

On conducting a mandatory referendum on two days with a break of two weeks

Case no 18/2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

IN THE NAME OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF PARAGRAPH 8 OF ARTICLE 18, PARAGRAPH 1 OF ARTICLE 45, PARAGRAPH 1 OF ARTICLE 52, PARAGRAPH 2 OF ARTICLE 53, PARAGRAPH 1 OF ARTICLE 81, AND ARTICLE 82 OF THE REPUBLIC OF LITHUANIA'S LAW ON REFERENDUMS (WORDING OF 20 DECEMBER 2018) AND OF ARTICLE 2 OF THE RESOLUTION (No XIII-1537) OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA ON CALLING A MANDATORY REFERENDUM ON AMENDING ARTICLE 12 OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

15 February 2019, no KT8-N2/2019

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 Pitrenaitė

Julius Sabatauskas and Stasys Šedbaras, the members of the Seimas of the Republic of Lithuania, acting as the representatives of the Seimas, the petitioner

Agnė Širinskienė, the Chair of the Committee on Legal Affairs of the Seimas, acting as the representative of the Seimas, the party concerned

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 of the Law on the Constitutional Court of the Republic of Lithuania, at the hearing of the Constitutional Court, on 29 January 2019, considered, under oral procedure, the constitutional justice case (no 18/2018) subsequent to the petition (no 1B-21/2018) of the Seimas of the Republic of Lithuania, the petitioner, as set out in the resolution (No XIII-1596) of 25 October 2018 of the Seimas of the Republic of Lithuania on applying to the Constitutional Court of the Republic of Lithuania with the request to investigate whether the Constitution of the Republic of Lithuania is violated by Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania. In the said resolution (No XIII-1596) of 25 October 2018, the Seimas requests an investigation into “whether the provision ‘To establish that the mandatory referendum shall take place on 12 and 26 May 2019’, formulated in Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania, is in conflict with the constitutional principle of a state under the rule of law, the constitutional principle of the continuity of a referendum, and the constitutional principle of the equality of the rights of persons as consolidated in Article 29 of the Constitution”.

The Constitutional Court

has established:

I

The petition and arguments of the petitioner

1. On 25 October 2018, the Seimas adopted the resolution (No XIII-1596) on applying to the Constitutional Court of the Republic of Lithuania with the request to investigate whether the Constitution of the Republic of Lithuania is violated by Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania. By Article 1 of its resolution No XIII-1596, the Seimas set out its petition requesting an investigation into “whether the provision ‘To establish that the mandatory referendum shall take place on 12 and 26 May 2019’, formulated in Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania, is in conflict with the constitutional principle of a state under the rule of law, the constitutional principle of the continuity of a referendum, and the constitutional principle of the equality of the rights of persons as consolidated in Article 29 of the Constitution”.

This petition of the Seimas was received at the Constitutional Court on 31 October 2018.

2. The Constitutional Court decided to accept the said petition of the Seimas by adopting, on 1 November 2018, its decision no KT21-S10/2018 on accepting the petition of the

Seimas of the Republic of Lithuania, the petitioner, as set out in the resolution (No XIII-1596) of the Seimas of 25 October 2018 on applying to the Constitutional Court of the Republic of Lithuania with the request to investigate whether the Constitution of the Republic of Lithuania is violated by Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania.

3. The announcement (no 2B-59P) of the President of the Constitutional Court of 1 November 2018 on suspending the validity of Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania was officially published in the Register of Legal Acts on the day that announcement was issued (Register of Legal Acts, 01-11-2018, No 17568). As of the said day until the publication of this ruling of the Constitutional Court, the validity of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania (hereinafter also referred to as the resolution (No XIII-1537) of the Seimas of 18 October 2018) is suspended.

4. The petition is based on the following principal arguments, as set out in the preamble to the resolution (No XIII-1596) of the Seimas of 25 October 2018 on applying to the Constitutional Court of the Republic of Lithuania with the request to investigate whether the Constitution of the Republic of Lithuania is violated by Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania (hereinafter also referred to as the resolution (No XIII-1596) of the Seimas of 25 October 2018).

The Constitution does not specify how long elections or referendums may last; to establish this is within the prerogative of the legislature. However, taking into account that the Constitution was adopted by referendum on 25 October 1992 and that it is indicated in the preamble to the Constitutional Act on Membership of the Republic of Lithuania in the European Union (a constituent part of the Constitution), adopted in 2004, that the Seimas adopted this constitutional act “executing the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003”, the conclusion should be drawn that the Constitution provides for the principle of the continuity of a referendum, which means that a referendum may take place on one day or two consecutive days. Still, the way in which a referendum is organised on two days with a break of two weeks could be not in line with the constitutional concept of referendums.

Moreover, the impugned provision could also violate the constitutional principle of the equality of the rights of persons, since the persons who would vote in the referendum on the second day could have more information about that referendum.

II

The arguments of the representative of the party concerned

5. In the course of preparing the case for the hearing of the Constitutional Court, written explanations were received from Agnė Širinskienė, the Chair of the Committee on Legal Affairs of the Seimas, acting as the representative of the Seimas, the party concerned. It is stated in the explanations that the impugned legal regulation is not in conflict with the Constitution. The position of the representative of the Seimas, the party concerned, is based on the following arguments.

5.1. The representative of the Seimas, the party concerned, agrees with the argument expressed in the petition that the Constitution does not specify how long elections or referendums may last, but disagrees with the fact that the Constitution gives rise to the principle of the continuity of a referendum, which means, *inter alia*, that a referendum may not be held on two days with a break of two weeks.

According to the representative of the party concerned, the principle of the continuity of a referendum is not *expressis verbis* enshrined in the Constitution and may not be derived from the provisions of the Constitution. The petitioner, for its part, maintains that the principle of the continuity of a referendum derives from the practice of organising and conducting referendums in the Republic of Lithuania, taking into account the fact that the Constitution was adopted by one-day voting in the referendum held on 25 October 1992 and that the Constitutional Act on Membership of the Republic of Lithuania in the European Union was adopted on 10 and 11 May 2003, i.e. in the referendum held on two days. The referendums indicated by the petitioner were held pursuant to the resolutions adopted on the basis of the law by the representative state authority institutions (the Supreme Council of the Republic of Lithuania and the Seimas, respectively). According to the representative of the party concerned, the Republic of Lithuania's Law on the Referendum on Adopting the Constitution of the Republic of Lithuania, which had been adopted in calling the referendum of 25 October 1992, did not provide for the number of days on which voting in the referendum could take place; the legislature had the discretion to choose the date or dates when the referendum would be held. When the referendum of 10 and 11 May 2003 on membership in the European Union was called, Paragraph 1 (wording of 25 February 2003) of Article 50 of the Republic of Lithuania's Law on Referendums, which was then in force, prescribed that the Seimas could provide, by means of a separate resolution, that a referendum was to take place on more than one day; the law did not establish any specific number of days or any possible break in between them (once a referendum was to take place on more than one day). According to the representative of the party concerned, as follows from both of the above-mentioned laws, the choice of the number of days for holding a specific referendum and the length of a break between those days was solely the discretion of the legislature and was consolidated in the resolution of the legislative state authority.

Therefore, according to the representative of the party concerned, the petitioner derives the constitutional principle of the continuity of a referendum not from the Constitution and even not from the provisions of the law, but indirectly from the will of the legislature, as expressed in the substatutory legal act – the resolution. Such an argument, in the opinion of the representative of the party concerned, is not sufficient to frame the constitutional principle and to raise doubts about the conformity of the provisions of a particular legal act with that principle.

5.2. The possibility of voting in a referendum at different times does not deny and does not restrict the constitutional right of citizens to decide the most significant issues concerning the life of the State and the Nation by referendum.

The representative of the party concerned notes that referendum campaigning starts from the day of the submission by a group of members of the Seimas of a motion to the Seimas, and citizens know in advance about the question proposed to be put to the referendum. Thus, campaigning for the referendum called under the resolution (No XIII-1537) of the Seimas of 18 October 2018 has already started; more than six months remain until its end and, during this period, a large amount of information on the referendum will reach voters; therefore, there is no reason to maintain that the amount of this information within two weeks between votes in the referendum will significantly change and will affect the ability of voters to vote. The only information changing at the time of voting in a referendum is the data on the voter turnout. However, even if voting in a referendum takes place on only one day, the data on turnout is published on a regular basis and, in this respect, a voter arriving to cast a vote before the closure of voting in the constituency has more information than a voter who voted in advance.

Therefore, according to the representative of the party concerned, the period between voting days, which is provided for in the resolution (No XIII-1537) of the Seimas of 18 October 2018, does not imply the different legal situation of voters, does not significantly affect the information available to voters who cast their votes at different times, and does not violate the constitutional human rights and freedoms. Consequently, the above-mentioned period between voting days is not in conflict with the constitutional principles of the equality of the rights of persons and of a state under the rule of law.

III

The material received in the case

6. In the course of the preparation of the case for the hearing of the Constitutional Court, the following conclusions and opinions were received: a conclusion prepared by Prof. Dr. Vytautas Sinkevičius, which was submitted by Prof. Dr. Lyra Jakulevičienė, Dean of Mykolas Romeris Law School of Mykolas Romeris University; as well as a written opinion of Assoc. Prof. Dr. Vaidotas A. Vaičaitis of the Department of Public Law of the Faculty of Law of Vilnius University, which was submitted by Assoc. Prof. Dr. Haroldas Šinkūnas, Acting Dean of the Faculty of Law of Vilnius University.

IV

The persons who participated in the hearing of the Constitutional Court and the explanations provided by them

7. At the hearing of the Constitutional Court, Julius Sabatauskas and Stasys Šedbaras, the members of the Seimas who were acting as the representatives of the Seimas, the petitioner, indicated that they supported the position and arguments set out in the petition; also, they provided additional explanations and answered the questions asked by the

representative of the party concerned and the justices of the Constitutional Court.

7.1. Stasys Šedbaras, a representative of the Seimas, the petitioner, additionally noted that, although, under Paragraph 4 of Article 9 of the Constitution, the procedure for calling and conducting referendums is established by law, the Seimas is not entirely free while establishing this procedure and must take account of the overall constitutional regulation. In the Constitution, a referendum, as a form of the direct execution of the supreme sovereign power of the Nation, is given a special status, as only the most significant issues concerning the life of the State and the Nation are decided by referendum. If organising referendums and establishing referendum results were not given such special significance, it is not clear how deciding the most significant issues concerning the life of the State and the Nation by referendum would be different, for example, from decision making in the Seimas.

Stasys Šedbaras, a representative of the Seimas, the petitioner, emphasised that the will of the Nation must be clear in amending the Constitution. Since, in this case, Article 12 of the Constitution may be amended only by referendum, the referendum must result in the clear expression of the will of the Nation on the issue put to the referendum; no doubts must remain regarding the will of the Nation. Thus, according to the representative of the petitioner, no doubts may arise regarding the referendum results, including in terms of the contents of the decision made, the procedure for organising the referendum, or the rules applied to establishing the referendum results; however, the impugned resolution (No XIII-1537) of the Seimas of 18 October 2018 had precisely created the preconditions for doubting the referendum results.

In this context, the representative of the petitioner emphasised that the citizens of the Republic of Lithuania voting on the second day of the referendum would inevitably be influenced by various factors and may even be put under some pressure. Meanwhile, not to vote in the referendum is also their right. According to the representative of the petitioner, following the first day, it may be possible to find out which citizens of the Republic of Lithuania have not voted yet and, accordingly, to exert some pressure on them, in particular, in order that they go to the referendum and/or vote respectively. In this connection, voting in the second round of an election to the Seimas or an election of the President of the Republic is not comparable to voting on the second day of a referendum, since the results in conducting an election to the Seimas or an election of the President of the Republic are counted after the first round of the election and campaigning for the election is relaunched; therefore, the process itself is also of a different nature. The representative of the petitioner also doubted whether the security of votes cast by the citizens of the Republic of Lithuania on the first day of the referendum can be ensured.

According to the representative of the petitioner, at the time of early voting in a referendum, ballot papers are kept by referendum commissions, so certain continuity is still ensured. This situation is not analogous to that in which a referendum takes place on two days with a break of two weeks. In that case, ballot papers should be kept separately and they could not be left for keeping by referendum commissions. Therefore, organising a referendum according to the impugned resolution (No XIII-1537) of the Seimas of 18 October 2018 may create the preconditions for distorting the actual will of the Nation.

7.2. Julius Sabatauskas, a representative of the Seimas, the petitioner, additionally noted that Article 1 of the Constitution states that the State of Lithuania is an independent democratic republic. The imperative of a democratic state also implies clear and transparent referendum procedures, whose application is aimed at determining the actual will of the Nation. Whereas, under the impugned resolution No XIII-1537 of the Seimas of 18 October 2018, there is no aim to determine the actual will of the Nation; this resolution creates the preconditions for reaching the desired outcome by whatever means.

According to the representative of the petitioner, although campaigning during a break between the days of a referendum is not permissible, it is difficult to ensure that this prohibition be observed, in particular, considering the modern means for the dissemination of information and social media, since, among other things, the respective information may be published on the internet while, at the same time, making an impact on persons who have not voted yet in the referendum on its first day.

7.3. Answering the questions asked by the justices of the Constitutional Court, Stasys Šedbaras, a representative of the Seimas, the petitioner, noted that, in establishing the number of days on which a referendum may take place, the essential question is what model guarantees the expression and establishment of the actual will of the Nation. According to the representative of the petitioner, one day for a referendum is the most ideal option, while a referendum taking place over two days has already taken place. However, each additional day of a referendum increases the possibility of influence being made on the persons who arrive to express their will on a later day. In addition, problems also arise in connection with the establishment of the results and it is also doubtful whether it is possible to ensure the security of the referendum ballot papers on a long-term basis. The expression of the actual will of the Nation and the security of the referendum ballot papers are all the more doubtful in cases where the referendum takes place on two days with a large break. The representative of the petitioner also pointed out that referendums could be classified (first of all, mandatory and consultative referendums can be distinguished); therefore, their different duration could also be established.

Answering the questions asked by the justices of the Constitutional Court, Julius Sabatauskas, a representative of the Seimas, the petitioner, noted that, when calling a referendum and when consolidating, by means of a law, the legal regulation connected with calling and organising referendums, the Seimas must not provide for any duration of a referendum. In this respect, the powers of the Seimas are limited by the Constitution. In the opinion of the representative of the petitioner, different duration of referendums could be established depending on the issue being addressed (for instance, giving greater weight to mandatory referendums on amending the Constitution). In this case, it is the referendum initiators who, when announcing a referendum initiative, should indicate the desired duration of the particular referendum.

