**On criminal liability for illicit enrichment**

Case no 14/2015-1/2016-2/2016-14/2016-15/2016

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA**

**IN THE NAME OF THE REPUBLIC OF LITHUANIA**

**RULING**

**ON THE COMPLIANCE OF PARAGRAPH 1 OF ARTICLE 1891 OF THE CRIMINAL CODE OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA**

15 March 2017, no KT4-N3/2017

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Elvyra Baltutytė, Vytautas Greičius, Danutė Jočienė, Pranas Kuconis, Vytas Milius, Egidijus Šileikis, Algirdas Taminskas, and Dainius Žalimas

The court reporter – Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1 and 531 of the Law on the Constitutional Court of the Republic of Lithuania, at the Court’s hearing, on 7 and 14 March 2017, considered, under written procedure, constitutional justice case no 14/2015-1/2016-2/2016-14/2016-15/2016 subsequent to the petition (no 1B-21/2015) of the Supreme Court of Lithuania *(Lietuvos Aukščiausiasis Teismas)*, the petition (no 1B-25/2015) of the Marijampolė District Local Court *(Marijampolės rajono apylinkės teismas)*, the petition (no 1B-1/2016) of the Vilnius Regional Court *(Vilniaus apygardos teismas)*, the petition (no 1B-20/2016) of the Šiauliai Regional Court *(Šiaulių apygardos teismas)*, and the petition (no 1B-21/2016) of the Joniškis District Local Court *(Joniškio rajono apylinkės teismas)*, the petitioners, requesting an investigation into whether Paragraph 1 of Article 1891 (wording of 2 December 2010) of the Criminal Code of the Republic of Lithuania is in conflict with Articles 23 and 31 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

By the Constitutional Court’s decision of 28 February 2017, the foregoing petitions were joined into one case, and it was given reference no 14/2015-1/2016-2/2016-14/2016-15/2016.

The Constitutional Court

**has established:**

**I**

**The arguments of the petitioners**

1. The Supreme Court of Lithuania, a petitioner, was considering a criminal case subsequent to a cassation appeal against the judgment of the court of first instance by which the accused had been convicted under Paragraph 1 of Article 1891 of the Criminal Code (*Baudžiamasis kodeksas* (BK), hereinafter also referred to as the BK) and against the ruling of the court of appeal instance, by which the appeal against the judgment of the court of first instance had been rejected. The cassation appeal requested the Supreme Court of Lithuania to overturn the judgment of the court of first instance and the ruling of the court of appeal instance and to dismiss the case.

2. The Marijampolė District Local Court, a petitioner, was considering a criminal case in which the accused persons were accused under Paragraph 1 of Article 1891 of the BK.

3. The Vilnius Regional Court, a petitioner, was considering a criminal case subsequent to an appeal against the judgment of the court of first instance by which one of the accused had been convicted under Paragraph 1 of Article 1891 of the BK. The appeal requested the Vilnius Regional Court to overturn the judgment of the court of first instance and to pass an acquittal judgment.

4. The Šiauliai Regional Court, a petitioner, was considering a criminal case subsequent to an appeal against the judgment of the court of first instance by which the accused had been acquitted under Paragraph 1 of Article 1891 of the BK. The appeal requested the Šiauliai Regional Court to overturn the acquittal judgment of the court of first instance and to pass a convicting judgment.

5. The Joniškis District Local Court, a petitioner, was considering a criminal case in which the accused person was accused, *inter alia*, under Paragraph 1 of Article 1891 of the BK.

6. By means of the orders issued by them, the petitioners adjourned the consideration of the criminal cases and applied to the Constitutional Court.

7. The petitions of the petitioners – the Supreme Court of Lithuania, the Marijampolė District Local Court, the Vilnius Regional Court, the Šiauliai Regional Court, and the Joniškis District Local Court – are based on the following arguments.

