodging an appeal, the right of a person to appeal against a decision of a court of first instance that has not come into force yet with a court of appeal instance is implemented.

7.2. Under Article 320 of the Code of Civil Procedure, the limits of appeal procedure in hearing a case shall consist of the factual and legal grounds of the appeal (Paragraph 1); these limits may not be exceeded by a court of appeal instance, with the exception of cases when it is required by public interest and, without exceeding the limits of an appeal, the rights and legitimate interests of a person, society or the state would be violated (Paragraph 2 (wording of 21 June 2011)).

Thus, the provisions of Article 320 (with the amendments of 21 June 2011) of the Code of Civil Procedure define the limits or the consideration of an appeal case. It should be noted that the subject-matter of an appeal depends on the discretion of the person who lodges an appeal: the factual, as well as the legal, ground of the decision of a court of first instance may be impugned, and all the decision, as well as part thereof, may be appealed within thirty days of the day of adoption of the decision by a court of first instance.

It should be noted that, while interpreting the specified provisions of the Code of Civil Procedure, the Supreme Court of Lithuania, which develops the case-law of courts of general jurisdiction, noted that these provisions consolidate partial (limited) appeal (*inter alia*, Item 36 of the ruling of 3 June 2016 in civil case no e3K-7-220-687/2016; Item 17 of the ruling of 1 June 2017 in civil case no e3K-3-265-611/2017); in a court of appeal instance, a case is not re-examined on its merits, but it is considered without exceeding the defined limits of the appeal in order to establish whether a court of first instance has adopted a just decision in the case in both legal and factual terms (the ruling of 15 February 2013 in civil case no 3K-3-26/2016; Item 23 of the ruling of 24 November 2017 in civil case no 3K-3-419-701/2017).

7.3. Paragraphs 1 and 2 of Article 306 of the Code of Civil Procedure consolidate the requirements for the content of an appeal. An appeal must specify the following: the decision being appealed and the court which passed the decision; the concrete part of the decision, if not all the decision is appealed; the amount impugned, when it is a property dispute; the circumstances of the case confirming the unlawfulness and unreasonableness of the decision or part thereof but only those that were specified in the decision of a court of first instance; evidence and legal arguments in a concise form, on which these circumstances are grounded; the reasons justifying the necessity of the provision of new evidence; the request of an appellant (subject-matter of an appeal); the request to consider the case under oral procedure, if so requested; a list of the written material annexed to the appeal.

In the aspect relevant in the constitutional justice case at issue, it should be noted that, under Paragraphs 1 and 2 of Article 306 (wording of 21 June 2011) of the Code of Civil Procedure, the same requirements are raised for the reasoning of both the issues of fact and law, *inter alia*, the requirements not to use new circumstances as reference and to set out the arguments in a concise manner.

7.4. Paragraph 2 of Article 315 (wording of 21 June 2011) of the Code of Civil Procedure establishes that an appeal is not accepted for consideration if it has been lodged after the established term for lodging has passed and this term is not extended (Item 1), an appeal is lodged by a person incapable in a certain sphere or a person, who is not entitled to lodge the appeal (Item 2 (wording of 26 March 2015)), or if it is appealed against a decision that may not be subject of appeal (Item 3).

In the aspect relevant in the constitutional justice case at issue, it should be noted that the grounds for non-acceptance (refusal) of an appeal for consideration consolidated in Paragraph 2 of Article 315 (wording of 21 June 2011) of the Code of Civil Procedure are formal and not related to the drawing up of an appeal.

7.5. Paragraph 1 of Article 316 of the Code of Civil Procedure prescribes that if a lodged appeal or its annexes do not meet, *inter alia*, the said requirements for drawing up an appeal specified in Article 306 of the Code of Civil Procedure, a court establishes the term for removing deficiencies. Paragraph 2 of this Article establishes that if the specified requirements are not fulfilled within the established term, the appeal is deemed to have been lodged on the day on its initial submission; otherwise, the appeal is deemed not to have been lodged.

In the aspect relevant in the constitutional justice case at issue, it should be noted that, under Paragraphs 1 and 2 of Article 316 of the Code of Civil Procedure, the fact that an appeal does not meet the said requirements set out for an appeal in Article 306 (with the amendments of 8 November 2016) of the Code of Civil Procedure, *inter alia*, the requirement that an appeal must be drawn up by a lawyer (and other specified subjects) consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure does not prevent from exercising the right to lodge an appeal, if the established deficiencies are removed within the set period of time.

7.6. Paragraph 1 of Article 318 (wording of 21 June 2011) of the Code of Civil Procedure, *inter alia*, establishes that the parties to the case must and the other persons participating in the case have the right to submit the responses to the appeal in writing by setting out their opinion concerning the justification of the arguments of the appeal.

Thus, Paragraph 1 of Article 318 (wording of 21 June 2011) of the Code of Civil Procedure establishes the duty of another party to the case to lodge a response to the appeal setting out the opinion on the justification of the arguments of the appeal by lodging which that party to the case implements its right to defend the violated rights and freedoms in a court of an appeal instance. In the aspect relevant in the constitutional justice case at issue, it should be noted that neither this provision, nor other provisions of the Code of Civil Procedure consolidate any

requirements for the form and content of a response to an appeal, *inter alia*, there is no requirement that a response to an appeal must be drawn up by a lawyer.

7.7. While interpreting the impugned Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure in the context of the provisions set out in the Code of Civil Procedure, it should be noted that the requirement established in the said paragraph that an appeal necessary for exercising the right to apply to a court of an appeal instance would be drawn up by a lawyer (with the exception of cases where an appeal is drawn up by a person having a university education in law, if he/she represents himself/herself or his/her close relative or spouse (cohabiting partner) and, in certain cases, other specified subjects) is also applicable when, in civil cases, the appeal is lodged not only concerning legal questions but also concerning factual circumstances, where it is appealed against the whole decision of a court of first instance or only a part thereof regardless of the complexity of the case and (or) its scope. In the event of non-fulfilment of this requirement, the term is established for removing the deficiencies of the appeal, which means that if the deficiencies are not removed within the specified term, i.e. without having accessed the lawyer (or other specified subjects), the appeal is deemed not to have been lodged, and upon termination of 30 days term from adoption of the appealed decision, it may not be lodged.

It should also be noted that although, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, a person who does not have a university education in law and wishes to lodge an appeal must access a lawyer (or other specified subjects), no requirements, *inter alia*, to access a lawyer or to have a relevant education in law are laid down for another party to the case that must submit a response to an appeal.

8. In this constitutional justice case, it is also worth mentioning the provisions of the Code of Criminal Procedure of the Republic of Lithuania, the Code of Administrative Offences of the Republic of Lithuania, and the Republic of Lithuania's Law on Administrative Proceedings, which regulate the implementation of the right to lodge an appeal in criminal cases, cases of administrative offences, and administrative cases concerning the disputes stemming from administrative legal relationships.

8.1. Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure prescribes: "A appeal against a court decision not yet final must be in writing and signed by the appellant. An appeal must specify the name of a court of appeal instance, the case due to which an appeal is lodged, and the essence of the appealed part of the case, the pleas and reasons of the appeal against the decision, the requests reasoned by the appellant concerning the admittance of and demand of evidence, performance of investigation of evidence and extent, concerning oral or written proceedings of a case, and requests on other issues."