Julius Sabatauskas, a representative of the Seimas, the petitioner, also noted that, once the referendum process has started, the legal regulation on whose basis that referendum process is conducted must not be changed. Meanwhile, in the present case, the Seimas first adopted the resolution (No XIII-1537) of 18 October 2018, and then the Law on

Referendums was set out in its new wording, which came into force on 1 January 2019.

Answering the questions asked by the justices of the Constitutional Court, the representatives of the petitioner made it clear that, by impugning the compliance of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with the constitutional principle of the continuity of a referendum, among others, they doubted its compliance with Article 9 of the Constitution.

Answering the questions asked by the justices of the Constitutional Court, the representatives of the petitioner also expressed doubts about the constitutionality of the Law on Referendums in its new wording in terms of the procedure of its adoption. The representative of the petitioner emphasised that the Seimas, having included the law establishing the legal regulation governing the relationships related to the organisation of referendums into the List of the Republic of Lithuania's Constitutional Laws, had undertaken the obligation to adopt the Republic of Lithuania's Constitutional Law of Referendums. Therefore, although certain amendments to the Law on Referendums could have been made, it could not be set out in its new wording, whereas the legal regulation governing the relationships related to the organisation of referendums should have been laid down in the constitutional law.

8. At the hearing of the Constitutional Court, Agnė Širinskienė, the Chair of the Committee on Legal Affairs of the Seimas, pointed out that she supported the arguments set out in her written explanations, provided additional explanations, and answered the questions asked by Julius Sabatauskas, a representative of the petitioner, and by the justices of the Constitutional Court.

8.1. The representative of the Seimas, the party concerned, additionally noted that the legislature, in order to give the citizens of the Republic of Lithuania the opportunity to express their will in a referendum, is expanding their opportunity to vote in a referendum – it gives them more days to vote in a referendum in advance.

According to the representative of the party concerned, no matter on how many days a referendum takes place, a certain person who expresses his/her will in the referendum may have more information than another person expressing his/her will even if the former votes earlier than the latter (for example, due to the possibility of access to information sources, etc.). Moreover, the petitioner itself does not claim that persons who vote in the referendum in advance will have less information than those who vote in it on the day of the referendum. Meanwhile, the impugned resolution (No XIII-1537) of the Seimas of 18 October 2018 gives everyone the same opportunities to vote in the referendum and they can choose on which day of the referendum to express their will; thus, they are treated equally, and their rights are guaranteed equally. In this context, the representative of the party concerned also pointed out that doubts about the referendum and the organisation of the elections, including doubts about possible pressure, disclosure of information, etc., persist, but, in practice, such matters have not interfered with the organisation and conduct of referendums or elections.

The representative of the party concerned stressed that neither the resolution (No XIII-1596) of the Seimas of 25 October 2018 nor the representatives of the petitioner at the hearing of the Constitutional Court explained how the constitutional principle of a state under the rule of law had specifically been violated. In the opinion of the representative of the party concerned, this principle has not been violated, because it also implies that all rights and freedoms of persons are guaranteed to them in the same way, and this has been taken into account when establishing the impugned legal regulation. In addition, the impugned legal regulation was established in accordance with the provisions of the Law on Referendums.

8.2. Answering the questions asked by the justices of the Constitutional Court, the representative of the party concerned noted that, unlike in the case of an election to the Seimas or an election of the President of the Republic, the number of referendum days in the text of the Constitution is not defined. At the same time, the Constitution provides that the procedure for calling and conducting referendums is established by law. Accordingly, the referendum procedure, together with the number of referendum days, is determined by law, and the legislature could also establish such a legal regulation according to which a referendum may take place on more than one day. In addition, there are more differences between referendums and electoral institutions; therefore, an election could be organised in such a way where it takes place on one day, while a referendum could also take place over more days. According to the representative of the party concerned, it is important, among other things, that, in defining the criteria for determining the number of days for a particular referendum, the law distinguishes between mandatory and advisory referendums. In all cases, the principle of reasonableness should be used to determine the number of days of referendums and breaks between them.

The representative of the party concerned stressed that the resolution (No XIII-1537) of the Seimas of 18 October 2018 had established two referendum days with a break of two weeks in view of the fact that it would be more economically expedient to organise a referendum in such a way that the referendum days would coincide with voting in the election.

The representative of the party concerned noted that the resolution (No XIII-1537) of the Seimas of 18 October 2018 states that it will enter into force on 1 January 2019, i.e. together with the Law on Referendums in its new wording. Meanwhile, the official constitutional doctrine does not establish the requirement that, when it is planned to adopt a particular constitutional law, the relevant legal regulation must necessarily be consolidated in the constitutional, but not an ordinary law. Otherwise, the question of the principle of the free mandate of a member of the Seimas would arise. In addition, the List of the Republic of Lithuania's Constitutional Laws also provides for an electoral code, i.e. a non-existent legal act. The representative of the party concerned also noted that, if the Constitutional Law on Referendums were adopted without adopting the electoral code, the electoral laws could be changed much easier than the legal regulation governing the relationships related to the organisation of referendums.

holds that:

I

The scope of investigation

9. The Seimas, the petitioner, requests an investigation into whether “the provision ‘To establish that the mandatory referendum shall take place on 12 and 26 May 2019’, formulated in Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania, is in conflict with the constitutional principle of a state under the rule of law, the constitutional principle of the continuity of a referendum, and the constitutional principle of the equality of the rights of persons as consolidated in Article 29 of the Constitution”.

9.1. Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 prescribes: “To establish that the mandatory referendum shall take place on 12 and 26 May 2019.”

It should be noted that there are no other provisions in Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018. Therefore, the petition of the Seimas is to be treated as a petition requesting an investigation into the compliance of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with the Constitution.

9.2. The petitioner requests an investigation into the compliance of the impugned legal regulation, among others, with the constitutional principle of the continuity of a referendum. It should be noted that such a principle is not explicitly entrenched in the Constitution.

The Constitutional Court has held that the Constitution, as a legal reality, consists of various provisions – constitutional norms and constitutional principles, which are directly consolidated in various formulations of the Constitution or are derived from them (the Constitutional Court’s rulings of 25 May 2004 and 13 December 2004, and its decision of 20 April 2010); thus, the constitutional legal regulation is consolidated explicitly and it may also be established implicitly.

It should be noted that the institution of referendums has been consolidated primarily in Article 9 of the Constitution. In its decision of 11 July 1994 (case no 5/94), the Constitutional Court stated that this article formulates the main provisions concerning referendums – a direct form of democracy.

In view of the foregoing, and taking into account the explanations provided at the hearing of the Constitutional Court by the petitioner’s representatives that they relate the constitutional principle of the continuity of a referendum primarily to the provisions of Article 9 of the Constitution, the request of the petitioner to investigate the compliance of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with the

constitutional principle of the continuity of a referendum should be treated as a request to investigate the compliance of that resolution with Article 9 of the Constitution.

9.3. The petitioner requests an investigation into the compliance of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with the constitutional principle of the equality of persons, which is enshrined in Article 29 of the Constitution.

This request of the petitioner should be treated as a request to investigate the compliance of the impugned legal regulation with Article 29 of the Constitution.

10. Consequently, in the constitutional justice case at issue, the Constitutional Court will investigate, subsequent to the petition of the Seimas, the petitioner, whether Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 is in conflict with Articles 9 and 29 of the Constitution and the constitutional principle of a state under the rule of law.

II

The impugned and related legal regulation

11. On 18 October 2018, the Seimas adopted the resolution (No XIII-1537) on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania, which was published in the Register of Legal Acts on 23 October 2018.

11.1. The resolution (No XIII-1537) of the Seimas of 18 October 2018 prescribes:

“The Seimas of the Republic of Lithuania, pursuant to Article 9, Item 3 of Article 67, and Paragraph 2 of Article 148 of the Constitution of the Republic of Lithuania, as well as Articles 4, 9, 14, and 15 of the Republic of Lithuania’s Law on Referendums, has resolved the following:

Article 1.

To call a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania.

Article 2.

To establish that the mandatory referendum shall take place on 12 and 26 May 2019.

Article 3.

To put to the mandatory referendum this text of the draft Law Amending Article 12 of the Constitution of the Republic of Lithuania:

‘THE REPUBLIC OF LITHUANIA’S LAW AMENDING ARTICLE 12 OF THE CONSTITUTION OF

THE REPUBLIC OF LITHUANIA

2019 No

Vilnius

Article 1. The Amendment to Article 12

To amend Article 12 and set it out as follows:

“Article 12

Citizenship of the Republic of Lithuania shall be acquired by birth or on other grounds established by constitutional law.

A citizen of the Republic of Lithuania by origin, having acquired the citizenship of a state that meets the criteria of European and transatlantic integration chosen by the Republic of Lithuania as established by constitutional law, shall not lose the citizenship of the Republic of Lithuania. In other cases, a citizen of the Republic of Lithuania may not at the same time be a citizen of another state apart from the exceptions provided for by constitutional law.

The procedure for the acquisition and loss of citizenship shall be established by constitutional law.”

Article 2. The entry into force of the Law

This Law shall come into force on 1 January 2020.

I promulgate this Law passed by the citizens of the Republic of Lithuania by referendum.

The President of the Republic'

Article 4.

This Resolution shall come into force on 1 January 2019.”

11.2. Thus, the resolution (No XIII-1537) of the Seimas of 18 October 2018:

- called a mandatory referendum on amending Article 12 of the Constitution (Article 1); in this context, it should be noted that Article 12 of the Constitution is enshrined in Chapter I, titled “The State of Lithuania”, of the Constitution;

- established the date for conducting the mandatory referendum – 12 May 2019 and 26 May 2019, i.e. it provided that the referendum was to take place on two days with a break of two weeks between them (Article 2);

- put to the mandatory referendum the text of the draft Law Amending Article 12 of the Constitution (Article 3);

- established the date of the entry into force of the resolution (No XIII-1537) of the Seimas of 18 October 2018, which was 1 January 2019 (Article 4).

11.3. The preamble to the resolution (No XIII-1537) of the Seimas of 18 October 2018 specifies the provisions of the Constitution and the Law on Referendums (wording of 4 June 2002) pursuant to which the Seimas adopted the said legal act: the impugned legal regulation was established in accordance with Articles 9, Items 3 of Article 67, and Paragraph 2 of Article 148 of the Constitution, as well as Articles 4, 9, 14, and 15 of the Law on Referendums (wording of 4 June 2002).

11.3.1. The preamble to the resolution (No XIII-1537) of the Seimas of 18 October 2018 shows that the Seimas, in adopting this resolution, was following the provisions of the Constitution, which:

- as mentioned above, consolidate the main provisions of the institution of referendums (Article 9);

- establish that the Seimas adopts resolutions on referendums (Paragraph 3 of Article 67);

- establish that the provisions, *inter alia*, of Chapter I, titled “The State of Lithuania”, of the Constitution may be altered only by referendum (Paragraph 2 of Article 148).

11.3.2. The preamble to the resolution (No XIII-1537) of the Seimas of 18 October 2018 shows that the Seimas, in adopting this resolution, was following the provisions of the Law on Referendums (wording of 4 June 2002), which:

- established the questions regarding which a referendum must be held (Article 4, titled “Mandatory referendums”); pursuant to Item 2 of Paragraph 1 of this article, a

referendum is mandatory, *inter alia*, on the amendment of the provisions of Chapter I, titled "The State of Lithuania", of the Constitution;

- regulated the right of initiative to call a referendum (Article 9, titled "The right of initiative to call a referendum"); under Paragraph 3 of this article, a group comprising at least 1/4 of the members of the Seimas may submit to the Seimas a proposal to call a referendum, and a decision on this proposal is taken by the Seimas;

- established the procedure for passing a resolution of the Seimas regarding the petition to call a referendum (Article 14, titled "Procedure for passing a resolution of the Seimas regarding the petition to call a referendum");

- established the content of the resolution of the Seimas on calling a referendum: under Paragraph 1 of Article 15, titled "The content of a resolution of the Seimas on calling a referendum", the type of a referendum, its date, and the text of the decision to be put to the referendum must be indicated in a resolution of the Seimas on calling a referendum (Paragraph 1); according to Paragraph 2 (wording of 28 September 2018) of Article 15, the date for conducting the referendum is set not later than in eight months and not earlier than in two months from the day of passing the resolution of the Seimas on the date of calling the referendum.

11.4. Thus, the date for conducting the mandatory referendum on amending Article 12 of the Constitution, which, as mentioned above, is two days with a break of two weeks, was set by the impugned Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 in implementing the powers of the Seimas, consolidated in Article 15 (as amended on 28 September 2018) of the Law on Referendums, *inter alia*, to set the date for conducting the referendum, among other things, by complying with the requirements, set out in Paragraph 2 (wording of 28 September 2018) of this article, for choosing the date of the referendum (i.e. to set the date for conducting the referendum that is not later than eight months and not earlier than two months after the day of passing the resolution of the Seimas on the date of calling the referendum).

11.4.1. In this context, it should be noted that the provisions of Article 15 (as amended on 28 September 2018) of the Law on Referendums relate to the legal regulation laid down in Paragraph 1 (wording of 25 February 2003) of Article 50 of this law.

Paragraph 1 (wording of 25 February 2003) of Article 50, titled "The time and location of voting", of the Law on Referendums prescribed:

"Voting on the day of the referendum shall take place from 7.00 until 20.00 at a polling station designated by the referendum commission. A different time may be set for voting in a resolution of the Seimas on calling the referendum. In a separate resolution, the Seimas may establish that the referendum shall take place on more than one day."

Thus, this legal regulation, among other things, gives the Seimas the right to determine by means of a separate resolution that a referendum is to take place on more than

one day. In interpreting the legal regulation entrenched in Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums in conjunction with that laid down in Article 15 (as amended on 28 September 2018) of this law, which establishes the powers of the Seimas, *inter alia*, to set the date for conducting a referendum, it should be noted that, according to this legal regulation, it was allowed to separately stipulate in a resolution of the Seimas on calling a referendum, when setting the date of the referendum, that the referendum was to take place on more than one day. It should be noted that this legal regulation did not determine on how many days in general a referendum could take place.