7.1. Concerning the compliance of the impugned legal regulation with the constitutional principle of a state under the rule of law and its element – the constitutional principle of proportionality

7.1.1. When interpreting the provisions of the Constitution in the context of applying liability for acts that are contrary to law, the Constitutional Court has held that the entire legal system must be based on the constitutional principle of a state under the rule of law; the said principle also implies the proportionality of established legal liability. The constitutional principles of justice and a state under the rule of law also imply that the measures established by the state for violations of law must be proportionate (adequate) to the violation of law, they must be in line with the legitimate and generally important objectives sought, they may not restrain a person clearly more than necessary in order to reach these objectives; there must be a fair balance (proportionality) between the pursued objective to punish the violators of law and to ensure the prevention of the violations of law and the measures chosen for reaching this objective.

In order to prevent illegal acts, it is not always expedient to deem certain acts to be crimes and to impose the most severe measures – punishments – for such acts; every time when it is necessary to decide whether to deem a certain act to be a crime or another violation of law, it is very important to assess what results may be achieved when applying other measures, which are not linked with the application of punishments (the Constitutional Court’s rulings of 13 November 1997 and 10 November 2005).

When interpreting the content of the constitutional principle of a state under the rule of law, the Constitutional Court has held that the measures, established and applied by the state, for preventing crimes, as well as restricting and reducing crime, must be effective (the Constitutional Court’s ruling of 8 May 2000). The resources (material, human, etc.) allocated for the protection of a person and society against criminal attempts must be distributed and used rationally (the Constitutional Court’s ruling of 16 January 2006). Taking into account the emerging case law, the petitioners state that, in strict compliance with the constitutional requirements of the criminal procedure, criminal liability under Article 1891 of the Criminal Code for illicit enrichment can be rarely applied, as there can often be a reasonable doubt that, still, property could have been acquired in a lawful way. Therefore, the petitioners also have doubts about the effectiveness of the criminal law measure that is consolidated in Article 1891 of the BK.

7.1.2. Article 1891 of the BK, in which the body of the crime is defined, does not require the establishment of the fact that the object of the crime – the property of a person – has been acquired precisely in a criminal way. The mere fact that property could not have been acquired with legitimate income can form the basis for incrimination. This means that criminal liability may be applied under Article 1891 of the BK to a person who has not committed any criminal act. The object of this crime may be property acquired in a non-criminal manner, for example, by committing only administrative, tax, or civil law violations. Consequently, according to Article 1891 of the BK, the possession of the property acquired as a result of such law violations that are not so dangerous that they could be considered crimes or could result in criminal liability becomes more dangerous than such law violations by committing which the property has been acquired, i.e. the said possession is considered a crime and incurs criminal liability. In addition, Article 1891 of the BK can be applied without proving specific law violations by committing which the acquired property is considered to be the object of this crime, because the logical construction of this article “property could not have been acquired with legitimate income” basically means that the financial resources for the acquisition of the property have not been precisely determined, but, after verifying all possible lawful methods of acquiring this property, it is clear that the property could not have been acquired in any of them.

7.1.3. The constitutional principle of a state under the rule of law, among other things, implies that, in order to ensure that the subjects of legal relations are aware of the requirements put forward to them by law, legal norms must be established in advance; the effect of legal acts is prospective, whereas the retroactive effect of laws and other legal acts is not permitted *(lex retro non agit)*, unless the situation of a subject of legal relations would be alleviated without prejudice to other subjects of legal relations *(lex benignior retro agit)*. Thus, criminal laws are applied to the facts and consequences that take place after these laws come into force.

Under Article 1891 of the BK, persons who, after the entry into force of this law, have property corresponding to the characteristics specified therein, are held criminally liable. Thus, the legislature linked the applicability of the law to the possession, but not the acquisition of the property referred to in the norm in question after the entry into force of this law. The application of criminal liability for the possession of the property in accordance with the law that comes into force after the property has been acquired would amount to the retroactive application of the law. The actual on-going state of the crime (the possession of property) would then be determined by one action (the acquisition of property) that took place before the entry into force of the criminal law.