Thus, Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure establishes certain procedural conditions for lodging an appeal in criminal cases: an appeal must be drawn up and signed by a person lodging it regardless of his/her profession or education. In the aspect relevant in the constitutional justice case at issue, it should be noted that neither the above-mentioned provision, nor any other provision of the Code of Criminal Procedure consolidates the requirement for an appeal to be drawn up by another person representing the appellant, for example, a lawyer, although the requirements for drawing an appeal in criminal cases, which are consolidated in Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure, are essentially similar to the requirements for drawing up an appeal in civil cases, which are established in Paragraphs 1 and 2 of Article 306 of the Code of Civil Procedure, in which, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, such an appeal may be drawn up only by a lawyer (or other specified subjects).

8.2. Article 647 of the Code of Administrative Offences, *inter alia*, prescribes:

"1. An appeal shall be lodged in writing and signed by a person lodging an appeal (or his/her representative). […]

2. The appeal must specify the following: the name of a regional court; the case of an administrative offence in which an appeal is lodged; the essence of the appealed ruling of a district court or part thereof in a case of an administrative offence; the pleas and reasons for appealing against the ruling; the requests of the person who has lodged an appeal. <...>"

Thus, Paragraph 1 of Article 647 of the Code of Administrative Offences establishes certain procedural conditions for lodging an appeal in the cases of administrative offences: an appeal must be drawn up and signed by a person

lodging it regardless of his/her profession or education, or by his/her representative. In the aspect relevant in the constitutional justice case at issue, it should be noted that the requirement for an appeal to be drawn up by the representative is alternative when lodging an appeal and does not prevent from drawing up an appeal by an appellant himself/herself, although the requirements for drawing an appeal in the cases of administrative offences, which are consolidated in Paragraph 2 of Article 647 of the Code of Administrative Offences, are essentially similar to the requirements for drawing up an appeal in civil cases, which are established in Paragraphs 1 and 2 of Article 306 of the Code of Civil Procedure, in which, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, such an appeal may be drawn up only by a lawyer (or other specified subjects).

8.3. Article 134 of the Law on Administrative Proceedings (wording of 2 June 2016) specifies that "an appeal shall be signed by the appellant or his/her representative" (Paragraph 4) and that "the following shall be indicated in the appeal: (1) the name of the court to which the appeal is addressed; (2) the name and surname (name) of the appellant, his/her personal number (number) and address; if the appellant has such–also the email address, telephone and fax numbers or addresses of other electronic means of communication; (3) the names and addresses of other participants in the proceedings, with the exception of the representatives of the proceedings; if known – also the email address, telephone and fax numbers or addresses of other electronic means of communication of other participants of the proceedings; (4) the appealed decision and the court which adopted the decision; (5) the impugned issues; (6) the laws and circumstances of the case whereon the unlawfulness and unreasonableness of the decision or a part thereof is based (legal grounds for the appeal); (7) the request of the appellant (subject-matter of the appeal); (8) evidence confirming the circumstances presented in the appeal; (9) the wishes as regards the receipt of the court decision and other procedural documents by electronic means of communication; (10) the request of the appellant to consider the case under oral procedure, if he/she so wishes; (11) the list of documents annexed to the appeal." (Paragraph 2)

Thus, under the legal regulation established in Article 134 of the Law on Administrative Proceedings (wording of 2 June 2016), in administrative cases concerning the disputes arising from administrative legal relationships, an appeal may be drawn up by a person himself/herself irrespective of his/her profession or education, or by his/her representative. In the aspect relevant in the constitutional justice case at issue, it should be noted that the requirement for an appeal to be drawn up by the representative is alternative when lodging an appeal and does not prevent from drawing up an appeal by an appellant himself/herself, although the requirements for drawing an appeal in administrative cases concerning the disputes arising from administrative legal relationships, which are consolidated in Paragraph 2 of Article 134 of the Law on Administrative Proceedings, are essentially similar to the requirements for drawing up an appeal in civil cases, which are established in Paragraphs 1 and 2 of Article 306 (wording of 21 June 2011) of the Code of Civil Procedure, in which, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, such an appeal may be drawn up only by a lawyer (or other specified subjects).

8.4. When summing up the legal regulation consolidated in Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure, Paragraph 1 of Article 647 of the Code of Administrative Offences, and Paragraphs 2 and 4 of Article 134 of the Law on Administrative Proceedings, in the aspect relevant in the constitutional justice case at issue, it should be noted that neither in criminal or administrative proceedings, nor in the proceedings of administrative offences, the requirement is applied for an appeal to be drawn up only by a lawyer (or other specified subject); however, in criminal cases, cases of administrative offences, as well as administrative cases linked to the disputes arising from administrative legal relationships, the requirements set out for drawing up an appeal are essentially similar to the requirements raised for drawing up an appeal in civil cases.

9. The legal regulation impugned in this constitutional justice case, which is established in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure and which consolidates the requirement for an appeal in civil cases to be drawn up by a lawyer (or other specified subject) should be interpreted in conjunction with the provisions of the Republic of Lithuania's Law on State-Guaranteed Legal Aid (wording of 9 May 2013). This law regulates the provision of state-guaranteed legal aid to persons to enable them to adequately assert their violated or disputed rights and the interests protected under law (Paragraph 1 of Article 1).

9.1. Under Paragraph 1 (wording of 3 November 2016) of Article 2 of the Law on State-Guaranteed Legal Aid, state-guaranteed legal aid shall, among other things, mean drafting of documents, defence and representation in cases (secondary legal aid guaranteed by the state).

9.2. Article 11 (with the amendments of 30 June 2018) of the Law on State-Guaranteed Legal Aid establishes the persons eligible for state-guaranteed legal aid.

9.2.1. Under Paragraph 2 (with the amendments of 30 June 2018) of Article 11 of the Law on State-Guaranteed Legal Aid, the citizens of the Republic of Lithuania, citizens of other Member States of the European Union and other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, as well as persons specified in international treaties of the Republic of Lithuania and directly applicable legal acts of the European Union shall be eligible for secondary legal aid:

– whose property and annual income do not exceed the property and income levels established by the Government for the provision of legal aid;

– citizens specified in Article 12 of this law as eligible for the secondary legal aid regardless of the property and income levels established by the Government for the provision of legal aid.

Article 12 (wording of 30 June 2018) of the Law on State-Guaranteed Legal Aid specifies the persons eligible for secondary legal aid regardless of the property and income levels, such as persons affected by certain specified criminal actions (Item 2), persons who have been granted a social allowance (Item 4), debtors in execution proceedings, when a recovery is levied against the last housing wherein they reside (Item 9), persons in the matters concerning registration of birth (Item 14), persons in the cases concerning the return of a child who has been wrongfully removed or retained (Item 15), etc.

Therefore, in view of the provisions of Paragraph 2 (with the amendments of 30 June 2018) of Article 11 and Article 12 (wording of 30 June 2018) of the Law on State-Guaranteed Legal Aid, secondary legal aid guaranteed by the state, *inter alia*, the aid in drawing up an appeal in civil cases may be provided not to all persons but only those persons whose property and income do not exceed the property and income levels established by the Government for the provision of legal aid, *inter alia*, in cases of certain categories regardless of their income level.