11.4.2. In this context, it should be noted that the mentioned provision of Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums, according to which a referendum may take place on more than one day, was consolidated only after the entry into force of the Republic of Lithuania's Law Amending and Supplementing Articles 7, 11, 13, 35, 43, 50, 51, 54, and 78 of the Law on Referendums and Supplementing the Law with Article 78¹, which was adopted by the Seimas on 25 February 2003.

It should be noted that the legal regulation that had been in force until then, namely, the Law on Referendums adopted by the Seimas on 4 June 2002, stipulated that a referendum was to take place on one day; this can be seen, *inter alia*, from the provision "Voting on the day of the referendum shall take place from 7.00 until 20.00 at a polling station designated by the referendum commission" of Paragraph 1 of Article 50 of the Law on Referendums (wording of 4 June 2002).

It should also be noted that the Republic of Lithuania's Law on Referendums that was adopted on 3 November 1989 and was in force prior to the adoption of the Law on Referendums (wording of 4 June 2002) also stipulated that a referendum was to take place on one day; this can be seen, *inter alia*, from the provision "Voting on the day of the referendum shall take place from 7.00 until 21.00 at a polling station designated by the referendum commission" of Article 27 of the Law on Referendums (wording of 3 November 1989).

11.4.3. When interpreting, in the context of the constitutional justice case at issue, the provisions of Article 15 (as amended on 28 September 2018) of the Law on Referendums in conjunction with Paragraph 1 (wording of 25 February 2003) of Article 50 thereof, it should be noted that, according to these provisions, the Seimas, when setting by its resolution the date of conducting a referendum under Article 15 (as amended on 28 September 2018) of this law, was allowed to stipulate, in accordance with Paragraph 1 (wording of 25 February 2003) of Article 50 thereof, that, *inter alia*, a mandatory referendum takes place on one day or on more than one day; Paragraph 1 (wording of 25 February 2003) of Article 50 of this law did not establish on how many days in general a referendum could take place, i.e. there were no established restrictions on implementing the discretion granted to the Seimas to determine that a referendum takes place on more than one day. Thus, under this legal regulation, the Seimas could determine any number of days on which a particular referendum was to take place, *inter alia*, it could also determine that a referendum was to take place on more than one consecutive day, or that it could take place on more than one day with a break (breaks) in between.

11.4.4. In view of the foregoing, the conclusion must be drawn that Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018, which, as mentioned above, establishes two referendum days with a break of two weeks, was adopted after the Seimas had exercised its powers, consolidated in Article 15 (as amended on 28 September 2018) of the Law on Referendums, to set the date of the referendum and had used its discretion, established in Paragraph 1 (wording of 25 February 2003) of Article 50 of the same law, to stipulate that a referendum may take place on more than one day.

12. In the context of this constitutional justice case, it should be noted that, on 20 December 2018, the Seimas adopted the Republic of Lithuania's Law Amending the Law (No IX-929) on Referendums, which came into force (with certain exceptions) on 1 January 2019 and whose Article 1 amended the Law on Referendums and set it out in its new wording; the Law on Referendums (wording of 20 December 2018) came into force on 1 January 2019.

12.1. As is apparent from the explanatory memorandum to the draft Law Amending the Law (No IX-929) on Referendums, it was decided to set out the Law on Referendums in its new wording because it had not been substantially revised for a long time; this draft law clarified the terms used in the law, as well as its provisions on procedures for organising referendums and campaigning, it increased the number of voting places abroad, set the payment of remuneration for the members of voting commissions, prolonged the time of voting, and made more precise the provisions for counting votes.

12.2. In this context, it should be noted that, as mentioned above, Article 4 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 provides that this resolution comes into force on 1 January 2019. Thus, the resolution (No XIII-1537) of the Seimas of 18 October 2018 came into force on the same day as the Law on Referendums (under Paragraph 1 of Article 2 of the Law Amending the Law (No IX-929) on Referendums, the Law on Referendums came into force (with certain exceptions) on 1 January 2019).

In the context of the petition of the Seimas, it should be noted that the Law Amending the Law (No IX-929) on Referendums does not contain any provisions stipulating that the provisions of the Law on Referendums in its new wording are not applicable to the conduct of the referendum called by the impugned resolution (No XIII-1537) of the Seimas of 18 October 2018 or that they, as regards the conduct of this referendum, are applicable with exceptions (or in part, except for the new formulations, coming into force on 1 July 2019, of the Law on Referendums (wording of 20 December 2018), as consolidated by the provisions of the Law Amending the Law (No IX-929) on Referendums). Thus, although the resolution (No XIII-1537) of the Seimas of 18 October 2018 called the mandatory referendum on amending Article 12 of the Constitution in accordance with the provisions of the Law on Referendums (wording of 4 June 2002), taking into account Paragraph 1 of Article 2 of the Law Amending the Law (No IX-929) on Referendums, the said referendum must be conducted pursuant to the legal regulation established by the Law on Referendum in its new wording, i.e. the wording of 20 December 2018.

12.3. Having compared the legal regulation of setting the date of a referendum established in the Law on Referendums (wording of 20 December 2018) with the one laid

down in the Law on Referendums (wording of 4 June 2002 as amended on 25 February 2003), it appears that the said legal regulation has remained unchanged from the aspect relevant in this constitutional justice case.

12.3.1. In this context, it should be noted that Paragraph 1 of Article 16 of the Law on Referendums (wording of 20 December 2018) defines the content of a resolution of the Seimas on calling a referendum: it must specify the type of a referendum, its date, and the text of the decision to be put to a referendum; according to Paragraph 2 of this article, the date for conducting the referendum is set not later than in eight months and not earlier than in two months from the day of passing the resolution of the Seimas on calling the referendum.

Thus, Article 16 of the Law on Referendums (wording of 20 December 2018), among others, consolidates the powers of the Seimas, *inter alia*, to set the date for a referendum, *inter alia*, by complying with the requirements, laid down in Paragraph 2 of this article, for choosing the date of a referendum (i.e. to set the date of a referendum not later than in eight months and not earlier than in two months from the day of passing the resolution of the Seimas on calling the referendum). It should be noted that these powers of the Seimas are identical to those set out in Article 15 (as amended on 28 September 2018) of the Law on Referendums.

12.3.2. In this context, it should be noted that the provisions of Article 16 of the Law on Referendums (wording of 20 December 2018) relate to the legal regulation laid down in Paragraph 1 of Article 52 of this law.

Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) prescribes:

“Voting on the day of the referendum shall take place from 7.00 until 20.00 at a polling station designated by the referendum commission. A different time may be set for voting in a resolution of the Seimas on calling a referendum (but not shorter than the one set in this Law). In its resolution, the Seimas may establish that the referendum shall take place on more than one day.”

Thus, this legal regulation, among other things, gives the Seimas the right to determine by means of a resolution that a specific referendum is to take place on more than one day. In interpreting the legal regulation entrenched in Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) in conjunction with that laid down in Article 16 of this law, which establishes the powers of the Seimas, *inter alia*, to set the date of a referendum, it should be noted that, according to this legal regulation, it is allowed to stipulate in a resolution of the Seimas on calling a referendum, when setting the date of the referendum, that the referendum is to take place on more than one day. It should be noted that this legal regulation does not determine on how many days in general a referendum may take place.

It should also be noted that, from the aspect relevant to this constitutional justice

case, the legal regulation established in Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is identical to the one laid down in Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums.

12.3.3. When interpreting, in the context of the constitutional justice case at issue, the provisions of Article 16 of the Law on Referendums (wording of 20 December 2018) in conjunction with Paragraph 1 of Article 52 thereof, it should be noted that, according to these provisions, the Seimas, when setting by its resolution the date of a referendum under Article 16 of this law, is allowed to stipulate, in accordance with Paragraph 1 of Article 52 of this law, that, *inter alia*, a mandatory referendum takes place on one day or on more than one day; Paragraph 1 of Article 52 of this law does not establish on how many days in general a referendum may take place, i.e. there are no established restrictions on implementing the discretion granted to the Seimas to determine that a referendum takes place on more than one day. Thus, under this legal regulation, the Seimas may determine any number of days on which a particular referendum is to take place, *inter alia*, it may also determine that a referendum will take place on more than one consecutive day, or that it will take place on more than one day with a break (breaks) in between.

12.3.4. Such an interpretation of Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is also substantiated by the provisions of Paragraph 8 of Article 18 of this law.

Paragraph 8 of Article 18, titled "Referendum campaigning", of the Law on Referendums (wording of 20 December 2018) prescribes:

"Referendum campaigning, despite its methods, forms, or measures, shall be prohibited 30 hours before the commencement of voting in the referendum and on the polling day until the polls are closed, with the exception of permanent visual campaigning material that was displayed prior to the commencement of the prohibition of this referendum campaigning and whose removal requires complex actions. During the period of the prohibition of the referendum campaigning and the period of voting in advance, no visual referendum campaigning measures (with the exception of those permitted by the Central Electoral Commission) may be present in the polling station and within 50 meters of the building in which the polling station is located. In the event of simultaneous (concurrent) electoral campaigning, the campaigning shall be prohibited 30 hours prior to the start of the election and on the election day until the polls are closed under the same conditions and in accordance with the same procedure as specified in this paragraph. Where a referendum takes place on more than one day (on two or more days) and a break between the days of the referendum is longer than one day, the period of the prohibition of campaigning shall end on the first day of the referendum as soon as the voting closes. The period of the prohibition of the referendum campaigning before the next day of the referendum shall begin in accordance with the procedure laid down in this paragraph."

Thus, as can be seen from the provisions of Paragraph 8 of Article 18 of the Law on Referendums (wording of 20 December 2018), which state that "Where a referendum takes place on more than one day (on two or more days) and a break between the days of the

referendum is longer than one day, the period of the prohibition of campaigning shall end on the first day of the referendum as soon as the voting closes. The period of the prohibition of the referendum campaigning before the next day of the referendum shall begin in accordance with the procedure laid down in this paragraph", a referendum may take place on one, two, or more days, and may take place on several days with breaks in between, *inter alia*, where such breaks may be longer than one day.

12.3.5. In the context of the received petition, it should also be mentioned that the Law on Referendums (wording of 20 December 2018) also contains other provisions regulating issues related to the conduct of a referendum when it takes place on more than one day.

12.3.5.1. In this context, mention should be made of Paragraph 1 of Article 45, titled "Updating electoral rolls upon compiling final electoral rolls, as well as on the day of a referendum", of the Law on Referendums (wording of 20 December 2018), which prescribes:

"If following the approval of the final electoral rolls, but not later than 18.00 on the referendum day (if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum), a citizen who has not been entered on the electoral roll of the referendum district applies to the district referendum commission, attests in writing that he/she has not voted in another referendum district and submits the citizen's passport with the home address recorded therein or the passport or the personal identity card and the document specifying his/her stated home address (the home address must be assigned to the territory of this referendum district, or the citizen must submit some other evidence that he/she is staying at the address assigned to the territory of this referendum district), the district referendum commission shall enter this citizen on the additional electoral roll of the referendum district and allow him/her to vote according to the procedure established by the Central Electoral Commission, immediately furnishing the municipal referendum commission with the citizen's surname, name, personal identification number, his/her passport number, and address."

Paragraph 1 of Article 45 of the Law on Referendums (wording of 20 December 2018) regulates the updating of electoral rolls upon compiling final electoral rolls, *inter alia*, it determines the deadline by which that updating may be completed, and the provision "(if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum)" creates the preconditions for updating the electoral rolls in the event that the referendum takes place on more than one day.

12.3.5.2. Mention should also be made of Paragraph 2 of Article 53, titled "The beginning of voting", of the Law on Referendums (wording of 20 December 2018), which prescribes:

"In the event that a referendum takes place on more than one day, the ballot box slot shall be sealed up with paper and stamped at the end of each referendum day, excepting the final referendum day, the unused or spoilt referendum ballot papers shall be collected and stamped in accordance with the procedure established by the Central Electoral Commission, and the polling station shall be left under the police protection. A polling station may also be

guarded by the members of the referendum commission and observers who wish to do so. A polling station shall be opened on the second and subsequent days when at least three-fifths of the members of the district referendum commission have assembled there and the chairperson and the members of the referendum commission have checked the district referendum ballot-box: to see whether the seals have not been tampered with and/or whether there are other signs showing that it could have been opened or that it could otherwise been possible to remove from or add to it the referendum ballot papers; also, to check other seals."

Paragraph 2 of Article 53 of the Law on Referendums (wording of 20 December 2018) regulates the beginning of voting in cases where a referendum takes place on more than one day.

12.3.5.3. Paragraph 1 of Article 81, titled "The entry into force of a law, another act, or resolution of the Republic of Lithuania adopted by referendum", of the Law on Referendums (wording of 20 December 2018) prescribes:

"The day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum. In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum."

Paragraph 1 of Article 81 of the Law on Referendums (wording of 20 December 2018) establishes the day that is deemed the date of the passing of a law, another act, or resolution adopted by referendum; the provision "In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum" of the said paragraph establishes the day that is deemed the date of the passing of a law, another act, or resolution adopted by referendum in cases where the referendum takes place on more than one day.

12.3.5.4. Article 82, titled "The calculation of time limits", of the Law on Referendums (wording of 20 December 2018) prescribes:

"1. In the event a referendum shall take place on more than one day, the time limits set out in this Law for up to the day of the referendum vote shall be calculated until the first day of the referendum vote.

2. In the event a referendum shall take place on more than one day, the time limits set out in this Law for after the day of the referendum vote shall be calculated after the final day of the referendum vote."

Article 82 of the Law on Referendums (wording of 20 December 2018) regulates the calculation of time limits set in this law in cases where a referendum takes place on more than one day.

12.3.5.5. To sum up the legal regulation entrenched in the provision "(if a referendum

takes place on more than one day, then until 18.00 on the last day of voting at the referendum)" of Paragraph 1 of Article 45 of the Law on Referendums (wording of 20 December 2018), in Paragraph 2 of Article 53 thereof, in the provision "In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum" of Paragraph 1 of Article 81 thereof, as well as in Article 82 thereof, it should be noted that, when regulating the issues of conducting referendums, this legal regulation creates the preconditions for a referendum to take place on more than one day.

12.3.6. In the context of the constitutional justice case at issue, it should be noted that the Law on Referendums (wording of 20 December 2018) establishes certain provisions that create the preconditions for voting in a referendum, *inter alia*, before the date of the referendum set in the resolution of the Seimas.