7.2. Concerning the compliance of the impugned legal regulation with Article 23 of the Constitution

The application of criminal liability under Article 1891 of the BK, which does not comply with the constitutional principle of proportionality, is also related to the restriction of the ownership of individuals, because the possession of property as ownership where this property cannot be reasonably explained in relation to legitimate income is considered a crime.

The official doctrine formulated by the Constitutional Court notes that, under the Constitution, the right of ownership is not absolute, and that this right can be limited by means of a law due to the character of an object of ownership, due to the committed acts that are contrary to law, and/or due to a constitutionally justified need that is essential to society. However, in all cases where the right of ownership is limited, the following conditions must always be observed: ownership may be limited only by invoking the law; limitations must be necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives that are essential to society; regard must be paid to the principle of proportionality, under which the measures provided for in laws must be in line with the sought objectives that are essential to society and constitutionally justified.

With this in mind, and having expressed doubts about the compliance of Article 1891 of the BK with the constitutional principle of proportionality, the petitioners also have doubts as to whether the same article is in conflict with the imperatives of the protection of ownership, which are enshrined in Article 23 of the Constitution.

7.3. Concerning the compliance of the impugned legal regulation with Article 31 of the Constitution

7.3.1. The presumption of innocence, enshrined in Paragraph 1 of Article 31 of the Constitution, means that, in the criminal proceedings, the burden of proving the guilt lies with the officials of pretrial investigation, whereas the suspect or the accused is not required to prove his/her innocence.

The Supreme Court of Lithuania, in deciding the issues of the applicability of Article 1891 of the BK, has held that, in the course of proving that “property could not have been acquired with legitimate income”, it is not allowed to violate the principle of the presumption of innocence; therefore, as such, the owner’s inability to reasonably explain his/her property in relation to his/her legitimate income is not sufficient to establish his/her guilt. However, the legal technique used in Article 1891 of the BK – the formulation of the object of the crime by using a negative statement (“property that could not have been acquired with legitimate income”) inevitably creates a situation where the illegality of income is determined on the basis of the lack of officially received income and the inability of the accused to provide a credible explanation for the sufficiency of his/her officially received income enabling him/her to acquire the property that he/she possesses. The conclusion regarding the illegality of income is based on the assumption that everything that could not have been acquired by lawful means has been acquired illegally. In criminal justice, such a manner of establishing facts can be assessed as placing the burden of proof on the accused and drawing on assumptions in determining the guilt of the person. This may violate the principle of the presumption of innocence, enshrined in Paragraph 1 of Article 31 of the Constitution, as well as the prohibition, consolidated in Paragraph 3 of this article, on giving evidence against himself/herself.

7.3.2. The petitions show that the doubt of the petitioners as to the compliance of Article 1891 of the BK with Paragraphs 2 and 6 of Article 31 of the Constitution is related to the compliance of the said article of the BK with the constitutional principle of a state under the rule of law.

The petitioners have referred to Paragraphs 2 and 6 of Article 31 of the Constitution and the right to fair (due) process (which is entrenched in the said paragraphs), as well as the provisions of the official constitutional doctrine that are related to the right of defence, they have presented the related jurisprudence of the European Court of Human Rights (hereinafter referred to as the ECtHR) concerning the interpretation of Paragraphs 1 and 3 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) and the application of the said paragraphs in the case law of the ECtHR, and also have stated that the constitutional principle of a state under the rule of law gives rise to the requirements that a legal regulation must be clear, understandable, consistent, that the formulations in legal acts must be accurate, that the consistency and internal harmony of the legal system must also be ensured, and that there must be no provisions in the legal acts that would differently regulate the same social relations at the same time.

The provisions of Article 1891 of the BK together with Paragraph 2 (which discloses the said provisions) of Article 190 of the BK may be regarded as contradictory, unclear, and ambiguous, preventing the charges from being formulated in such a manner that counsel for the defence could know a precise factual and legal basis and be able to challenge these charges effectively.