9.2.2. In this context, it should be noted that, under Paragraph 5 (wording of 30 June 2018) of Article 11 of the Law on State-Guaranteed legal Aid, legal persons are eligible for secondary legal aid only in a case when a legal person is held criminally liable. No possibility is provided for for a legal person to receive state-guaranteed legal aid in civil cases.

9.3. Paragraph 7 (with the amendments of 30 June 2018) of Article 11 of the Law on State-Guaranteed Legal Aid establish the grounds for refusing to provide secondary legal aid, which are applied to all the specified persons, *inter alia*, those persons whose property and annual income do not exceed the property and income levels established by the Government for the provision of legal aid: secondary legal aid is not provided, among other things, when the representation in a case is not viable (Item 2), the applicant is claiming non-pecuniary damage related to the protection of his honour and dignity but has suffered no property damage (Item 3), the application concerns a claim arising directly out of the applicant's trade or self-employed profession (Item 4), the applicant applies with respect to the violation of the rights other than his own, with the exception of the cases of representation under the law (Item 6), etc. Under Paragraph 8 (wording of 11 November 2017) of Article 11 of the Law on State-Guaranteed Legal Aid, some of these limitations in order to receive state-guaranteed legal aid are not applicable when providing secondary legal aid in cases of administrative offences when a person who is held administratively liable applies for secondary legal aid and in criminal cases; and under Paragraph 10 (wording of 30 June 2018) of this article, a State-guaranteed legal aid service may decide to provide secondary aid also in civil cases of specified categories, however, only in exceptional cases.

Thus, under Paragraph 7 (with the amendments of 30 June 2018) of Article 11 of the Law on State-Guaranteed Legal Aid, state-guaranteed legal aid is usually not provided to any groups of persons (regardless of the property possessed and level of the income received by a person) in civil cases of certain categories (for example, in cases concerning compensation for non-material damage).

9.4. In summarising the discussed legal regulation consolidated in the Law on State-Guaranteed Legal Aid (wording of 9 May 2013 with subsequent amendments), it should be held that the right to state-guaranteed legal aid, *inter alia*, assistance for the preparation of court documents, is not guaranteed for all persons in all cases.

First, state-guaranteed secondary legal aid is ensured only to those persons who do not have the possibilities to properly defend their rights and interests protected by laws due to their financial situation (their property and annual income do not exceed the property and income levels established by the Government for the provision of legal aid) or who meet other conditions established in this law (i.e. apply for legal aid in such cases in which no financial criteria is applied for the provision of legal aid)(Paragraph 2 of Article 11 and Article 12 (wording of 30 June 2018)). Second, irrespective of the property owned and the level of income received by a person, such aid is usually not provided in civil cases of certain categories (for example, in cases concerning the compensation for non-material damage, cases concerning independent professional activity or economic commercial activities, etc.) (Paragraph 7 (with the amendments of 18 June 2018) of Article 11). Thus, the persons whose property and annual income at least slightly exceed the property and income levels established by the Government or who wish to lodge an appeal in civil cases of certain categories may not receive state-guaranteed secondary legal aid.

In the context relevant in the constitutional justice case at issue, it should also be noted that, in civil cases, legal persons are in no case provided with state-guaranteed legal aid.

9.5. While interpreting the legal regulation impugned by the petitioner, which is consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, under which, as mentioned before, there is a requirement for an appeal to be drawn up by a lawyer (or another specified subject), together with the said provisions of the Law on State-Guaranteed Legal Aid (wording of 9 May 2013 with subsequent amendments), it should be noted that not all persons and not in all civil cases are provided state-guaranteed legal aid, *inter alia*, for drawing up an appeal in civil cases:

– natural persons who do not meet the conditions for receiving state-guaranteed legal aid may not have access to the services of a lawyer guaranteed by the state for drawing up an appeal; thus, if they wish to lodge an appeal, they must access a lawyer and pay for his/her services at their own expense;

– legal persons may not at all receive any legal aid for lodging an appeal in civil cases; therefore, if they wish to lodge an appeal and do not have an employee who would have acquired education in law, they must, in all cases, apply to a lawyer and pay for his/her service from their own funds.

10. In summing up the legal regulation established in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure and the related legal regulation, it should be mentioned that:

– Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure consolidates the general rule that in a civil case, an appeal must be drawn up by a lawyer (with the exception of cases when an appeal is drawn up by a person having a university education in law, if he/she represents himself/herself or his/her close relative or spouse (cohabiting partner), as well as by other specified subjects in certain cases);

– under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, this requirement applies to all natural persons who do not have university education in law or a close relative or spouse (cohabiting partner) having such education and to all legal persons who do not have an employee who would have acquired such education in civil cases of all categories (with the exception of the specified ones), irrespective of the difficulty of the case and (or) its extent, concerning legal issues, as well as when factual circumstances are impugned or appealing against all the decision of a court of first instance or a part thereof;

– if this requirement is not fulfilled within the specified term, i.e. it has not been applied to a lawyer (or other specified subjects), an appeal is deemed to have not been lodged and the appeal proceedings in a case are not initiated; and upon termination of the specified term, it may no longer be initiated (Paragraph 2 of Article 316 of the Code of Civil Procedure);

– no requirements, *inter alia*, to apply to a lawyer or to have relevant legal education, are laid down for another party to a case who must lodge a response to the appeal setting out the opinion on the justification of arguments of the appeal (Paragraph 1 of Article 318 (wording of 21 June 2011) of the Code of Civil Procedure;

– the requirement for an appeal to be drawn up by a lawyer is not applied in criminal proceedings, administrative proceedings or matters of administrative offences: in criminal cases, cases of administrative offences, and administrative cases concerning the disputes which stem from administrative legal relationships, an appeal may be

drawn up by the same person who lodges the appeal irrespective of his/her profession or education, although the requirements for drawing up an appeal in the said cases are essentially similar to those set out for drawing up an appeal in civil cases (Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure, Paragraph 1 of Article 647 of the Code of Administrative Offences, and Paragraphs 2 and 4 of Article 134 of the Law on Administrative Proceedings);

– under the legal regulation established in the Law on State-Guaranteed Legal Aid (wording of 9 May 2013 with subsequent amendments), not all persons and not in all civil cases are provided state-guaranteed legal aid, *inter alia*, for drawing up an appeal in civil cases; natural persons who do not meet the conditions for receiving state-guaranteed legal aid, *inter alia*, those persons whose property and annual income at least slightly exceed the property and income levels established by the Government for the provision of legal aid, and the legal persons, in any case, may not have access to state-guaranteed legal aid for drawing up an appeal in civil cases; thus, in order to lodge an appeal in a civil case, they must apply to a lawyer and pay for his/her services from their own funds.

II

The provisions of the Constitution and the official constitutional doctrine

11. In this constitutional justice case, the compliance of the legal regulation consolidated in the Code of Civil Procedure, under which there is a requirement for an appeal to be drawn up by a lawyer (or other specified subjects), with Paragraph 1 of Article 30 of the Constitution.