12.3.6.1. Paragraph 1 of Article 56, titled "Voting at special polling places", of the Law on Referendums (wording of 20 December 2018) prescribes:

"Voting at special polling places shall be made possible for citizens who, due to their status of health or age, are in health care (except out-patient), social care, or guardianship institutions or are performing compulsory military service and, therefore, are unable to arrive at a referendum district to vote, or are performing active military service, state service, or working under employment contracts in international military operations abroad, or are serving a sentence of arrest or imprisonment, or are in police arrest houses or in remand prisons. Voting at special polling places shall be possible only during the business hours set by the district referendum commission on the recommendation of the heads of the bodies specified in this paragraph, on the last Wednesday, Thursday, or Friday before the referendum day. In military units deployed abroad, voting shall be conducted in accordance with the procedure laid down by the Central Electoral Commission (by setting a voting date and transmission of ballot papers electronically) on the recommendation of the Minister of National Defence. Expenses related to voting at special polling places shall be covered from the state budget."

12.3.6.2. Article 57, titled "Voting in diplomatic missions or consular posts of the Republic of Lithuania and in additional polling places abroad at a diplomatic mission or consular post of the Republic of Lithuania", of the Law on Referendums (wording of 20 December 2018), among others, prescribes:

"1. Citizens who have gone to foreign states shall be entitled to vote in diplomatic missions or consular posts of the Republic of Lithuania during their business hours. Not less than 4 hours must be allotted for voting during a business day of the said institutions. Voting in an additional polling place abroad at a diplomatic mission or consular post of the Republic of Lithuania shall take place within the hours set by the diplomatic mission or consular post of the Republic of Lithuania. Voting shall end on the day of the referendum at the moment it ends in the Republic of Lithuania.

2. Voting commissions set up by the diplomatic missions or consular posts of the

Republic of Lithuania shall hand referendum documents to the citizens who have notified the said institutions about their home address, or, at their request, deliver the documents by post and accept them.”

12.3.6.3. Article 63, titled “Voting at home and voting in advance”, of the Law on Referendums (wording of 20 December 2018), among others, prescribes:

“1. Only the following citizens may vote at home: voters with disabilities, voters with temporary working incapacity due to illness, voters aged 70 and over if they are unable because of their status of health to arrive at a referendum district to vote on the referendum day and if they have submitted a citizen’s request the form of which is established by the Central Electoral Commission for voting at home and if they have been entered on the electoral roll of citizens voting at home. Referendum commissions that draw up and verify rolls of citizens voting at home shall be entitled to receive information about persons with disabilities from the administrator of the Republic of Lithuania’s register of persons covered by state social insurance and recipients of state social insurance benefits and from the administrator of the data on the establishment of a working capacity and disability level, as well as to receive information about persons with temporary working incapacity from the administrator of the Republic of Lithuania’s register of persons covered by state social insurance and recipients of state social insurance benefits and from health care establishments. Referendum commissions must not disseminate this information and shall use it only for making up and verifying electoral rolls of citizens voting at home.

2. Only those citizens shall be entitled to voting in advance who are unable to arrive at a referendum district to vote on the referendum day. A municipal referendum commission shall organise citizens’ voting in advance. Voting in advance must be conducted from 8.00 until 20.00 on the last Monday, Tuesday, Wednesday, Thursday, and Friday before the referendum day on the premises arranged beforehand, fitted for voting, and located in the building where the workplace of the municipal mayor (director of the administration) is situated. The chairperson of a municipal referendum commission shall appoint at least two members of the municipal referendum commission or district referendum commissions, who may not be proposed by the same political party, to issue and collect referendum ballot papers and voting envelopes during voting in advance. Voting in advance shall be supervised by the chairperson of the municipal referendum commission or, on his/her instruction, a member of the municipal referendum commission. The Chairperson of the Central Electoral Commission, a member of this Commission authorised by him/her, or the chairperson of the municipal referendum commission who has established, in accordance with the procedure laid down by the Central Electoral Commission, the cases of bribery of citizens, the transportation of citizens to vote, encouragement to vote for a fee, or other cases grossly violating the citizens’ rights, must suspend the voting in advance until the violations have been removed and it is possible to conduct the referendum freely and democratically in accordance with the requirements of this Law.

3. Requests of citizens for voting at home shall be submitted to district referendum commissions. The acceptance of requests for voting at home from citizens who reside on the territory of the particular referendum district shall start with the issue of poll cards to such

voters and end on the last Wednesday before the referendum day. The acceptance of requests for voting at home from citizens temporarily staying on the territory of the respective referendum district, who have not been entered on the electoral roll of this referendum district, shall end on the last Tuesday before the referendum day. A citizen who because of his/her disability or for other reasons is unable to fill in a request for voting at home or to submit it to a district referendum commission may authorise his/her family member, neighbour, or a person who takes care of him/her to carry out the said actions for him/her. The said persons shall sign the citizen's request and indicate their name, surname, and personal identification number.

4. On the last Thursday before the referendum day, a district referendum commission shall draw up and approve an electoral roll of citizens voting at home, who are entered on the electoral roll of that referendum district. On the last Wednesday before the referendum day, a municipal referendum commission shall draw up and approve an electoral roll of citizens who reside or temporarily stay on the territory of a particular polling district but who have been entered on the electoral roll of another referendum district and have not been entered on the electoral roll of this referendum district when revising them.

5. On the last Friday or Saturday before the referendum day, from 8.00 until 20.00, at least two members of a district referendum commission shall deliver voting envelopes, advance voting sheets, and a referendum ballot paper to the homes of the citizens who have been entered on the roll of the particular district referendum voters voting at home and who are voters of that referendum district. On the last Thursday before the referendum day, at least two members of a municipal referendum commission or, by order of its chairperson, at least two members of a district referendum commission shall deliver voting envelopes, advance voting sheets, and ballot papers to the homes of the citizens who were entered on the roll of the municipal voters voting at home, but who have not been entered on the electoral roll of the referendum district on the territory of which they are temporarily staying. Voting at home and voting in advance may be observed by referendum observers who have the certificate to observe a referendum in any referendum district. At the end of the vote, the sealed covering envelopes shall be transferred to the chairperson of the municipal referendum commission. The rolls of citizens who voted at home or in advance, as well as unused referendum ballot papers, shall be included in the records and stored by the referendum commissions that organised the voting. Following the voting in the referendum, such commissions shall transfer the said documents together with other referendum documents to an appropriate municipal referendum commission or the Central Electoral Commission.

6. A concrete schedule of arrivals of referendum commission members to the homes of citizens voting at home shall be approved by the chairperson of a district or municipal referendum commission not later than on the last Wednesday or Thursday, respectively, until 12.00 prior to the referendum day. This schedule shall be made available to the public; its copy shall be posted on the notice board of the district (municipal) referendum commission on the day of the approval of the schedule. Only the referendum commission members and referendum observers proposed by different political parties may come along to the homes of citizens voting at home."

12.3.6.4. Thus, the legal regulation governing the relationships connected with referendums, as laid down in the Law on Referendums (wording of 20 December 2018), *inter alia*, in Paragraph 1 of Article 56, Paragraphs 1 and 2 of Article 57, and Paragraphs 1–6 of Article 63 thereof, creates the preconditions for the citizens of the Republic of Lithuania, *inter alia*, to cast their votes in a mandatory referendum not only on the day scheduled for the referendum by the respective resolution of the Seimas, but also in advance, i.e. prior to the day scheduled for the referendum by the resolution of the Seimas. It should be noted that this possibility is granted to those citizens of the Republic of Lithuania who, due to their state of health, service, or work, departure to a foreign state, or other reasons, cannot arrive at the referendum district and vote on the referendum day set in the resolution of the Seimas. In the context of the constitutional justice case at issue, it should also be emphasised that, by means of the legal regulation entrenched in the Law on Referendums (wording of 20 December 2018), citizens of the Republic of Lithuania who are unable to arrive at a referendum district to vote in the referendum day set in the resolution of the Seimas are provided with the opportunity to vote on the days and according to the procedure established by law before the referendum day set in the resolution of the Seimas.

13. In the context of the arguments presented in the petition, it should be mentioned that, after the restoration of the independence of the Republic of Lithuania, one general plebiscite was conducted in the Republic of Lithuania in accordance with the rules established in the Law on Referendums (wording of 3 November 1989), as well as 11 referendums, 9 of which were mandatory.

It should be noted that the general plebiscite and referendums were conducted only on one day, except for one referendum (which took place on two consecutive days).

III

The European standards for referendums

14. In the constitutional justice case at issue, mention should be made of the provisions of the relevant documents of the European Commission for Democracy through Law (Venice Commission), acting as an advisory body to the Council of Europe.

14.1. In the documents of the Venice Commission, the following principles and provisions of the conduct of referendums relevant in the context of the constitutional justice case at issue have been formulated:

– the practice of referendums and legal acts regulating the organisation of referendums in various states are different; it is common to both elections and referendums that, while conducting them, it is sought to respect the principles inherent in Europe’s electoral heritage, which are applied *mutatis mutandis* also to referendums (the report “Referendums in Europe – an Analysis of the Legal Rules in European States” adopted by the Venice Commission at its 64th plenary session on 21–22 October 2005 (hereinafter also referred to as the Report)); the constitutional principles of electoral law – universal, equal, free, direct, and secret suffrage – apply to referendums (the Guidelines for Constitutional

Referendums at National Level, adopted by the Venice Commission at its 47th plenary session on 6–7 July 2001);

– to pass the test of legitimacy, a referendum must be conducted in accordance with minimum standards of legality and good electoral practice (the Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with Applicable International Standards, adopted by the Venice Commission at its 65th plenary session on 16–17 December 2005);

– the principle of free suffrage also includes freedom of voters to form an opinion, as well as freedom to express one's will, *inter alia*, by ensuring equal opportunities for the supporters or opponents of the proposal put to the vote; in this context, administrative authorities must remain neutral, *inter alia*, with regard to the referendum campaign; neutrality is one of the means of ensuring that voters can form their opinion freely; contrary to the case of elections, it is not necessary to prohibit completely intervention by the authorities in support of or against the proposal submitted to a referendum; however, the public authorities (national, regional, and local) must not influence the outcome of the vote by excessive, one-sided campaigning; freedom of voters to express their wishes means, among other things, the right to accurate establishment of the result by the body responsible for organising the referendum; an impartial body must be in charge of organising the referendum; the authorities must not abuse the powers conferred on them (the Guidelines on the Holding of Referendums, adopted by the Venice Commission at its 70th plenary session on 16–17 March 2007, which make part of the Code of Good Practice on Referendums (hereinafter also referred to as the Guidelines on the Holding of Referendums));

– the process of amending the Constitution should be marked by the highest levels of transparency and inclusiveness; transparency, openness, and inclusiveness, as well as adequate timeframes and conditions allowing for a variety of views and proper wide and substantive debates of controversial issues are key requirements of a democratic constitution-making process and help ensure that the text is adopted by society as a whole, and reflects the will of the people (joint opinion on the draft law amending the Constitution of the Kyrgyz Republic, adopted by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights at the 108th plenary session on 14–15 October 2016);

– the possibility of voters to freely express their will is ensured by creating preconditions for them to vote in the polling stations; at the same time, one of the ways to ensure that voters would freely express their will may be the possibility to vote by post; postal voting is allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined, among other things, to people who are in hospital or to persons with reduced mobility or to electors residing abroad (the Guidelines on the Holding of Referendums).

14.2. In this context, it should be mentioned that the Code of Good Practice in Electoral Matters, which was adopted by the Venice Commission at its 52nd plenary session on 18–19 October 2002, *inter alia*, emphasises the duty of state authorities to be neutral and the

requirement that an impartial body would organise the elections and would be in charge of applying electoral law. While revealing the principle of free suffrage in the explanatory report, which is a constituent part of the Code of Good Practice in Electoral Matters, it is emphasised that free suffrage comprises two different aspects: free formation of the elector's opinion, and free expression of this opinion, i.e. freedom of voting procedure and accurate assessment of the result; freedom of voters to form an opinion partly overlaps with equality of opportunity and implies the duty of state authorities to be impartial and equally just. It should be noted that, in the explanatory report, the impartiality of the body organising the elections is specified as one of the procedural guarantees related to the organisation of elections, as only transparency, impartiality, and independence from politically motivated manipulation can ensure proper administration of the election process. It is also worth mentioning that, in the explanatory report, postal voting, where the security and reliability of this procedure is ensured, is specified as one of the conditions ensuring free suffrage; voting in this manner is important, among other things, in ensuring the opportunity to vote for persons who stay in hospitals, persons with restricted mobility, and persons residing abroad.

14.3. In the context of the received petition, it should be noted that, as the Venice Commission stated in its Report, in most states, in a referendum, the vote takes place over one day. It should be noted that only in Poland the vote can also take place over one or two days without holding the referendum at the same time as the national elections. Meanwhile, Finland schedules two days if the referendum is held at the same time as the national elections; otherwise, the vote also takes place on only one day.

In this context, it needs to be noted that, in the Czech Republic, voting in local referendums also takes place over one day, but it may be scheduled for two days if the vote coincides with local, regional, national elections, or the elections to the European Parliament.

As can be seen from the results of the analysis of the practice of referendums in European states presented in this Report and from the material of the constitutional justice case at issue, in no European state may referendums take place on more than two consecutive days or on a few days with a break.

It should also be mentioned that not in all states in general referendums can be organised where legally binding decisions are adopted. For example, according to the data provided in the Report, in Belgium, only certain referendums are possible, namely consultative ones, and referendums where legally binding decisions would be adopted would be in conflict with the Constitution.

14.4. It also needs to be noted that, under the Guidelines on the Holding of Referendums, one of the necessary conditions for proper implementation of the principles of referendums and the principles of Europe's electoral heritage is the stability of the legal acts regulating referendums. It is emphasised that apart from rules on technical matters and detail (which may be included in regulations of the executive), rules of referendum law should have at least the rank of a statute. In addition, the fundamental aspects of referendum law, *inter alia*, should not be open to amendment less than one year before a referendum. In

this context, fundamental rules include, among other things, the provisions concerning the composition of electoral commissions, lists of voters, the procedural and substantive validity of the text put to a referendum, etc.