According to the petitioners, having stipulated in Paragraph 2 of Article 190 of the BK that the legitimate income specified in Article 1891 of the BK is income derived from activities not prohibited by legal acts, irrespective of whether or not this income has been accounted for in accordance with the procedure laid down by legal acts, the phrases “irrespective of whether or not it has been accounted for in accordance with the procedure laid down by legal acts” and “legitimate income shall be income derived from activities not prohibited by legal acts” are so contradictory that it is impossible to understand what is considered to be legitimate income.

In addition, according to Article 1891 of the BK, a person is also liable in the event that he/she has the property referred to in this article while having to be and likely to be aware that this property could not have been acquired with legitimate income. The phrase “having to be and likely to be aware” is characteristic of criminal carelessness as a type of negligent guilt and, according to Article 16 of the BK, this form of guilt can be inherent in the commission of criminal acts the necessary characteristics of whose bodies include consequences. Meanwhile, consequences are not a necessary characteristic of the body of illicit enrichment – this act is considered to be a criminal one from the moment of the possession of corresponding property. The petitioners state that, when assessing the BK as a single criminal law, it is unclear in general how it is possible to become enriched illicitly in the context of Article 1891 of the BK.

7.3.3. The petitioners also point out that the Constitutional Court has held in its acts that the constitutional principle of *non bis in idem* means the prohibition on punishing anyone twice for the same unlawful act, i.e. for the same crime, as well as for the same violation of law that is not a crime. The constitutional principle of *non bis in idem* also means that, if a person who commits an unlawful act is held administratively, but not criminally, liable, i.e. he/she is imposed a sanction – a penalty for an administrative violation of law, but not for a crime, he/she must not additionally be held criminally liable for the said act. Since fines imposed pursuant to the Law on Tax Administration of the Republic of Lithuania are criminal in nature, these fines for the same unlawful act cannot be applied together with criminal liability. Based on the case law of the Supreme Court of Lithuania, the petitioners claim that the manner how illicit enrichment is criminalised in Article 1891 of the BK creates the preconditions for violating the principle of the prohibition on punishing anyone twice for the same unlawful act, as enshrined in Paragraph 5 of Article 31 of the Constitution, because a person, due to the acquisition of the same property and the failure to pay taxes for such property, is subject not only to criminal liability in accordance with Article 1891 of the BK, but also to a fine under the Law on Tax Administration.

**II**

**The arguments of the representative of the party concerned**

8. In the course of the preparation of the case for the hearing of the Constitutional Court, written explanations were received from Stasys Šedbaras, the member of the Seimas acting as the representative of the Seimas of the Republic of Lithuania, the party concerned, in which it is maintained that the impugned legal regulation is not in conflict with the Constitution. The position of the representative of the party concerned is substantiated by the following arguments.

8.1. When assessing the compliance of Article 1891 of the BK with Article 23 of the Constitution, it is necessary to emphasise that the right of ownership is not absolute. It might be argued that the limitations on the right of ownership imposed by Article 1891 of the BK are proportional to the objective stated in the case law formulated by the Supreme Court of Lithuania – to reduce the economic usefulness and attractiveness of crimes related to corruption, property, economy, finance, as well as other selfish crimes, to undermine the potential of separate individuals and criminal organisations to commit new criminal acts, to reduce their prevalence and the damage done to the state and society.

8.2. The sanction provided for in Paragraph 1 of Article 1891 of the BK, according to which a maximum sentence of four years of the deprivation of liberty is imposed, is proportional to the danger of illicit enrichment. It is in systematic consistence with the sanctions established in other articles (parts thereof), such as Paragraph 2 of Article 189 of Chapter XXVIII, titled “Crimes and Misdemeanours against Property, Property Rights and Property Interests”, of the same BK, which also includes Article 1891. In assessing the proportionality of the impugned legal regulation, its compliance with the principle of *ultima ratio*, it is also necessary to take into account the fact that, in the case of illicit enrichment as a less serious crime, the law also provides for the possibility of exempting a person from criminal liability, or for holding a person liable by postponing the execution of a punishment.

8.3. As such, the construction of the body of a crime of illicit enrichment does not violate the principle of the presumption of innocence. The prerequisites for violating this principle may only be created by an incorrect interpretation of the body of illicit enrichment.