12. Paragraph 1 of Article 30 the Constitution establishes that a person whose constitutional rights or freedoms are violated has the right to apply to a court. The Constitutional Court has held on more than one occasion that Paragraphs 1 and 2 of Article 30 of the Constitution consolidate the constitutional principle of judicial protection.

12.1. Each person who believes that his/her rights or freedoms are violated has the right to the judicial protection of his/her violated constitutional rights and freedoms; the defence of violated rights in a court is guaranteed to persons regardless of their legal status (*inter alia*, the Constitutional Court's rulings of 10 December 2012, 05 July 2013 and its decision of 16 April 2014). In a democratic state, the court is the main institutional guarantee of human rights and freedoms (*inter alia*, the Constitutional Court's ruling of 10 December 2012 and its decision of 28 June 2016).

12.2. The Constitutional Court has also more than once held that, under the Constitution, the right to apply to a court may not be limited or denied (*inter alia*, the Constitutional Court's rulings of 13 May 2010, 10 December 2012, and 5 July 2013); the constitutional right of a person to apply to a court cannot be artificially restricted and the implementation of this right may not be unreasonably burdened (*inter alia*, the Constitutional Court's rulings of 27 November 2006, and 11 May 2011), since this would give rise to a threat for one of the most important values of a state under the rule of law (the Constitutional Court's rulings of 4 March 2003 and 9 June 2011).

12.3. The right of a person to apply to a court, which is consolidated in Paragraph 1 of Article 30 of the Constitution, as well as the constitutional principle of a state under the rule of law, implies the right of a person to due process, *inter alia*, due process, which is a necessary condition for a just decision in a case (*inter alia*, the Constitutional Court's rulings of 8 June 2009, 25 January 2013, and 11 October 2018). The guarantee of the judicial protection of the rights and freedoms of a person is a guarantee of a procedural character, an essential element of the constitutional institute of the rights and freedoms of the person, a necessary conditions for the implementation of justice, and an inseparable element of the content of the constitutional principle of a state under the rule of law (*inter alia*, the Constitutional Court's rulings of 5 July 2013 and 9 July 2015).

Under the Constitution, it is not permitted to establish any such legal regulation that would deny the right of a person who believes that his/her rights or freedoms are violated to defend his/her rights or freedoms in a court (*inter alia*, the Constitutional Court's rulings of 29 December 2004 and 10 December 2012). Otherwise, it would have to be stated that this constitutional right is a mere declaration (the Constitutional Court's ruling of 16 January 2006 and its decision of 16 April 2014).

13. In the jurisprudence of the Constitutional Court, it is noted that the constitutional right of a person to apply to a court, as interpreted in the context of other provisions of the Constitution, also implies that a law must establish

such a legal regulation that would make it possible to lodge an appeal with at least one court of higher instance against any final act adopted by a court of general jurisdiction or by a specialised court of first instance established under Paragraph 2 of Article 111 of the Constitution (*inter alia*, the Constitutional Court's rulings of 16 January 2006, 27 November 2006, and 24 October 2007).

13.1. Justice is always administered by leaving an opportunity to rectify a possible mistake (the Constitutional Court's rulings of 9 December 1998, 24 January 2008, and 15 November 2013). The correction of mistakes made by courts of lower instance and the related prevention of injustice is the *conditio sine qua non* of the confidence of the parties of particular cases and society in general not only in the court of general jurisdiction that considers a particular case, but also in the whole system of courts of general jurisdiction (the Constitutional Court's rulings of 28 March 2006 and 24 January 2008). In its ruling of 24 January 2008, the Constitutional Court noted that the purpose of the institute of lodging an appeal against a final act of a court of first instance is the defence and protection of the rights of not only a person (convict) who has been brought to legal liability, but also the defence and protection of the rights and legitimate interests of other persons, *inter alia*, a victim, as well as the defence and protection of the public interest and the legal order of the state.

13.2. Under the Constitution, a law must establish not only the right of a party to the proceedings to lodge an appeal with at least one court of higher instance against any final act that was adopted in a case by a court of first instance, but it also must establish a procedure for lodging such an appeal; such a procedure would allow correcting possible mistakes made by a court of first instance; otherwise, it would be deviated from the constitutional principle of a state under the rule of law and the constitutional right of a person to due process would be violated (the Constitutional Court's rulings of 21 September 2006, 24 October 2007 and 24 January 2008).

As it was held by the Constitutional Court, the legislature, while regulating civil procedure relationships, has a certain discretion to establish various grounds and terms for lodging such a complaint, as well as various judicial institutions with which it is allowed lodge a complaint against final acts of a court of first instance, and to consolidate separate institutions in the laws on civil procedure (the Constitutional Court's ruling of 24 October 2007). However, the Constitution does not allow to establish any such legal regulation whereby, in cases of a certain category, it would be impossible in all situations to seek to initiate reviewing a final act adopted by a court of first instance in a relevant case, since, so the possibility of correcting possible mistakes made by the court, to apply law justly, and to administer justice would be denied; upon establishing such a legal regulation, the constitutional concept of justice would be limited only to formal, nominal justice administered by a court, only to the appearance of justice administered by a court, but it would not mean the justice that is consolidated in and protected and defended by the Constitution (the Constitutional Court's ruling of 24 October 2007).

13.3. Therefore, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the right to lodge an appeal with at least one court of higher instance against any final act of a court of first instance in order to ensure the possibility of correcting potential mistakes is an inseparable part of the constitutional right to apply to a court and the right to due process. It is not allowed to artificially restrict or altogether deny the right to apply to at least one court of higher instance for the assessment of the lawfulness and reasonableness of a decision adopted by a court of first instance, and no such a legal regulation may be established which would disproportionately limit the right to apply to a court of higher instance for the person, who believes that his/her rights or freedoms were not defended properly by the court of first instance.

In the context of the constitutional justice case at issue, it should be noted that while implementing the duty to ensure the possibility for the participants of the proceedings to assess the lawfulness and reasonableness of a decision of a court of first instance, which stems from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the legislature must establish such a legal regulation that would create preconditions for the person to effectively exercise his/her right to appeal against a decision adopted by a court of first instance that has not come into force yet with a court of appeal instance. This means that when establishing, by means of a law, the procedure for appealing with the court of appeal instance against a decision adopted by a court of first instance, no such grounds, terms, and conditions for lodging an appeal may be provided for due to which it would become especially difficult or impossible at all to appeal with the court of appeal instance against a final act adopted in a case by the court of first instance. Otherwise, the constitutional right to appeal with the court of appeal instance against a decision of a court of first instance would be declaratory, and the legislature would prevent from correcting potential mistakes of a court of first instance and

from applying law correctly and administering justice, as well as it would violate the constitutional right of a person to due process and would deviate from the principle of a state under the rule of law.