In the explanatory memorandum, which makes part of the Code of Good Practice on Referendums, it is specified that since, as a rule, the date of a referendum is not known a year or more before the referendum, the requirement that no essential amendments to the legal regulation governing referendums be made a year before the referendum is, specifically, aimed not at prohibiting the adoption of amendments to the legal regulation a year before voting in a referendum, but at prohibiting the application of such amendments to the referendum process that is already in progress.

It should be noted that, in the Code of Good Practice in Electoral Matters, adopted by the Venice Commission at its 52nd plenary session on 18–19 October 2002, ensuring the stability of legal acts is also recognised as crucial in guaranteeing the credibility of the electoral process.

15. In the context of the constitutional justice case at issue, it should also be mentioned that the Constitutional Tribunal of the Republic of Poland, by its judgment (No K 9/11) of 20 July 2011, recognised, among others, that the legal regulation entrenched in the Electoral Code by which the authority ordering elections had been granted the right to choose whether voting takes place on one day or on two days was inconsistent with the Constitution of the Republic of Poland. The Constitutional Tribunal noted that the unlimited freedom granted to the authority ordering elections in this respect was incompatible with the requirements of the reliability of law. The Constitutional Tribunal stressed that the provisions of electoral law should be unambiguous and should provide a sense of certainty to participants in elections as regards essential elements of the electoral system. According to the Constitutional Tribunal, the required certainty had not been provided by the challenged legal regulation, which made determining whether voting must be held on a single day or over two days conditional on a decision of the authority ordering elections; the said decision was not determined by any objective premises, which meant it could be taken arbitrarily.

In the above-mentioned ruling, the Constitutional Tribunal also revealed the general features of certain elements of electoral law and noted that, although, in the hierarchy of legal acts, election statutes are equal to other statutes, the analysis of relevant constitutional provisions leads to the conclusion that they have a special character. The content of electoral laws is determined to a significant extent by the constitutional regulation: it is the Constitution that establishes the conditions for active and passive electoral rights in the elections to the Sejm and the Senate, the essential elements of electoral law, sets the limits of the discretion of the legislature to regulate the electoral process, etc. The Constitution only imposes certain requirements for changes in the legal regulation of elections: for example, changes to the electoral law should be preceded with a thorough debate in the parliament; also, the legislature, when establishing the legal regulation of elections, must take into account not only the specific provisions of the Constitution that include electoral provisions, but also the constitutional values revealed in constitutional provisions. In this context, the Constitutional Tribunal emphasised that, in a democratic state under the rule of law,

elections are an indispensable institution of public life, which gives the opportunity to elect representatives of the Nation. Thus, electoral laws should guarantee that the outcome of elections will reflect the will of the Nation as much as possible.

16. In the context of the constitutional justice case at issue, mention should be made of the provisions of the jurisprudence of the European Court of Human Rights (hereinafter referred to as the ECtHR) in relation to the principles of the implementation of the right to free elections of the legislature, which is enshrined in Article 3 of the First Protocol to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as the Convention).

The right to free elections, guaranteed under Article 3 of Protocol No 1 to the Convention, is one of the fundamental principles of a democratic state (the ECtHR, the judgment of 2 March 1987, *Mathieu-Mohin and Clerfayt v Belgium*, no 9267/81, paragraph 47).

Although the said right of individuals to free elections of the legislature is interpreted in the jurisprudence of the ECtHR as an individual right to vote and to stand for election, states have a wide margin of appreciation in this area (the ECtHR, the judgment of 6 October 2005, *Hirst v the United Kingdom* (no 2) [GC], no 74025/01, paragraphs 57 and 61); however, the ECtHR has also pointed out that the right to free elections also creates the obligation for the state as a guarantor of pluralism to adopt some positive measures to organise electoral systems or to administer elections in general (e.g. the ECtHR, the judgment of 8 July 2008, *Yumak and Sadak v Turkey* [GC], no 10226/03, paragraphs 105–107). Positive obligations of the state mean that it has to take appropriate measures to organise democratic elections under conditions that would ensure the free expression of the will of individuals in the election of legislative authorities and guarantee the effectiveness of this right (the ECtHR, the judgment of 2 March 1987, *Mathieu-Mohin and Clerfayt v Belgium*, no 9267/81, paragraphs 52 and 54).

When disclosing, among others, the content of this right, the ECtHR emphasises the need for political neutrality, *inter alia*, for state servants exercising public authority, as well as for judges, in order to ensure equal and fair treatment of all citizens, where this treatment would not be affected by political considerations. In line with this principle, also taking into account the fact that the rights guaranteed by Article 3 of Protocol No 1 to the Convention are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (the ECtHR, the judgment of 6 October 2005, *Hirst v the United Kingdom* (no 2) [GC], no 74025/01, paragraph 58), it is of particular importance that the electoral authority acts in a transparent manner, that it is impartial and does not give in under political pressure (the ECtHR, the judgment of 8 July 2008, *The Georgian Labour Party v Georgia*, no 9103/04, paragraph 100).

In addition, as mentioned above, although the state has a wide margin of appreciation in the context of electoral law, this margin must be defined as precisely as possible and based on provisions of domestic law; besides, decisions taken must be fair and objective, while arbitrary decisions and abuse of power must be avoided, *inter alia*, when deciding on the registration of candidates or the removal of a particular person from the list of candidates (e.g. the ECtHR, the judgment of 11 June 2009, *Petkov and Others v Bulgaria*,

nos 77568/01, 178/02, and 505/02, paragraph 61; the judgment of 19 October 2004, *Melnychenko v Ukraine*, no 17707/02, paragraph 59; the judgment of 9 April 2002, *Podkolzina v Latvia*, no 46726/99, paragraph 35).

Thus, the specified jurisprudence of the ECtHR reveals certain principles of the implementation of the right to free elections of the legislature, which have been developed in the interpretation and application of Article 3 of Protocol No 1 to the Convention.

As mentioned above, the Venice Commission, when disclosing the relevant principles for the conduct of referendums, emphasises that the principles inherent in Europe's electoral heritage should apply *mutatis mutandis* to referendums, and that, in order for a referendum to meet its lawfulness (legitimacy) requirements, it must be conducted, among other things, in line with good electoral practice.

Thus, in the context of the constitutional justice case at issue, it should be noted that it is also possible to apply *mutatis mutandis* to referendums the principles, developed in the jurisprudence of the ECtHR, of ensuring the right to free elections of the legislature, such as transparent and impartial conduct of the state and its authorised institutions in the electoral process, *inter alia*, the adoption of fair and objective decisions, the avoidance of arbitrary decisions and abuse of power in the organisation and conduct of elections, and the refusal to give in under political pressure.

IV

The provisions of the Constitution and the official constitutional doctrine

17. In this constitutional case, the Constitutional Court examines the constitutionality of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018, which provides that the mandatory referendum must be conducted on two days with a break of two weeks.

18. The Nation directly exercises its supreme sovereign power through two main organisational forms: national elections and referendums; the principles and main conditions for organising national elections and referendums are consolidated in constitutional norms, and the procedures for conducting national elections and referendums are regulated by the relevant laws; the legal grounds for these forms of democracy derive from Articles 2 and 4 of the Constitution, as well as from the electoral rights of citizens (Articles 33 and 34 of the Constitution) (the Constitutional Court's decision of 11 July 1994 (case no 5/94) and its ruling of 11 July 2014).

In this context, it should be noted that Article 2 of the Constitution, *inter alia*, stipulates that sovereignty belongs to the Nation; under Article 4 of the Constitution, the Nation executes its supreme sovereign power either directly or through its democratically elected representatives. It should also be noted that Article 33 of the Constitution establishes, *inter alia*, the right of citizens to participate in the governance of their state both directly and through their democratically elected representatives (Paragraph 1); Article 34 of the Constitution consolidates the constitutional grounds for the active and passive electoral

rights of citizens.

Since both forms of the execution of the supreme sovereign power of the Nation and direct democracy – national elections and referendums – are based on the same constitutional grounds (*inter alia*, the sovereignty of the Nation, democracy, and the electoral rights), it needs to be emphasised that no interpretation of the Constitution may lead to confrontation between them. As held by the Constitutional Court in its ruling of 11 July 2014, referendums, as well as elections, constitute a form of the direct execution of the supreme sovereign power of the Nation, as citizens declare their will through national voting; the right to initiate a referendum and to vote in a referendum is granted only to citizens who have the electoral right; referendums are held according to the principles of electoral law.

18.1. In this context, it should be noted that the Constitution consolidates the following universally recognised democratic principles of elections to political representative institutions: elections must be conducted on the basis of universal, equal, and direct suffrage, and the ballot must be secret; under the Constitution, only such elections are allowed where there is free and fair competition for the mandate, where the voters have the right and a real opportunity to choose from several candidates, where at the time of voting they can express their will freely and without being subjected to control; the requirements of transparency and publicity must be applied to the formation of a representative political institution (the Constitutional Court's ruling of 9 November 2010, its conclusion of 10 November 2012, and its ruling of 13 October 2014); the fairness of the electoral process must be ensured (*inter alia*, the Constitutional Court's conclusions of 5 November 2004, 7 November 2008, and 10 November 2012).

18.2. In this context, it should also be noted that the constitutionally consolidated democratic principles (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) governing elections to political representative institutions stem not only from the constitutional grounds for electoral rights explicitly entrenched in Paragraphs 1 of Article 33 and Article 34 of the Constitution and the principles of elections of the Seimas, the President of the Republic, and members of municipal councils explicitly laid down in Paragraph 1 of Article 55, Paragraph 2 of Article 78, and Paragraph 2 of Article 119 of the Constitution. It needs to be emphasised that the said democratic principles of elections to political representative institutions are also derived from the imperatives implied by the constitutional principle of a state under the rule of law; when interpreting the democratic principles of elections to political representative institutions, it is necessary to take into account the latter imperatives. As held by the Constitutional Court, in a constitutional democracy, special requirements are raised for the formation of political representative institutions; these institutions may not be formed in such a way that would raise doubts as to their legitimacy or legality, *inter alia*, doubts as to whether the principles of a democratic state under the rule of law were violated in the course of the election of persons to political representative institutions (*inter alia*, the Constitutional Court's conclusion of 5 November 2004, its ruling of 9 November 2010, and its conclusion of 26 October 2012).

The Constitutional Court has held on more than one occasion that the constitutional

principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution itself are based. The constitutional principle of a state under the rule of law is an especially broad constitutional principle and comprises a wide range of interrelated imperatives; the content of the said principle should be revealed by taking into account the content of various other constitutional principles such as the supremacy of the Constitution, the sovereignty of the Nation, democracy, responsible governance, the limitation of the scope of powers, and the service of state institutions to the people (the Constitutional Court's rulings of 13 December 2004 and 17 November 2011). Thus, the constitutional principle of a state under the rule of law is related, *inter alia*, with constitutional principles such as the sovereignty of the Nation and democracy, which form the basis of the forms of direct democracy – national elections and referendums.

19. The petitioner impugns the compliance of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with, *inter alia*, Article 9 of the Constitution.

As mentioned above, Article 9 of the Constitution consolidates the main provisions governing the institution of referendums. The Constitutional Court has noted that, according to the theory of law and constitutional traditions, a referendum is understood as the universal popular vote on the adoption of the Constitution, a law, or separate provisions of a law, as well as on the issues of the domestic and foreign policy (the Constitutional Court's rulings of 22 July 1994 and 11 July 2014).

19.1. Article 9 of the Constitution prescribes:

“The most significant issues concerning the life of the State and the Nation shall be decided by referendum.

In cases established by law, the Seimas shall call a referendum.

A referendum shall also be called if not less than 300 000 citizens with the electoral right so request.

The procedure for calling and conducting referendums shall be established by law.”

19.2. In its ruling of 11 July 2014, interpreting, *inter alia*, the provision of Paragraph 1 of Article 9 of the Constitution, the Constitutional Court revealed which matters should be regarded as the most significant issues concerning the life of the State and the Nation.

19.2.1. The most significant issues concerning the life of the State and the Nation are, first of all, the issues of altering the provisions of the Constitution, which, under the Constitution, may be decided only by referendum:

– under Paragraph 1 of Article 148 of the Constitution, the provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitution may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof; the same procedure must be applied to altering the

provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of the Constitutional Law on the State of Lithuania, which is a constituent part of the Constitution (Article 2 of the Constitutional Law on the State of Lithuania);

– the same procedure, as established in Article 2 of the Constitutional Law on the State of Lithuania, must be applied to altering the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions on the State of Lithuania, which is a constituent part of the Constitution;

– under Paragraph 2 of Article 148 of the Constitution, the provisions of the First Chapter "The State of Lithuania" and those of the Fourteenth Chapter "The Alteration of the Constitution" may be altered only by referendum;

– the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is a constituent part of the Constitution, may be altered only by referendum.

19.2.2. Under Paragraph 2 of Article 9 of the Constitution, in cases established by law, the Seimas may call a referendum; in addition to those established in the Constitution, a law may provide for other most significant issues concerning the life of the State and the Nation that must be decided by referendum.

19.2.3. In addition to those established in the Constitution or the law, there may be other most significant issues concerning the life of the State and the Nation that must be decided by referendum:

– under Paragraph 3 of Article 9 of the Constitution, a referendum is also called if not less than 300 000 citizens with the electoral right so request; under the Constitution, the significance of a particular issue may also be determined by the fact that, as provided for by law, not less than 300 000 citizens with the electoral right request that it be decided by referendum: the most significant issues concerning the life of the State and the Nation, which must be decided by referendum, should also include such an issue that would be requested to be decided by referendum by not less than 300 000 citizens with the electoral right, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum;

– under Article 4 of the Constitution, the Nation executes its supreme sovereign power, *inter alia*, through its democratically elected representatives; Item 3 of Article 67 of the Constitution stipulates that the Seimas adopts resolutions on referendums; under the Constitution, the significance of a certain issue may also be determined by the fact that it is being put to a referendum by the Seimas as the representation of the Nation: the most significant issues concerning the life of the State and the Nation, which must be decided by referendum, should also include such an issue that would be put to a referendum by the Seimas as the representation of the Nation, although neither the Constitution nor any other law would indicate that this issue must be decided by referendum.

19.2.4. Under Paragraph 4 of Article 69 of the Constitution, the provisions of laws of the Republic of Lithuania may also be adopted by referendum; the Seimas may, on its own initiative or at the request of not less than 300 000 citizens with the electoral right, call a referendum on the adoption of the provisions of a law (laws) that regulate a certain most significant issue concerning the life of the State and the Nation.