The provision of proof and the duties of participants in the proceedings are regulated by the Code of Criminal Procedure of the Republic of Lithuania (*Baudžiamojo proceso kodeksas* (BPK), hereinafter referred to as the BPK). The guarantees provided for by the BPK apply to all suspects/accused irrespective of the body of a criminal act. Thus, also in the case of Article 1891 of the BK, the prosecutor has the duty to collect evidence only in the ways provided for by the law and to deny by means of this evidence all doubts about the guilt of the accused.

The formulation “property that cannot be reasonably explained in relation to legitimate income”, which can be derived from Paragraph 1 of Article 1891 of the BK, does not mean that a person must attempt to substantiate the lawfulness of the acquisition of the property, but, rather, it means that the prosecutor must prove by means of evidence the impossibility of the legality of such acquisition. The mere fact that, in the course of applying Article 1891 of the BK, the prosecutors must prove circumstances that are somewhat different than usual (in most cases, the prosecutor must prove that the facts or actions have taken place, whereas in order to prove illicit enrichment, he/she must prove the impossibility of the fact that the acquisition of the property has been lawful), there are no grounds for asserting that the principle of the presumption of innocence is violated.

**III**

**The material received in the case**

9. In the course of the preparation of the case for the hearing of the Constitutional Court, written opinions were received from Rasa Svetikaitė, the chief adviser of the President of the Republic of Lithuania, Juozas Bernatonis, a former Minister of Justice of the Republic of Lithuania, Žydrunas Radišauskas, the Deputy Chief Prosecutor of the Republic of Lithuania, Justas Namavičius, a lecturer from the Department of Criminal Justice of the Faculty of Law of Vilnius University, Lyra Jakulevičienė, the Dean of the Faculty of Law of Mykolas Romeris University, Jurgita Paužaitė-Kulvinskienė, the Director of the Law Institute of Lithuania, as well as an overview of the case law related to the application of Article 1891 of the BK, which was prepared by the Department of Legal Studies and Summarisation of the Supreme Court of Lithuania.

10. Jonas Prapiestis, the Chairperson of the Plenary Session of the Criminal Division of the Supreme Court of Lithuania, the representative of the Supreme Court of Lithuania, a petitioner, submitted a written opinion on the material contained in this constitutional justice case. In response to this opinion, Seimas member Stasys Šedbaras, the representative of the Seimas, the party concerned, stressed that he continued to stand by the view expressed in his earlier written explanations.

The Constitutional Court

**holds that:**

**I**

**The impugned and related legal regulation**

11. On 26 September 2000, the Seimas adopted the Republic of Lithuania’s Law on the Approval and Entry into Force of the Criminal Code. Article 1 of the said law approved the Criminal Code, which, in accordance with Article 1 of the Republic of Lithuania’s Law on the Procedure for the Entry into Force and Implementation of the Criminal Code, as Approved by Law No VIII-1968 of 26 September 2000, the Code of Criminal Procedure, as Approved by Law No IX-85 of 14 March 2002, and the Code of the Enforcement of Punishments, as Approved by Law No IX-994 of 27 June 2002, came into force on 1 May 2003.

11.1. Under Paragraph 1 of Article 1 of the BK, this code is a uniform criminal law having the purpose of defending, by means of criminal law, human and citizens’ rights and freedoms, as well as public and state interests, against criminal acts. This code, among other things, defines which acts are crimes and misdemeanours and prohibits them (Item 1 of Paragraph 2 of Article 1). According to Article 11 of the BK, a crime is a dangerous act (action or omission) forbidden under this code and punishable with the deprivation of liberty (Paragraph 1); crimes are committed with intent or through negligence; intentional crimes are divided into minor, less serious, serious, and grave crimes (Paragraph 2); a less serious crime is an intentional crime for which the maximum punishment provided for in a criminal law exceeds three years of the deprivation of liberty, but does not exceed six years of the deprivation of liberty (Paragraph 4).