14. In the context of the constitutional justice case at issue, it should also be noted that when revealing the requirements for the legal regulation of civil proceedings, the Constitutional Court held that when regulating the relations of civil proceedings by means of a law, the legislature must heed the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, equality of rights, public and fair consideration of the case, impartiality and independence of judges, as well as the right of a person to due process which is derived from, *inter alia*, the constitutional principle of a state under the rule of law and which is inseparably related to it (the Constitutional Court's ruling of 21 September 2006). Under the Constitution, the relations of civil proceedings must be regulated by means of a law so that the legal preconditions would be created for the court to investigate all circumstances important to the case and to adopt a just decision in the case (the Constitutional Court's rulings of 21 September 2006 and 24 October 2007). The Constitutional Court also held that the legal regulation of the relations of civil proceedings must be such so that the participants, which have the same legal status, to the proceedings would be treated equally; thus, they must have the same rights and duties (the Constitutional Court's rulings of 21 September 2006 and 24 October 2007). As the Constitutional Court held in its ruling of 5 June 2001, in civil procedure law, *inter alia*, the principle of the procedural equality of the parties and that of adversarial argument are based upon the constitutional principle of the equality of all persons.

15. The Constitutional Court noted that the right of a person to have an advocate is one of the conditions for the effective implementation of the right of a person to judicial protection (the Constitutional Court's rulings of 9 June 2011 and 9 July 2015). From the constitutional right to defence, as well as from the right to have an advocate, the obligation of the legislature arises to particularise by means of laws the implementation of this constitutional right of persons and the duty of state institutions to ensure real opportunities for the implementation of these rights (*inter alia*, the Constitutional Court's rulings of 12 February 2001, 9 July 2015, and 11 October 2018).

In the context of the constitutional justice case at issue, it should also be noted that, under the Constitution, the right to an advocate, as one of the conditions for effective implementation of the right of the person to judicial defence, in regulating the implementation of the constitutional right to appeal with the court of appeal instance against the final act of the court of first instance, may not be transformed into the duty restricting this constitutional right, in particular, to the extent that the possibility to exercise the right itself would be denied.

16. It should be noted that, as it has been held by the Constitutional Court, the Constitution, *inter alia*, the right of a person to apply to a court, as consolidated in Paragraph 1 of Article 30 thereof, the imperative of a public and fair hearing of a case by an independent and impartial court, as guaranteed in Paragraph 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the duty of the state to ensure, under the procedure and conditions established in a law and taking account of the financial capacities of the state, the provision of effective legal aid, *inter alia*, legal advice and legal representation services, to those socially sensitive (vulnerable) persons to whom, in the general market of legal services, such legal aid would otherwise either be a sham or its access would be extremely difficult due to financial reasons, as well as in those cases when this is necessary for the interests of justice; in regulating legal aid (public legal service) that is financed from state budget funds or other public funds and is ensured by special institutional and organisational means, the legislature has broad discretion to choose a model of organising, providing, and financing this legal aid (the Constitutional Court's rulings of 9 July 2015 and 11 October 2018).

In this context, it should be noted that, under Paragraph 6 of Article 31 of the Constitution, a person suspected of committing a crime, as well as the accused, is guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate. The right to an advocate consolidated in Paragraph 6 of Article 31 of the Constitution means, *inter alia*, that a person has the right to choose an advocate, as well as the right to have an advocate appointed by the state; the constitutional right to defence and the right to have an advocate also give rise to the duty of state institutions to ensure real opportunities for the implementation of these rights (*inter alia*, the Constitutional Court's rulings of 9 June 2011 and 11 October 2018).

Therefore, when seeking to ensure the right of a person to judicial protection as consolidated in Paragraph 1 of Article 30 of the Constitution, the compliance with the constitutional principle of a state under the rule of law, and the right to the due process of law implied by them, a duty stems for the legislature, with regard to the financial capabilities of the state and while respecting the obligations stemming from the Constitution, *inter alia*,

Paragraphs 2 and 6 of Article 31 thereof, to first of all ensure the provision of effective legal aid in criminal cases for those socially sensitive (vulnerable) persons to whom, in a general market of legal services, it would otherwise be fictitious or its access would be extremely difficult due to financial reasons, as well as in those cases when it is necessary for the interests of justice. It should also be noted that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the legislature must also establish such a legal regulation under which, in the cases established in the law, the legal aid guaranteed by the state would be provided, *inter alia*, in civil cases, for those persons for whom it would be at all impossible to implement their right to apply to a court without providing such aid.

Thus, under the Constitution, given the particularities of civil and criminal cases, the provision of legal aid, which is financed from state budget funds or other public funds and is ensured by special institutional and organisational means, *inter alia*, the possibility to receive the assistance of a lawyer may, in civil and criminal proceedings, be regulated in a different manner.

III

The legal regulation laid down in the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights

17. The person's right to a trial is guaranteed by the provisions of the European Convention on Human Rights (the Convention) of the year 1950.

17.1. Paragraph 1 of Article 6 of the Convention provides for that, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair trial, including access to a court, and consolidates the principles of a fair trial.

17.2. Article 2 of the Protocol No. 7 to the Convention regulates the right of appeal against the decisions in criminal cases with the court of second instance. Paragraph 1 of this article prescribes: "Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law."

In this context, it should be noted that, in the preamble to the Recommendation No. R(95)5 adopted by the Committee of Ministers of the Council of Europe on 7 February 1995 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases, it is noted that appeal procedures should also be available for civil and commercial cases and not only for criminal cases. In this document, it is recommended for the Member States of the Council of Europe to take all the necessary measures for the efficient implementation of the right of appeal. In this recommendation, it is, among other things, specified that it should be possible for any decision of a lower court to be subject to the control of a higher court (Item a of Article 1).

In the said recommendation, it is also provided for that in order to ensure that appeals are heard expeditiously and efficiently, states should choose promoting the use of qualified lawyers, acting for parties in the court as one of the measures (Item k of Article 6). In the aspect relevant for the constitutional justice case at issue, it should be noted that such a recommendation does not mean that the member states must establish that the participation of a qualified lawyer in the appeal procedures is a necessary condition for the implementation of the right of appeal.

18. When interpreting the said Paragraph 1 of Article 6 of the Constitution, the European Court of Human Rights (ECtHR) emphasised that this paragraph must be interpreted in the context of the rule of law and it guarantees for every person the right to apply to court due to his/her rights of civil nature and duties (*inter alia*, Items 28–36 of the judgment of 21 February 1975, *Golder v. the United Kingdom*, no 4451/70; Item 116 of the judgment of 19 October 2005, *Roche v. the United Kingdom* [GC], no 32555/96; Item 54 of the judgment of 23 March 2010, *Cudak v. Lithuania* [GC], no 15869/02). The ECtHR also held that the right of access to the courts must be "practical and effective" and it must not be only "theoretical and illusory". For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights (Item 36 of the judgment of 4 December 1995, *Bellet v. France*, no 23805/94). In addition, the right of access to a court does not only include the right to institute proceedings, but also the right to obtain a "determination" of the dispute by a court (Items 21–22 of the judgment of 19 May 2015, *Fălie v. Romania*, no 23257/04).

The exercise of the right to a court granted to a person under Paragraph 1 of Article 6 of the Convention may be limited with regard to the particularities of legal regulation of each state. When establishing relevant limitations for exercising the right to a court, the member states have certain freedom of assessment. However, these limitations may not be such as to restrict the right of a person to apply to a court so or to such an extent that the very essence of this right would be denied. Moreover, any limitations will be incompliant with the provisions of Paragraph 1 of Article 6 of the Convention, if they do not pursue a legitimate aim and if they are not proportionate (*inter alia*, Item 86 of the judgment of 29 November 2016, *Lupeni Greek Catholic Parish and others v. Romania* [GC], no 76943/11).