19.2.5. The provision of Paragraph 1 of Article 9 of the Constitution does not preclude the possibility of holding an advisory referendum where namely such a referendum is initiated.

19.2.6. Summarising the aforesaid provisions of the official constitutional doctrine formulated in the Constitutional Court's ruling of 11 July 2014, it should be noted that the Constitution does not consolidate any exhaustive list of the most significant issues concerning the life of the State and the Nation, which must be decided by referendum as provided for under Paragraph 1 of Article 9 of the Constitution.

In the context of this constitutional justice case, it should be noted that, under Paragraph 1 of Article 9 of the Constitution, irrespective of whether they are specified in the Constitution or a law as issues that must be decided by referendum, or whether, although they are not specified in the Constitution or a law, they are put to a referendum by 300 000 citizens with the electoral right or by the Seimas as the representation of the Nation, all the above-mentioned issues should be regarded as the most significant issues concerning the life of the State and the Nation; such issues are not differentiated in Paragraph 1 of Article 9 of the Constitution. Therefore, the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, gives rise to the requirement that the same procedure for calling and conducting referendums be applied in deciding all the most significant issues concerning the life of the State and the Nation, with the exception of the special requirements provided for in the Constitution with regard to adopting decisions on certain of the most significant issues concerning the life of the State and the Nation (for example, under Paragraph 1 of Article 148 of the Constitution, in order to amend the provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of the Constitution, it is required that not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof; under Article 2 of the Constitutional Law on the State of Lithuania, the provision "The State of Lithuania shall be an independent democratic republic" of Article 1 of this constitutional law may be amended by following the same procedure).

19.2.7. In this context, it should be noted that, under Paragraph 4 of Article 9 of the Constitution, the procedure for calling and conducting referendums is established by law. Thus, according to Paragraph 4 of Article 9 of the Constitution, the legislature must establish the procedure for calling and conducting referendums while having regard to the requirements arising from the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof.

19.3. It should be noted that Paragraph 1 of Article 9 of the Constitution does not *expressis verbis* set out the requirements how the most significant issues concerning the life of the State and the Nation must be decided by referendum.

However, as mentioned above, referendums, as well as elections, constitute a form of the direct execution of the supreme sovereign power of the Nation; national elections and referendums are based on the same constitutional grounds, *inter alia*, on the sovereignty of the Nation, democracy, and the electoral rights, as laid down, *inter alia*, in Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution. Thus, Paragraph 1 of Article 9 of the Constitution, interpreted in the context of the provisions of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 thereof, gives rise to the imperative that the constitutionally consolidated democratic principles (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) governing elections to political representative institutions be *mutatis mutandis* applied in calling and conducting referendums. It should be noted that, as mentioned above, these principles stem, *inter alia*, from the imperatives implied by the constitutional principle of a state under the rule of law; when interpreting the democratic principles of elections to political representative institutions, it is necessary to take into account the latter imperatives.

It needs to be emphasised that, arising from the Constitution, the above-mentioned imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions be applied *mutatis mutandis* in calling and conducting referendums is not an objective in itself. As the Constitutional Court held in its ruling of 11 July 2014, Paragraph 1 of Article 9 of the Constitution, interpreted in conjunction with the provision of Article 2 of the Constitution that sovereignty belongs to the Nation and with the provision of Article 4 of the Constitution that the Nation executes its supreme sovereign power directly, gives rise to the imperative to create the preconditions for determining the actual will of the Nation in a referendum. Thus, compliance with the above-mentioned constitutionally consolidated democratic principles governing elections to political representative institutions is a *conditio sine qua non* in order to create the preconditions for determining the actual will of the Nation in a referendum.

Consequently, under Paragraph 1 of Article 9 of the Constitution, in exercising its powers, established in Paragraph 4 of this article, to regulate the procedure for calling and conducting referendums, the legislature is bound by the democratic principles governing elections to political representative institutions. Otherwise, if the provision of Paragraph 1 of Article 9 of the Constitution were interpreted only literally by applying solely the linguistic method of the interpretation of law, such an interpretation would deny the above-mentioned constitutional imperative to create the preconditions for determining the actual will of the Nation in a referendum.

19.3.1. In view of this fact, it should be noted that, under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is subject, *inter alia*, to the principles of universal, equal, and direct suffrage.

Thus, under the Constitution, a referendum must be conducted on the basis, *inter alia*, of universal suffrage, i.e. by creating the preconditions for participation in the referendum of all citizens with an active electoral right under Article 34 of the Constitution (i.e. those who on the day of the referendum have reached 18 years of age and who have not been declared by a court to be legally incapacitated).

Under the Constitution, a referendum must also be conducted on the basis of equal suffrage. With regard to the principle of equal suffrage, it is universally recognised that this principle, *inter alia*, means that, in the course of organising and conducting elections, all voters must be treated equally, as well as that the vote of each voter is equal to the vote of any other voter and has equal weight when the results of voting are established (the Constitutional Court's ruling of 1 October 2008). Thus, as in the case of elections, all citizens who can participate in a referendum must be treated in the same way and as having equal votes.

Under the Constitution, a referendum must also be conducted by having regard to the principle of direct suffrage, which requires a vote without mediators in a referendum. Interpreting the content of this principle, the Constitutional Court has held that the legislature, while regulating electoral relationships, may not establish any such legal regulation that would create such preconditions where a different person votes for the voter (except when the voter is unable to implement such his/her constitutional right by himself/herself for health reasons) (the Constitutional Court's conclusion of 5 November 2004). This requirement applies to the legal regulation governing the relationships connected with referendums.

19.3.2. It should be noted that, under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is subject, *inter alia*, to the principle of secret ballot.

As stated by the Constitutional Court in its ruling of 1 October 2008, according to the principle of secret ballot, such conditions for expressing the will of voters during the voting must be created that nobody could control them, influence their choice, or otherwise impede their opportunity to express their will freely and unrestrictedly.

19.3.3. Under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is *mutatis mutandis* subject, *inter alia*, to the principle of free and fair elections. It should be noted that this principle should be interpreted by taking into account, *inter alia*, the imperative of fairness implied by the constitutional principle of a state under the rule of law. As held by the Constitutional Court, under the Constitution, the subjects of legal relationships are under the duty to behave in good faith and without violating law; this is required by the general legal principle of *bona fides*, which is inseparable from the constitutional principle of a state under the rule of law (the Constitutional Court's rulings of 27 June 2007 and 6 September 2007).

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof and the constitutional principle of a state under the rule of law, it is obligatory to ensure a fair referendum process, *inter alia*, the free expression of will by citizens. This, *inter alia*, means that it is obligatory to create the preconditions enabling citizens, freely and without being subjected to control, to form their opinion and express their will on the issue put to a referendum, as well as to create the equal opportunities to campaign for both proponents and opponents of the decision put to a referendum; the imperative of a fair referendum process also implies the following requirements: the institution organising referendums (Central Electoral Commission) must be impartial; the institution calling referendums (Seimas) may

not influence the referendum results while exercising its powers; the institution calling referendums, the institution organising referendums, and other state institutions may not abuse the powers conferred on them.

As mentioned above, the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, gives rise to the requirement that the same procedure for calling and conducting referendums be applied in deciding all the most significant issues concerning the life of the State and the Nation, with the exception of the special requirements provided for in the Constitution with regard to adopting decisions on certain of the most significant issues concerning the life of the State and the Nation. It should be noted that this requirement also arises from the constitutional imperative of a fair referendum process, under which, while remaining as neutral as possible, state institutions may not, selectively by their decisions, encourage or, on the contrary, hinder decision making in a referendum on certain of the most significant issues concerning the life of the State and the Nation once such issues are put to the referendum.

19.3.4. Under Paragraph 1 of Article 9 of the Constitution, conducting a referendum is also subject, *inter alia*, to the principle of a transparent and public referendum process. It should be noted that this principle implies the requirement that the publicity of meaningful information about the referendum is ensured where that information is significant to citizens, as well as the requirement that citizens are properly informed about the decision put to the referendum and about the arguments of the proponents and opponents of the decision.

It should also be noted that the principle of a transparent and public referendum process should be interpreted in the light, *inter alia*, of the requirements implied by the constitutional principle of a state under the rule of law, *inter alia*, the requirement for the implementation of the powers of state authorities and officials. The Constitutional Court has held that transparency, as a principle of the activity of public authorities and officials, implies, among other things, that decisions taken must be reasoned and clear (*inter alia*, the Constitutional Court's rulings of 22 January 2008, 2 March 2018, and 12 April 2018). In view of this fact, the principle of a transparent and public referendum process implies the requirement that the institution calling referendums and the institution organising referendums must take reasonable, clear, and public decisions in relation to calling and conducting referendums.

19.3.5. In this context, it should also be noted that the above-mentioned principles of a fair, transparent, and public referendum process are to be interpreted in the light, *inter alia*, of the imperative (implied by the constitutional principle of a state under the rule of law) of legal certainty and clarity for a legal regulation. As repeatedly stated by the Constitutional Court, legal certainty and legal clarity are among the essential elements of the principle of a state under the rule of law, which are consolidated in the Constitution; a legal regulation must be clear and harmonious, legal norms must be formulated precisely, they may not contain ambiguities. It needs to be emphasised that, in the light of the constitutional principle of a state under the rule of law and in order to create the preconditions for a fair and transparent referendum process, the procedure for calling and conducting a referendum

established by law in accordance with Paragraph 4 of Article 9 of the Constitution must also be clear and precise.

20. It should be noted in the aspect relevant in this constitutional justice case that the Constitution, *inter alia*, Article 9 thereof, does not explicitly establish how many days may be scheduled for a referendum once it is called.

The Constitutional Court held in its ruling of 25 May 2004 that the Constitution as a legal reality is comprised of various provisions – constitutional norms and constitutional principles – which are directly consolidated in various formulations of the Constitution or are derived from them; some constitutional principles are entrenched in constitutional norms formulated *expressis verbis*, others, although not entrenched *expressis verbis*, are reflected in them and are derived from constitutional norms, from other constitutional principles reflected in these norms, from the entirety of the constitutional legal regulation, from the meaning of the Constitution as the act that consolidates and protects the system of major values of the national community – the civil Nation, and provides for the guidelines for the entire legal system. Thus, as mentioned above, the constitutional legal regulation is consolidated explicitly and it may also be established implicitly.

20.1. As mentioned above, Paragraph 1 of Article 9 of the Constitution, interpreted in the context of the provisions of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 thereof, gives rise to the imperative that the constitutionally consolidated democratic principles (stemming, *inter alia*, from the constitutional principle of a state under the rule of law) governing elections to political representative institutions be *mutatis mutandis* applied in calling and conducting referendums. It should be noted that there are no constitutional grounds for applying other principles in regulating, by means of a law, as to how many days may be scheduled for a referendum once it is called.

20.1.1. In this context, mention should be made of the constitutional provisions establishing the day of an election to the Seimas.

Under Paragraph 1 of Article 57 of the Constitution, a regular election to the Seimas is held in the year of the expiry of the powers of the members of the Seimas on the second Sunday of October, and, according to Paragraph 2 of the same article, a regular election to the Seimas following an early election to the Seimas is held at the time specified in the first paragraph of this article. Thus, Article 57 of the Constitution *expressis verbis* establishes a specific date for a regular elections to the Seimas, i.e. one day for an election to the Seimas.

According to Paragraph 4 of Article 58 of the Constitution, the day of election to the new Seimas is specified in the resolution of the Seimas or in the act of the President of the Republic on the early election to the Seimas; the election to the new Seimas must be held within 3 months of the adoption of the decision on the early election. Taking account of Article 57 of the Constitution, the term “the day of election to the new Seimas” used in Paragraph 4 of Article 58 thereof should be interpreted as meaning that, under the Constitution, one day of election to the new Seimas may be established, which must be a Sunday.

20.1.2. In this context, mention should be made of the constitutional provisions establishing the day of an election of the President of the Republic.

According to Article 80 of the Constitution, a regular election of the President of the Republic is held on the last Sunday two months before the expiry of the term of office of the President of the Republic. Under Paragraph 2 of Article 81 of the Constitution, if, during the first round of voting in the election of the President of the Republic, no single candidate gets the requisite number of votes, the second round of voting is held two weeks later with the two candidates who have received the greatest number of votes standing against each other. Taking account of Article 80 of the Constitution, the provision “the second round of voting is held two weeks later” of Paragraph 2 of Article 81 thereof should be interpreted as meaning that the second round of voting with the two candidates who have received the greatest number of votes in the first round of voting in the election of the President of the Republic should be held on the Sunday after two weeks after the Sunday that is the last Sunday two months before the expiry of the term of office of the President of the Republic. It should be noted that the second round of voting in the election of the President of the Republic is not identical to the first round of voting in that election, i.e. in the second round of voting in the election of the President of the Republic, votes are cast not for all candidates, but only for the two candidates who have received the greatest number of votes in the first round of voting in the election of the President of the Republic.

Thus, Article 80 and Paragraph 2 of Article 81 of the Constitution *expressis verbis* establish a specific date of a regular election of the President of the Republic, i.e. one day of the election, as well as a specific date of the second round of voting in the election of the President of the Republic, i.e. one day of the election, in which votes are cast for the two candidates who have received the greatest number of votes in the first round of voting.

Under Paragraph 3 of Article 81 of the Constitution, if no more than two candidates take part in the first round, and neither of them receives the requisite number of votes, a repeat election is held. According to Paragraph 1 of Article 87 of the Constitution, after, in cases provided for in Paragraph 2 of Article 58 of the Constitution, the President of the Republic calls an early election to the Seimas, the newly elected Seimas may, by a 3/5 majority vote of all the members of the Seimas and within 30 days of the day of the first sitting, call an early election of the President of the Republic; also, under Paragraph 1 of Article 89 of the Constitution, the Seimas must, within 10 days, call an election of the President of the Republic, which must be held within two months (if the Seimas cannot convene and call the election of the President of the Republic, the election is called by the Government), in the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office (the said election of the President of the Republic should also be considered an early election). In interpreting these provisions of the Constitution in the context of the provisions of Article 80 thereof, it should be noted that Paragraph 3 of Article 81 of the Constitution provides for a repeat election of the President of the Republic, Paragraph 1 of Article 87 thereof provides for an early election of the President of the Republic, and Paragraph 1 of Article 89 thereof stipulates that an election of the President of the Republic is called in the event that the

President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office – in all these cases the election must also take place on one day, which must be a Sunday.