18.1. In the jurisprudence of the ECtHR, it is also noted that Article 6 of the Convention does not oblige the states to establish courts of appeal or cassation instance. However, if such courts exist in the member states, in those proceedings, the guarantees of Article 6 of the Convention linked to, *inter alia*, the effective right of a person to apply to a court concerning his/her civil rights and duties must also be applied (Item 97 of the judgment of 18 February 2009, *Andrejeva v. Latvia* [GC], no 55707/00). The provisions of Article 6 of this Convention are applied to the procedures of appeal and cassation with regard to the particularities of these procedures and the system of instances as a whole, as well as the role of a court of a higher instance in it; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (*inter alia*, Item 32 of the judgment of 2 November 2006, *Kozlica v. Croatia*, no 29182/03).

18.2. The ECtHR also emphasised that certain limitations of the right to apply to a court of higher instance are possible and that the states have discretion, with regard to the particularities of their court systems, to choose relevant limitations. However, the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (the judgment of 5 April 2018, *Zubac v. Croatia* [GC], no 40160/12).

18.3. The ECtHR also noted that the requirement to be represented by a lawyer would be incompliant with the guarantees of the Convention, if, in a state, the possibility to receive legal aid were not provided or it would be limited in a disproportionate manner (Items 57–60 of the judgment of 30 July 1998, *Aerts v. Belgium*, no 25357/94; the judgment of 19 July 2011, *Jelcovas v Lithuania*, no 16913/04. However, attention is also drawn to the fact that, both cases dealt with the limitations of the right to cassation in the case, when a lawyer was necessary in a court of cassation instance but he/she was not provided to the applicants.

In this context, it should also be noted that, in the case-law of the ECtHR, Paragraph 1 of Article 6 of the Convention, concerning the right to a court when during the consideration of questions of the civil rights and duties of a person and criminal charges brought against a person, is interpreted and applied in a different manner. Under Paragraph 3(c) of Article 6 of the Convention, in order to properly ensure the right to defence for such a person, legal aid is necessary in criminal cases, the person meets the conditions established in this paragraph (i.e. when the person has not sufficient means to pay for legal assistance and when the interests of justice so require); however, under Article 6 of the Convention, such a right is not guaranteed in civil cases. In this sphere, the states have discretion and choose themselves the ways to ensure the effective right to a court for the person in civil cases (the judgment of 19 July 2011, *Jelcovas v. Lithuania*). However, when, in civil cases, the assistance of a lawyer proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case, the person must be provided with such an aid (Item 26 of the judgment of 9 October 1979, *Airey v. Ireland*, no 6289/73).

18.4. It should be noted that, in its ruling of 11 October 2018, the Constitutional Court noted that, under the jurisprudence of the ECtHR, although it is not *expressis verbis* specified in Paragraph 1 of Article 6 of the Convention, in certain cases, free legal aid must be provided in civil cases but not in all of them. The need for free legal aid, *inter alia*, in a certain civil case, in order to guarantee the compliance with the principles of due process is assessed in the light of the circumstances of any case and depends, among other things, on the interests of the applicant in the case, the difficulty of law and procedures applied, as well as the ability of the applicant to properly represent his/her interests in court (Items 59–61 of the judgment of 15 February 2005, *Steel and Morris v. the United Kingdom*, no 68416/01; the judgment of 8 November 2016, *Urbšienė and Urbšys v Lithuania,* no 16580/09).

18.5. To sum up the case-law of the ECtHR concerning the right of a person to apply to a court under Paragraph 1 of Article 6 of the Convention, when the issues of his civil rights and duties are decided, in the aspect relevant in the constitutional justice case at issue, it should be noted that states have certain discretion in ensuring the effectiveness of the said right, *inter alia*, in regulating the provision of legal aid in civil cases; it is important that the very essence of the right to apply to a court would not be violated. If a state has freely chosen to have, *inter alia*, the system of courts of appeal instance, this process is applied the requirements of Article 6 of the Convention guaranteeing the right to apply to a court and to due process; however, even in this sphere, certain discretion is left for the states in regulating this process, *inter alia*, in establishing relevant limitations of the use of the right of appeal. However, in any case, these limitations must be necessary in a democratic society and proportionate to the legitimate aim pursued.

IV

Case-law of constitutional courts of foreign states

19. In the context of the constitutional justice case at issue, it should be noted that the constitutional courts of foreign states have assessed the constitutionality of the requirement for a lawyer to draw up an appeal and to represent a person participating in a case during the consideration of a civil case in a court of appeal instance.

20. In its decision no 462/2014 of 17 September 2014, the Constitutional Court of Romania recognised that a legal regulation under which it is required that a lawyer would represent natural persons during the proceedings of appeal instance was in conflict with the Constitution.

20.1. In this decision, the Constitutional Court of Romania emphasised that the right to apply to a court may be limited by means of a law if such a limitation is proportionate to legitimate and reasonable objectives sought; however, such limitations are unacceptable if they deny the very essence of law. The legislature may establish the terms for lodging an appeal, its forms and requirements for its contents, the court for lodging an appeal with, the competence of the court and the procedure. The establishment of certain conditions for the implementation of the right of access to a court, including procedural measures does not in itself violate the right of access to a court itself, and the establishment of the said conditions is a prerogative of the legislature. However, in establishing them, the legislature must respect the principle *est modus in rebus*, which means that the established conditions must be reasonable enough and must not deny the existence of the right itself.

20.2. In this decision, the Constitutional Court of Romania noted that by establishing compulsory participation of a lawyer in appeal proceedings as a condition of acceptability of an appeal, the legislature prescribed a certain limitation of the right to apply to a court, whereby a legitimate objective is sought, i.e. that, during the appeal proceedings, the parties to the case would be represented in a proper and competent manner and that the court could function properly.

20.3. However, the Constitutional Court of Romania further noted that this measure did not seem proportionate to the pursued objective to create the interrelation between the public and private interest: the benefit thereof is not as significant as are the restrictions of human rights as a result of the said measure; it creates an imbalance between the public interest to ensure proper implementation of justice and the protection of fundamental human rights. Having established that the possibility to exercise the right to apply to a court depends on the conclusion of a contract with a lawyer as a condition for the acceptance of an appeal, the legislature imposed on the individuals excessive conditions for exercising the remedy of appeal because of the significant additional costs in relation to the costs incurred by the citizen for the payment of the service of justice. The legislature must be concerned about the strict application of the principle of *est modus in rebus*, whereas the establishment of an appeal as a means of access to justice includes in principle the possibility of using it for all those who have a right and legitimate interest.

20.4. In the abovementioned judgment, it was noted that, having chosen to establish the measures enabling the achievement of the legitimate objective pursued to ensure high-quality court proceedings, the legislature may not impose additional financial burden to the parties of the case. State-guaranteed legal aid concerns a limited category of citizens, bearing also in mind that, besides the income limits laid down, this aid may be received only up to a certain limit within a year. Meanwhile, the requirement to be represented by a lawyer in the legal phase of the appeal falls directly on all citizens, even those whose income exceed the income established by the state and

who may not receive state-guaranteed legal aid but who do not always have the material means to pay for a lawyer. Thus, state-guaranteed legal aid is not the remedy to compensate for the deficiencies of the impugned legal regulation.