20.1.3. It should be held that Article 57, Paragraph 4 of Article 58, Article 80, Paragraphs 2 and 3 of Article 81, Paragraph 1 of Article 87, and Paragraph 1 of Article 89 of the Constitution establish the requirement that elections to the Seimas and the elections of the President of the Republic must last one day (the provision is made that regular elections are held on the specific date), which must be a Sunday.

It should be emphasised that, under the Constitution, such a requirement is not an objective in itself. As the Constitutional Court held in its ruling of 19 September 2002, the provision of Article 1 of the Constitution that the State of Lithuania is an independent democratic republic, *inter alia*, means that free and periodic elections and the democratic process of decision making must be ensured in the state; this provision embodies the constitutional obligation not to deviate from the requirements of democracy; the said obligation is applicable to all state institutions, including the legislature. One of the fundamental characteristics of a democratic state is democratic elections of representative institutions of state power (*inter alia*, the Constitutional Court's conclusions of 23 November 1996 and 7 November 2008, as well as its ruling of 29 March 2012).

In view of this, it should be noted that the above-mentioned constitutional requirement that elections to the Seimas and the elections of the President of the Republic must last one day (the Constitution makes the precise provision for the specific date for regular elections or a procedure for determining the day of runoffs or early elections) is aimed at ensuring the implementation of the necessary condition of democracy – free and periodic elections and the democratic process of decision making during elections. Establishing, in the Constitution, the precise day for regular elections and limiting, under the Constitution, the discretion to choose the day and duration of runoffs or early elections precludes the state authority institutions that, under the Constitution, are vested with the powers to call elections from abusing these powers, *inter alia*, from influencing the election results while exercising the said powers. At the same time, this constitutes one of the preconditions for ensuring the fairness and transparency of the electoral process and revealing the actual will of voters in elections.

20.2. To sum up, it should be noted that, arising from Paragraph 1 of Article 9 of the Constitution, interpreted in the context of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution, the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions (and stemming, *inter alia*, from the constitutional principle of a state under the rule of law) be applied *mutatis mutandis* in calling and conducting referendums also implies, *inter alia*, the requirement that, once a referendum is called, it must be provided that it is to take place on one day (by analogy with elections to the Seimas and the elections of President of the Republic, usually on a Sunday). Such a requirement is aimed at ensuring, in a referendum, the democratic process of decision making, which, as mentioned above, is implied by the

provision of Article 1 of the Constitution, proclaiming that the State of Lithuania is an independent democratic republic. It should also be noted that such a requirement creates the preconditions for ensuring the fairness and transparency of the referendum process, *inter alia*, guaranteeing that the same procedure for calling and conducting referendums is applied in deciding all the most significant issues concerning the life of the State and the Nation; at the same time, the preconditions are created for ensuring the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, to determine the actual will of the Nation in a referendum.

As mentioned above, according to Paragraph 4 of Article 9 of the Constitution, the legislature must establish the procedure for calling and conducting referendums while having regard to the requirements arising from the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof. It has also been mentioned that, in the light of the constitutional principle of a state under the rule of law and in order to create the preconditions for a fair and transparent referendum process, the procedure for calling and conducting referendums established by law in accordance with Paragraph 4 of Article 9 of the Constitution must also be clear and precise.

Thus, Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement for the legislature, in regulating the procedure for calling and conducting referendums, *inter alia*, to prescribe that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

20.3. At the same time, it should be noted that, according to Item 3 of Article 67 of the Constitution, the Seimas "shall adopt resolutions on referendums".

Thus, Item 3 of Article 67 of the Constitution, *inter alia*, implies that, having regard to the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, and the requirements stemming from the Constitution and the constitutional principle of a state under the rule of law, the Seimas is under the duty to provide, in its resolution on calling a referendum, for the date of the referendum, i.e. to provide that the referendum is to take place on one day.

21. It should be noted that the requirement, arising from Paragraph 1 of Article 9 of the Constitution, that, once a referendum is called, it must be provided that it is to take place on one day, may not be interpreted as preventing the legislature from establishing a procedure for early voting in referendums for those citizens who are unable to cast their votes on the day of a referendum. It should be emphasised that providing for a procedure for early voting in referendums is a constitutional duty of the legislature; it stems from the Constitution, *inter alia*, from Paragraphs 1 and 4 of Article 9 thereof.

In this context, it should be noted that, in its ruling of 1 December 1994, the Constitutional Court held that a referendum (i.e. voting by citizens) is conducted on the date specified in the resolution of the Seimas and at the time prescribed by law; citizens participate in a referendum earlier than on the designated voting day only in the cases and according to the procedure provided for by law when voting by mail.

As mentioned above, Paragraphs 1 and 4 of Article 9 of the Constitution gives rise to the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions be applied *mutatis mutandis* in calling and conducting referendums; in exercising its powers, established in Paragraph 4 of this article, to regulate the procedure for calling and conducting referendums, the legislature is bound by the democratic principles governing elections to political representative institutions. In this context, it should be noted that the Constitutional Court, by revealing the requirements implied by the democratic principles governing elections to political representative institutions, *inter alia*, by personal (direct) voting, for the legislature to be followed in the establishment of the electoral legal regulation, has stated that the constitutional imperative of democratic elections requires that the voters who, on the set day, are unable to appear at the polling station due to illness, disability, imprisonment, the performance of official tasks, as well as due to a journey or other personal reasons, be granted the opportunity to express their will in the elections; the legislature has the constitutional duty to establish such a legal regulation that would ensure that citizens who are unable to vote on the day of election would have the opportunity to implement their constitutional right at some other time (the Constitutional Court's conclusion of 5 November 2004).

22. The petitioner impugns the compliance of Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 with, *inter alia*, Article 29 of the Constitution.

Paragraph 1 of Article 29 of the Constitution provides that all persons are equal before the law, courts, and other state institutions and officials, and, according to Paragraph 2 of Article 29 thereof, human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views.

The Constitutional Court has held on more than one occasion that these norms of Article 29 of the Constitution consolidate the constitutional principle of the equality of all persons. In interpreting the provisions of Article 29 of the Constitution, the Constitutional Court has noted that the constitutional principle of the equality of all persons, which must be followed both in passing laws and applying them, as well as in administering justice, imposes the obligation to legally assess homogeneous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner; the Constitutional Court has also held that the constitutional principle of the equality of all persons consolidates the formal equality of all persons and does not allow any discrimination of persons or granting them privileges. The constitutional principle of the equality of the rights of persons would be violated if certain persons or groups of persons were treated in a different manner, even though there are no differences of such a nature and to such an extent between the said groups of persons so that their uneven treatment could be objectively justified (*inter alia*, the Constitutional Court's rulings of 27 February 2012, 20 June 2016, and 25 January 2017).

of 18 October 2018 with the Constitution

23. As mentioned above, in the constitutional justice case at issue, the Constitutional Court investigates, subsequent to the petition of the Seimas, the petitioner, whether Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 is in conflict with Articles 9 and 29 of the Constitution and the constitutional principle of a state under the rule of law.

24. As can be seen from the received petition, the Seimas substantiates its doubts on the constitutionality of the impugned legal regulation, among other things, by the fact that, under the Constitution, a referendum may take place on one day or two consecutive days, while the way in which a referendum is organised on two days with a break of two weeks could be not in line with the constitutional concept of referendums.

25. When deciding on the compliance of the impugned legal regulation with the Constitution, it should be noted that, as mentioned above, referendums, as well as elections, constitute a form of the direct execution of the supreme sovereign power of the Nation; national elections and referendums are based on the same constitutional grounds, *inter alia*, on the sovereignty of the Nation, democracy, and the electoral rights, as laid down, *inter alia*, in Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution; thus, Paragraph 1 of Article 9 of the Constitution, interpreted in the context of the provisions of Articles 2 and 4, Paragraph 1 of Article 33, and Article 34 of the Constitution, gives rise to the imperative that the constitutionally consolidated democratic principles (universal, equal, and direct suffrage, secret ballot, free and fair elections, a transparent and public electoral process) governing elections to political representative institutions be *mutatis mutandis* applied in calling and conducting referendums; these principles stem from the imperatives implied by the constitutional principle of a state under the rule of law; when interpreting the democratic principles of elections to political representative institutions, it is necessary to take into account the latter imperatives.

25.1. It has also been mentioned that:

– arising from Paragraph 1 of Article 9 of the Constitution, the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions (and stemming, *inter alia*, from the constitutional principle of a state under the rule of law) be *mutatis mutandis* applied in calling and conducting referendums also implies, *inter alia*, the requirement that, once a referendum is called, it must be provided that it is to take place on one day; the said requirement creates the preconditions for ensuring the fairness and transparency of the referendum process, *inter alia*, guaranteeing that the same procedure for calling and conducting referendums is applied in deciding all the most significant issues concerning the life of the State and the Nation; at the same time, the preconditions are created for ensuring the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, to determine the actual will of the Nation in a referendum;

– Item 3 of Article 67 of the Constitution, *inter alia*, implies that, having regard to the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, and the requirements stemming from

the Constitution and the constitutional principle of a state under the rule of law, the Seimas is under the duty to provide, in its resolution on calling a referendum, for the date of the referendum, i.e. to provide that the referendum is to take place on one day.

25.2. As mentioned above, by Article 1 of the resolution (No XIII-1537) of 18 October 2018, the Seimas called a mandatory referendum on amending Article 12 of the Constitution; the resolution (No XIII-1537) of the Seimas of 18 October 2018 was passed pursuant, *inter alia*, to Item 3 of Article 67 of the Constitution, under which the Seimas adopts resolutions on referendums.

It has also been mentioned that the impugned Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 established the date for holding the mandatory referendum – 12 May 2019 and 26 May 2019, i.e. it provided that the referendum was to take place on two days with a break of two weeks between them.

25.3. Thus, Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 established the date for holding the mandatory referendum on amending Article 12 of the Constitution by failing to follow the requirement, arising from Paragraph 1 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law, that, once a referendum is called, it must be provided that it is to take place on one day, and by failing to follow the duty of the Seimas, stemming from Item 3 of Article 67 of the Constitution, to provide, by having regard to the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, in its resolution on calling a referendum, that the referendum is to take place on one day.

26. In the light of the foregoing arguments, the conclusion should be drawn that Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 is in conflict with Paragraph 1 of Article 9 and Item 3 of Article 67 of the Constitution, as well as with the constitutional principle of a state under the rule of law.

27. Having held this, the Constitutional will not further investigate whether Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 is in conflict with Article 29 of the Constitution.

28. In this context, it should be noted that, as the Constitutional Court has repeatedly stated, any legal act (part thereof) of the Seimas that is declared by a ruling of the Constitutional Court to be in conflict with the Constitution is removed from the legal system of Lithuania and may no longer be applied.

Therefore, following the declaration by the Constitutional Court that Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 is in conflict with the Constitution, that article may no longer be applied. Therefore, the mandatory referendum, called under Article 1 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 on amending Article 12 of the Constitution may not be held unless the Seimas, having regard to the requirements, laid down in Paragraph 2 of Article 16 of the Law on Referendums (wording of 20 December 2018), in relation to choosing the date of a referendum, provides in the said resolution for such a date of the referendum that is in line with the above-mentioned

requirement, stemming from the Constitution, *inter alia*, Paragraph 1 of Article 9 thereof, to provide, in the resolution on calling a referendum, that the referendum is to take place on one day.

29. As mentioned above, the requirement, arising from Paragraph 1 of Article 9 of the Constitution, that, once a referendum is called, it must be provided that it is to take place on one day may not be interpreted as preventing the legislature from establishing a procedure for early voting in referendums for those citizens who are unable to cast their votes on the day of a referendum; providing for a procedure for early voting in referendums is a constitutional duty of the legislature; it stems from the Constitution, *inter alia*, from Paragraphs 1 and 4 of Article 9 thereof.

It has also been mentioned that the legal regulation governing the relationships connected with referendums, as laid down in the Law on Referendums (wording of 20 December 2018), *inter alia*, in Paragraph 1 of Article 56, Paragraphs 1 and 2 of Article 57, and Paragraphs 1–6 of Article 63, creates the preconditions for the citizens of the Republic of Lithuania, *inter alia*, to cast their votes in a mandatory referendum not only on the day scheduled for the referendum by the respective resolution of the Seimas, but also in advance, i.e. prior to the day scheduled for the referendum by the resolution of the Seimas.

VI

The assessment of the compliance of Paragraph 8 of Article 18, Paragraph 1 of Article 45, Paragraph 1 of Article 52, Paragraph 2 of Article 53, Paragraph 1 of Article 81, and Article 82 of the Law on Referendums (wording of 20 December 2018) with the Constitution

30. It should be noted that the implementation of constitutional justice implies that a legal act (part thereof) that is in conflict with the Constitution must be removed from the legal system; therefore, having found the unconstitutionality of a law whose compliance with the Constitution is not impugned by the petitioner, but on which the impugned substatutory legal act is based, the Constitutional Court must state that such a law is unconstitutional; this duty of the Constitutional Court stems from the Constitution and, in this way, the supremacy of the Constitution is ensured (the Constitutional Court's rulings of 29 November 2001 and 29 September 2015).

31. As mentioned above, Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018, which establishes two referendum days with a break of two weeks, was adopted after the Seimas had exercised its powers, consolidated in Article 15 (as amended on 28 September 2018) of the Law on Referendums, to set the date of the referendum and had used its discretion, established in Paragraph 1 (wording of 25 February 2003) of Article 50 of the same law, to stipulate that a referendum may take place on more than one day. It has also been mentioned that, from the aspect relevant to this constitutional justice case, the legal regulation laid down in Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums is identical to the one established in Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018), which, according to Paragraph 1 of Article 2 of the Law Amending the Law (No IX-929) on Referendums has been in force since

1 January 2019 instead of the legal regulation established in Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums.

31.1. It has been mentioned that Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018), *inter alia*, prescribes: "In its resolution, the Seimas may establish that the referendum shall take place on more than one day." It has also been mentioned that the Seimas, when setting by its resolution the date of a referendum, is allowed to stipulate, in accordance with Paragraph 1 of Article 52 of this law, that, *inter alia*, a mandatory referendum takes place on one day or on more than one day; Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) does not specify any total number of days on which a referendum may take place, i.e. there are no established restrictions on the exercise of the discretion granted to the Seimas to provide that a referendum is to take place on more than one day: according to this legal regulation, the Seimas may provide for any number of days on which a specific referendum may take place, *inter alia*, it may provide that a referendum is to take place on more than one consecutive day, or that it is to take place on more than one day with a break (breaks) in between.