21. The requirement for a party to a case to be represented by a lawyer in appeal proceedings was also assessed by the Constitutional Court of Romania in its judgment no 485/2015 of 23 June 2015. In this judgment, the Court declared unconstitutional the legal regulation under which a legal person had to be represented by a lawyer in the appeal proceedings. In the opinion of the Constitutional Court of Romania, such a requirement is an excessive condition imposing additional costs on legal persons seeking to exercise their right to appeal, thus, it violates the right to apply to a court and to judicial defence.

21.1. Having noted that the constitutional guarantee of free access to the courts and the right to defence belongs to natural as well as legal persons, the Constitutional Court of Romania held that the obligation of representation and assistance through a lawyer in the exercise of an appeal amounted to a condition of admissibility to exercise a legal remedy which limited the right to a court and to judicial defence. In the judgment, it was noted that the right to have a legal representative is transformed into an obligation, in the context of an appeal. Although in determining that, in appeal proceedings, legal persons must be represented by a lawyer, the legislature pursued the legitimate aim to ensure relevant legal representation of the parties and proper functioning of the courts of appeal, the measure chosen was disproportionate.

21.2. In this judgment of the Constitutional Court of Romania, it was also noted that legal persons, unlike natural persons, may not benefit from state-guaranteed legal aid, they may only expect for certain discounts or rebates, spreading of payments or deferral of payment of judicial stamp duties. Thus, legal persons inevitably entail additional costs as they have to hire lawyers in order to exercise their right of appeal. Those legal persons that are in a difficult economic situation or who cannot make payments for legal services as their bank accounts are blocked are unable to exercise their right of appeal at all.

22. The Constitutional Court of the Republic of Latvia also decided concerning the constitutionality of the requirement for a lawyer to represent a party to the case in court proceedings and declared unconstitutional the legal regulation, under which a person wishing to apply to a court of cassation instance had to be represented by a lawyer. This court noted that the legislature, when consolidating mandatory representation of a lawyer in a law, had the possibility of envisaging more considerate means for reaching the legitimate aims to ensure qualified legal representation and adequate performance. The restrictions determined by the legislature were not proportionate, as state financed legal aid was not ensured and the requirement to be represented by a lawyer denied persons the right of access to the court (the judgment of 27 June 2003, case no 2003-04-01).

23. The Constitutional Court of the Republic of Moldova also declared the requirement to have a lawyer when applying to the Supreme Court with a cassation appeal to be in conflict with the Constitution of the Republic of Moldova. In the judgment of 19 July 2005 of this Constitutional Court, it was noted that by means of such a legal regulation the right to freely choose the form of defence was violated. According to the said court, the condition that a lawyer must be addressed before applying to the Supreme Court was the unlawful infringement of the right of a person (the judgment of 19 July 2005, case no 16).

24. Therefore, to sum up the case-law of the constitutional courts of the above-mentioned states, it should be noted that the legal regulation establishing the requirement to have a lawyer when applying to a court of higher instance and during the consideration of the case by the said court is declared unconstitutional (violating the right to apply to a court and the right to judicial defence), when legal acts do not properly ensure the state-guaranteed free legal aid; such a requirement is considered disproportionate in order to pursue legitimate objective such as to reduce the workload of judges and to ensure the compliance with the principle of concentration of the proceedings and the quality.

V

The assessment of the compliance of Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure with the Constitution

25. As mentioned before, in the constitutional justice case at issue, the petitioner impugns the compliance of Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure with Paragraph 1 of Article 30 of the Constitution.

26. According to the petitioner, the right of appeal is a constituent part of the constitutional right to judicial defence. In the opinion of the petitioner, the legal regulation consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure excessively limits this right of a person, as in the case when a person does not have the possibilities, *inter alia*, financial, to address a lawyer and state-guaranteed legal aid is not provided for this person, he/she may not lodge an appeal and implement his/her constitutional right to apply to a court of appeal instance.

27. As mentioned before, the impugned Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure consolidates the general rule that, in a civil case, an appeal must be drawn up by a lawyer (with the exception of cases when an appeal is drawn up by a person having a university education in law, if he/she represents himself/herself or his/her close relative or spouse (cohabiting partner), as well as by other specified subjects in certain cases); this requirement applies to all natural persons who do not have university education in law or a close relative or spouse (cohabiting partner) having such education and to all legal persons who do not have an employee who would have acquired such education in civil cases of all categories (with the exception of the specified ones), irrespective of the difficulty of the case and (or) its extent, concerning legal issues, as well as when factual circumstances are impugned or when appealing against all the decision of a court of first instance or a part thereof.

It has also been mentioned that neither in criminal or administrative proceedings, nor in the proceedings of administrative offences, the requirement is applied for an appeal to be drawn up by a lawyer; however, the requirements for drawing up an appeal set out in the said cases are essentially similar to the requirements raised for drawing up an appeal in civil cases (Paragraph 1 (wording of 30 June 2016) of Article 313 of the Code of Criminal Procedure, Paragraph 1 of Article 647 of the Code of Administrative Offences, and Paragraphs 2 and 4 of Article 134 of the Law on Administrative Proceedings).

28. As mentioned before, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the right to lodge an appeal with at least one court of higher instance against any final act of a court of first instance in order to ensure the possibility of correcting potential mistakes is an inseparable part of the constitutional right to apply to a court and the right to due process.

It has also been mentioned that under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law:

– it is not allowed to artificially restrict or deny the right to apply to at least one court of higher instance for the assessment of the lawfulness and reasonableness of a decision adopted by a court of first instance, and no such a legal regulation may be established which would disproportionately limit the right to apply to a court of higher instance for the person, who believes that his/her rights or freedoms were not defended properly by the court of first instance;

– in implementing the constitutional duty to ensure the possibility for the participants of the proceedings to verify, with at least one court of higher instance, the legality and rationality of the decision that was adopted by the court of first instance, the legislature must establish such a legal regulation that would create preconditions for a person to effectively exercise his/her right to lodge an appeal with the court of appeal instance against a decision of the court of first instance that has not yet come into force; no such grounds, terms, and conditions for lodging an appeal may be provided for, due to which it would become especially difficult or impossible at all to appeal against a final act of a court of first instance with the court of appeal instance; otherwise, the constitutional right to appeal with the court of appeal instance against a decision of the court of first instance would be declaratory, and the legislature would prevent from correcting potential mistakes of the court of first instance, as well as from applying law correctly and administering justice.

29. While deciding on the compliance of the impugned legal regulation with the Constitution, it should be noted that the general rule consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure that an appeal must be drawn up by a lawyer should be assessed as a condition limiting the

lodging of an appeal, because, as mentioned before, a natural person who does not have university education in law, or a legal person who does not have an employee who would have acquired such education, cannot draw up an appeal himself/herself in his/her case irrespective of the difficulty of the case or its extent or whether the issues of fact or law are impugned, and if, under Paragraph 2 of Article 316 of the Code of Civil Procedure, within the term specified, the applicant does not access a lawyer (or other specified subjects), the appeal is deemed not to have been filed and the appeal proceedings are not initiated; upon termination of the specified term, it may no longer be initiated.

Thus, under Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, the possibilities to exercise the constitutional right to apply to the court of appeal instance are, in civil cases, limited for those persons who may not have access to a lawyer, *inter alia*, due to financial reasons, as well as for the persons who do not wish that due to the fact that the case is not difficult or due to the fact that the person himself/herself better knows the factual circumstances of the case.

29.1. The Constitutional Court has held more than once that, according to the Constitution, it is allowed to limit the implementation of constitutional rights and freedoms of a person if the following conditions are followed: 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 or freedoms; and the constitutional principle of proportionality is observed.

In this regard, it should be noted that, as mentioned before, under the Constitution, the right to an advocate as one of the conditions for effective implementation of the right of the person to judicial defence, in regulating the implementation of the constitutional right to appeal with the court of appeal instance against the final act of the court of first instance, may not be transformed into the duty restricting this constitutional right, *inter alia*, to the extent that the possibility to exercise the right itself would be denied.

29.2. As mentioned before, the legal regulation established in Paragraph 3 (wording of 8 November 2016) implies that, in order to draw up an appeal in civil cases, certain legal knowledge is necessary that can only be possessed by lawyers or other persons having university education in law or, in individual specified cases – certain special knowledge (in the cases concerning employment relationship, activity of association, etc.). Thus, in establishing such a legal regulation, the legislature pursued the legitimate and important objectives – to ensure appropriate representation of the parties to the case at the court of appeal instance and to guarantee the concentration, efficiency, and cost-effectiveness of civil proceedings.

29.3. It has also been mentioned that, under the legal regulation consolidated in the Law on State-Guaranteed Legal Aid (wording of 9 May 2013 with subsequent amendments), not all persons and not in all civil cases are provided state-guaranteed legal aid, *inter alia*, for drawing up an appeal in civil cases; natural persons, who do not meet the conditions for receiving the state-guaranteed legal aid, *inter alia*, such as the persons whose property and annual income at least slightly exceed the property and income levels established by the Government for the provision of legal aid, as well as legal persons, may in no case have access to state-guaranteed legal aid in civil cases for drawing-up an appeal.

Therefore, the model of provision of state-guaranteed legal aid established in the Law on State-Guaranteed Legal Aid is not such as to create preconditions for ensuring the implementation of the requirement established in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure for all persons who seek to lodge an appeal; therefore, natural and legal persons, who wish to exercise their right to appeal against a decision of the court of first instance in civil cases but who are not entitled to state-guaranteed legal aid, are obliged to address a lawyer and pay for his/her services from their own funds, thus experiencing certain financial burden, which could be unbearable for a certain part of persons.

29.4. In this context, it should also be noted that, as mentioned before, the provisions of the Code of Civil Procedure consolidate limited appeal, when a case is not re-examined in a court of appeal instance but the lawfulness and reasonableness of a decision of a court of first instance are reviewed within the limits of the appeal (with the exception of cases provided for in a law). It should be mentioned that the Constitutional Court has held that the general rule that a court of appeal instance must not exceed the limits of the appeal guarantees the pace of civil proceedings (the Constitutional Court’s ruling of 21 September 2006).

Thus, by consolidating, by means of the provisions of the Code of Civil Procedure, such a model of limited appeal, the legislature created preconditions to ensure the implementation of the principles of the concentration, efficiency, and cost-effectiveness of civil proceedings. Therefore, it should be held that in pursuing legitimate and important objectives, *inter alia*, by the requirement for an appeal to be drawn up by a lawyer (or other specified subjects) consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure complicated the implementation of the constitutional right of a person to apply to a court of appeal instance.

29.5. Meanwhile, neither Paragraph 1 of Article 318 (wording of 21 June 2011) of the Code of Civil Procedure regulating the duty to lodge a response to the appeal nor other provisions of the Code of Civil Procedure specify any requirements, *inter alia*, the requirement to apply to a lawyer or to have relevant legal education, to be met by another party of the case, who must lodge a response to the appeal setting out the opinion on the justification of arguments of the appeal.

In this ruling, it has been noted that, when regulating the relations of civil proceedings by means of a law, the legislature must respect the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, the equality of rights, public and fair trial, as well as the constitutional right of a person to due process, among other things, the principles of equality of arms and the right to be heard.

Thus, by such a legal regulation consolidated in the provisions of the Code of Civil Procedure, different conditions were established for the parties to a case exercising their right of appeal to participate in the proceedings of appeal instance, and preconditions were created to violate the principles of equality of arms and the right to be heard of the parties to the proceedings, without which the civil procedure could not be considered as appropriate.

29.6. In the light of the arguments set out, it should be held that the impugned Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure, under which a natural person, who did not have university education in law, or a legal person, who did not have an employee who would have acquired such education, could not, in his/her case, draw up an appeal himself/herself and had to refer to a lawyer and pay for his/her services from his/her own funds, established such a procedure for the implementation of the right to apply to the court of appeal instance, under which the right to an advocate was turned into the duty; due to this duty, it became particularly difficult for a number of persons (especially those who did not have the right, under the Law on State-Guaranteed Legal Aid (wording of 9 May 2013), to receive state-guaranteed legal aid, *inter alia*, due to the fact that their property and annual income at least slightly exceeded the property and income levels established by the Government) to apply to the court of appeal instance, *inter alia*, due to the experienced financial burden and, in certain cases, it also became impossible to appeal against the final act that was adopted in a case of a court of first instance.

Thus, it should be held that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, the legal regulation consolidated in Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure disproportionately limits the constitutional right of a person to apply to a court of appeal instance in order to verify the lawfulness and reasonableness of a decision of a court of the first instance, which is an inseparable part of the right to apply to the court, and, in certain cases, the essence of the right itself is denied; such a legal regulation prevented from correcting potential mistakes of a court of first instance, as well as from applying law correctly and administering justice.

30. With regard to the above, it must be concluded that Paragraph 3 (wording of 8 November 2016) of Article 306 of the Code of Civil Procedure is in conflict with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

31. In the context of the constitutional justice case at issue, it should be noted that both a person willing to lodge an appeal under Article 301 (wording of 21 June 2011) and Article 305 of the Code of Civil Procedure and a person who must lodge a response to the appeal under Article 318 (wording of 21 June 2011) of the Code of Civil Procedure may, under Paragraph 1 of Article 51 of the Code of Civil Procedure, decide to also conduct the case through representatives that, as mentioned before, are specified in Article 56 (wording of 8 November 2016) of the Code of Civil Procedure.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 53^1, 54, 55, and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania gives the following

ruling:

To recognise that Paragraph 3 (wording of 8 November 2016, Register of Legal Acts, 17-11-2016, No 26956) of Article 306 of the Code of Civil Procedure of the Republic of Lithuania is in conflict with Paragraph 1 of Article 30 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

This ruling of the Constitutional Court is final and not subject to appeal.

Justices of the Constitutional Court Elvyra Baltutytė
Gintaras Goda
Vytautas Greičius
Danutė Jočienė
Gediminas Mesonis
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