31.2. It has been mentioned in assessing the constitutionality of Article 2 the resolution (No XIII-1537) of the Seimas of 18 October 2018 that, arising from Paragraph 1 of Article 9 of the Constitution, the imperative that the constitutionally consolidated democratic principles governing elections to political representative institutions (and stemming, *inter alia*, from the constitutional principle of a state under the rule of law) be *mutatis mutandis* applied in calling and conducting referendums also implies, *inter alia*, the requirement that, once a referendum is called, it must be provided that it is to take place on one day; the said requirement creates the preconditions for ensuring the fairness and transparency of the referendum process, *inter alia*, guaranteeing that the same procedure for calling and conducting referendums is applied in deciding all the most significant issues concerning the life of the State and the Nation; at the same time, the preconditions are created for ensuring the imperative, stemming from Paragraph 1 of Article 9 of the Constitution, to determine the actual will of the Nation in a referendum.

It has also been mentioned that Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement for the legislature, in regulating the procedure for calling and conducting referendums, *inter alia*, to prescribe that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

31.3. Thus, the legislature, when establishing in Paragraph 1 of Article 52 of the Law on Referendum (wording of 20 December 2018) such a legal regulation under which the Seimas, in setting by its resolution the date of a referendum, may at the same time provide that the referendum is to take place on more than one day, has disregarded the requirement, arising from Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law, to prescribe, in regulating the procedure for calling and conducting referendums, that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

32. In the light of the foregoing, the conclusion should be drawn that the provision “In its resolution, the Seimas may establish that the referendum shall take place on more than one day” of Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

33. In this context, it should be noted that, as mentioned above, the Law on Referendums (wording of 20 December 2018) also contains other provisions regulating issues related to the conduct of a referendum when it takes place on more than one day.

33.1. It has been mentioned that, as can be seen from the provisions of Paragraph 8 of Article 18 of the Law on Referendums (wording of 20 December 2018), which state that “Where a referendum takes place on more than one day (on two or more days) and a break between the days of the referendum is longer than one day, the period of the prohibition of campaigning shall end on the first day of the referendum as soon as the voting closes. The period of the prohibition of the referendum campaigning before the next day of the referendum shall begin in accordance with the procedure laid down in this paragraph”, a referendum may take place on one, two, or more days, and may take place on several days with breaks in between, *inter alia*, where such breaks may be longer than one day.

In this ruling, the Constitutional Court has held that the provision “In its resolution, the Seimas may establish that the referendum shall take place on more than one day” of Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

As mentioned above, Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement for the legislature, in regulating the procedure for calling and conducting referendums, *inter alia*, to prescribe that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

In view of the foregoing and in the light of the same arguments, it should be held that the provisions of Paragraph 8 of Article 18 of the Law on Referendums (wording of 20 December 2018), stating that “Where a referendum takes place on more than one day (on two or more days) and a break between the days of the referendum is longer than one day, the period of the prohibition of campaigning shall end on the first day of the referendum as soon as the voting closes. The period of the prohibition of campaigning shall begin before the next day of the referendum in accordance with the procedure established in this Paragraph”, are also in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

33.2. It has also been mentioned that:

– Paragraph 1 of Article 45 of the Law on Referendums (wording of 20 December 2018) regulates the updating of electoral rolls upon compiling final electoral rolls, *inter alia*, it

determines the deadline by which that updating may be completed, and the provision “(if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum)” creates the preconditions for updating the electoral rolls in the event that the referendum takes place on more than one days;

– Paragraph 2 of Article 53 of the Law on Referendums (wording of 20 December 2018) regulates the beginning of voting in cases where a referendum takes place on more than one days;

– Paragraph 1 of Article 81 of the Law on Referendums (wording of 20 December 2018) establishes the day that is deemed the date of the passing of a law, another act, or resolution adopted by referendum; the provision “In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum” of the said paragraph establishes the day that is deemed the date of the passing of a law, another act, or resolution adopted by referendum in cases where the referendum takes place on more than one day;

– Article 82 of the Law on Referendums (wording of 20 December 2018) regulates the calculation of time limits set in this law in cases where a referendum takes place on more than one day.

33.2.1. In summing up this legal regulation, it has been mentioned that the provision “(if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum)” of Paragraph 1 of Article 45 of the Law on Referendums (wording of 20 December 2018), Paragraph 2 of Article 53 thereof, the provision “In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum” of Paragraph 1 of Article 81 thereof, as well as Article 82 thereof, create the preconditions, when regulating the issues of conducting referendums, for a referendum to take place on more than one day.

33.2.2. In this ruling, the Constitutional Court has held that the provision “In its resolution, the Seimas may establish that the referendum shall take place on more than one day” of Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

As mentioned above, Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law give rise to the requirement for the legislature, in regulating the procedure for calling and conducting referendums, *inter alia*, to prescribe that, once a referendum is called, it is permitted to provide that the referendum is to take place on only one day.

33.2.3. In view of the foregoing and in the light of the same arguments, it should be held that the provision “(if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum)” of Paragraph 1 of Article 45 of the Law on

Referendums (wording of 20 December 2018), Paragraph 2 of Article 53 thereof, the provision “In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum” of Paragraph 1 of Article 81 thereof, as well as Article 82 thereof, are also in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

VII

On the legal consequences of declaring Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) in conflict with the Constitution and on the amendments to the legal regulation established in the Law on Referendums

34. In this ruling, the Constitutional Court has held that the provision “In its resolution, the Seimas may establish that the referendum shall take place on more than one day” of Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution and the constitutional principle of a state under the rule of law.

In this ruling, the Constitutional Court has also held that, from the aspect relevant to this constitutional justice case, the legal regulation consolidated in Paragraph 1 of Article 52 of the Law on Referendums (wording of 20 December 2018) is identical to the legal regulation laid down in Paragraph 1 of Article 50 of the Law on Referendums (wording of 25 February 2003), which expired on 31 December 2018 (following the entry into force (with certain exceptions), on 1 January 2019, of the Law on Referendums (wording of 20 December 2018) in accordance with Paragraph 1 of Article 2 of the Law Amending the Law (No IX-929) on Referendums).

34.1. It should be noted that those legal relationships that arose on the basis of not the resolution (No XIII-1537) of the Seimas of 18 October 2018, but other resolutions of the Seimas adopted on calling a referendum pursuant to Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums, which is currently no longer in force, have expired. In this context, it should be noted that, expressing its view regarding the possibility of assessing the constitutionality of those legal acts that may no longer be applied in general, since they were designated to regulate relationships that had already expired and, thus, no longer exist, the Constitutional Court has stressed that any intervention by law-making subjects in such a legal regulation is no longer feasible, it would be meaningless and irrational, as it would mean that the respective law-making subjects undertake steps to regulate – consequently, make efforts to change – the past (the Constitutional Court’s ruling of 15 February 2013). Any intervention by the Constitutional Court in the particular legal regulation of relationships connected with referendums would be equally meaningless where such a legal regulation is no longer in force, may no longer be applied, or the legal relationships that are connected with referendums and emerged on the basis of such a legal regulation have expired.

34.2. In view of this, it should be emphasised that, with the exception of the resolution

(No XIII-1537) of the Seimas of 18 October 2018, there are no constitutional grounds for doubting regarding the constitutionality of other resolutions of the Seimas on calling a referendum that were adopted pursuant to Paragraph 1 (wording of 25 February 2003) of Article 50 of the Law on Referendums, which is currently no longer in force, or regarding the results of the referendums held on the basis of such resolutions, or regarding the legal effects caused by these results.

35. As mentioned above, the resolution (No XIII-1537) of the Seimas of 18 October 2018, which called a mandatory referendum on amending Article 12 of the Constitution, was adopted on 18 October 2018; under its Article 4, this resolution is to enter into force on 1 January 2019.

It has also been mentioned that the impugned Article 2 of the resolution (No XIII-1537) of the Seimas of 18 October 2018 establishes the date for conducting the mandatory referendum on amending Article 12 of the Constitution, which, as mentioned above, is two days with a break of two weeks, where that date was set out in implementing the powers of the Seimas, consolidated in Article 15 (as amended on 28 September 2018) of the Law on Referendums, *inter alia*, to set the date for conducting the referendum, among other things, by complying with the requirements, set out in Paragraph 2 (wording of 28 September 2018) of this article, for choosing the date of the referendum (i.e. to set the date for conducting the referendum that is not later than eight months and not earlier than two months after the day of passing the resolution of the Seimas on the date of calling the referendum).

As mentioned above, on 20 December 2018, the Seimas adopted the Law Amending the Law (No IX-929) on Referendums, which entered into force (with certain exceptions) on 1 January 2019 and whose Article 1 amended the Law on Referendums and set it out in its new wording; the Law on Referendums (wording of 20 December 2018) came into force on 1 January 2019.

It has also been mentioned that the referendum called by the resolution (No XIII-1537) of the Seimas of 18 October 2018 must be conducted pursuant to the legal regulation established by the Law on Referendum in its new wording, i.e. the wording of 20 December 2018.

35.1. In the context of the constitutional justice case at issue, it should be noted that, as held by the Constitutional Court, under Paragraph 1 of Article 70 of the Constitution, interpreted in the context of the constitutional principle of a state under the rule of law, the legislature is, in certain cases, obliged to provide for a sufficient *vacatio legis*, i.e. a period of time from the moment of the official publication of the particular law until its entry into force (date of its application), during which the persons concerned would be able to prepare for the implementation of the requirements resulting from that law (*inter alia*, the Constitutional Court's rulings of 15 February 2013, 2 February 2016, and 19 June 2018).

It should also be noted that, as mentioned above, according to the European standards for referendums, one of the necessary conditions for the proper implementation of the principles of referendums and the principles of Europe's electoral heritage is the stability of

legal acts regulating referendums, which, among other things, implies that the main aspects of the legal regulation governing referendums (as, for instance, the provisions concerning the composition of electoral commissions, lists of voters, the procedural and substantive validity of the text put to a referendum, etc.) may not be modified less than a year before the referendum.

As mentioned above, since, as a rule, the date of a referendum is not known a year or more before the referendum, the requirement that no essential amendments to the legal regulation governing referendums be made a year before the referendum is, specifically, aimed not at prohibiting the adoption of amendments to the legal regulation a year before voting in a referendum, but at prohibiting the application of such amendments to the referendum process that is already in progress.

35.2. In view of this, in the context of the constitutional justice case at issue, it should be noted that, from the point of view of ensuring the stability of the legal regulation governing the relationships connected with the organisation of referendums, such a situation should be regarded as flawed in which the said legal regulation is significantly amended less than a year before a referendum, the more so in cases where this legal regulation is modified after a referendum has already been called and enters into force less than half a year before a referendum, but must be applied in the course of conducting a referendum that has already been called.

36. It should be noted that, in its ruling of 11 July 2014, the Constitutional Court held that the Seimas had undertaken the obligation to adopt the Republic of Lithuania's Constitutional Law on Referendums. This law is indicated in Item 5 of Paragraph 1 of Article 2, titled "The List of the Republic of Lithuania's Constitutional Laws", of the Constitutional Law on the List of the Republic of Lithuania's Constitutional Laws, adopted by the Seimas on 15 March 2012.

It should be mentioned that, under Paragraph 2 of Article 69 of the Constitution, laws are deemed adopted if the majority of the members of the Seimas participating in the sitting vote in favour; under Paragraph 3 of the same article, the constitutional laws of the Republic of Lithuania are adopted if more than half of all the members of the Seimas vote in favour, and they are amended by not less than a 3/5 majority vote of all the members of the Seimas.

Having regard to this, it should be emphasised that the inclusion of the law consolidating the legal regulation governing the relationships connected with the organisation of referendums in the List of the Republic of Lithuania's Constitutional Laws, under the Constitution, means that such a law must be adopted and the legal regulation consolidated therein must be subject to amendments under a more complex procedure (compared with the procedure for adopting and amending other laws); in this way, it is sought to create the preconditions for ensuring the stability of this legal regulation. It should be noted that the Law on Referendums in its new wording, as set by the Law Amending the Law (No IX-929) on Referendums, was not adopted as a constitutional law.

37. It should also be noted that, although, at the hearing of the Constitutional Court,

the representatives of the Seimas, the petitioner, expressed their doubts regarding the constitutionality of the Law on Referendums (wording of 20 December 2018) in terms of the procedure of its adoption, the procedure of adopting the Law on Referendums in its new wording, in this regard, is not a matter of investigation in this constitutional justice case.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 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:

1. To recognise that the provision “In its resolution, the Seimas may establish that the referendum shall take place on more than one day” of Paragraph 1 of Article 52 of the Republic of Lithuania’s Law on Referendums (wording of 20 December 2018; Register of Legal Acts, 28-12-2018, No 21715) is in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

2. To recognise that the provisions of Paragraph 8 of Article 18 of the Republic of Lithuania’s Law on Referendums (wording of 20 December 2018; Register of Legal Acts, 28-12-2018, No 21715), stating that “Where a referendum takes place on more than one day (on two or more days) and a break between the days of the referendum is longer than one day, the period of the prohibition of campaigning shall end on the first day of the referendum as soon as the voting closes. The period of the prohibition of campaigning shall begin before the next day of the referendum in accordance with the procedure established in this Paragraph”, the provision “(if a referendum takes place on more than one day, then until 18.00 on the last day of voting at the referendum)” of Paragraph 1 of Article 45 thereof, Paragraph 2 of Article 53 thereof, the provision “In the event a referendum takes place on more than one day, the last day of voting by referendum shall be deemed to be the date of the passing of a law, another act, or resolution adopted by referendum” of Paragraph 1 of Article 81 thereof, as well as Article 82 thereof, are in conflict with Paragraphs 1 and 4 of Article 9 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

3. To recognise that Article 2 of the resolution (No XIII-1537) of the Seimas of the Republic of Lithuania of 18 October 2018 on calling a mandatory referendum on amending Article 12 of the Constitution of the Republic of Lithuania (Register of Legal Acts, 23-10-2018, No 16530) is in conflict with Paragraph 1 of Article 9 and Item 3 of Article 67 of the Constitution of the Republic of Lithuania, as well as with 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

Vytas Milius

Daiva Petrylaitė

Janina Stripeikienė

Dainius Žalimas