11.2. Article 2, titled “Basic Provisions of Criminal Liability”, of the BK, among other things, prescribes:

– “A person shall be held liable under this Code only when the act committed by him/her is forbidden by a criminal law in force at the time of the commission of the criminal act” (Paragraph 1);

– “A person shall be held liable under a criminal law only when he/she is guilty of the commission of a criminal act and only if, at the time of the commission of the act, the conduct of the person could have been reasonably expected to conform to the requirements of law” (Paragraph 3);

– “Only a person whose act as committed corresponds to a definition of the body of a crime or criminal misdemeanour provided for by a criminal law shall be liable under the criminal law” (Paragraph 4);

– “No one may be punished twice for the same criminal act” (Paragraph 6).

12. The BK has been amended and/or supplemented on more than one occasion, *inter alia*, by the Republic of Lithuania’s Law Amending and Supplementing Articles 3, 67, 72, and 190 of the Criminal Code of the Republic of Lithuania and Supplementing This Code with Articles 723 and 1891 (hereinafter referred to as the Law Amending the BK), which was adopted by the Seimas on 2 December 2010 and came into force on 11 December 2010.

By means of Article 5 of the Law Amending the BK, the BK was supplemented with Article 1891, titled “Illicit Enrichment”, the compliance of whose Paragraph 1 with the Constitution is impugned by the petitioners. In addition, the Law Amending the BK amended Article 72, titled “Confiscation of Property”, of the BK (Article 3), the BK was supplemented with Article 723 “Extended Confiscation of Property” (Article 4), and some other amendments related to the said supplements were made.

13. It is to clear from the *travaux préparatoires* of the Law Amending the BK that its purpose is to establish in Lithuanian criminal law a set of measures that would allow a wider use of the confiscation of property, the seizure of all illegally acquired property from the culprit, and the prosecution of persons who have acquired such property or who have helped to conceal its origin. An attempt is thus made to create such conditions where crimes related to corruption, property, economy, finance, as well as other selfish crimes, would become economically unprofitable and, therefore, less attractive to those who are predisposed to commit crimes; it is also attempted to undermine the potential of individuals and criminal organisations to commit new criminal acts, deter individuals from consenting to becoming fake property owners and, thereby, complicate the concealment of illicitly acquired property, as well as reduce the spread of these crimes and the damage done to the state and society. It is noted that, without the initiated amendments to the BK, it is difficult to control the situation where people systematically conceal ill-gotten gains and other assets acquired illicitly, and where softer measures fail to change the prevailing views in society that living off ill-gotten gains is normal.

Thus, the legislature, seeking, *inter alia*, to make economically not viable the commission of crimes related to corruption, property, economy, finance, as well as other selfish crimes, and to prevent such acts and damage inflicted on the state and society, has chosen to establish the legal measure – criminal liability for illicit enrichment – and, by Paragraph 1 of Article 1891 of the BK, banned this act.

The explanatory note to the Draft Law Amending the BK states that, in the course of drafting this law, among other things, consideration was given to the provisions of the United Nations Convention against Transnational Organised Crime of 13 December 2000 (ratified by the Seimas by the law (No IX-794) of 19 March 2002), the United Nations Convention against Corruption of 31 October 2003 (ratified by the Seimas by the law (No X-943) of 5 December 2006), and the experience of some foreign countries.

14. Article 1891, titled “Illicit Enrichment” (wording of 2 December 2010), of the BK (hereinafter referred to as Article 1891 of the BK) provides:

“1. A person who holds by right of ownership the property whose value exceeds 500 MSLs, while being aware or having to be and likely to be aware that such property could not have been acquired with legitimate income,

shall be punished by a fine, or by arrest, or by the deprivation of liberty for up to four years.

2. A person who takes over the property referred to in Paragraph 1 of this Article from third parties shall be released from criminal liability for illicit enrichment where he/she gives a notice thereof to law enforcement institutions before he/she is served a notice of suspicion and where he/she actively cooperates in determining the origin of the property.

3. Legal persons shall also be held liable for the acts provided for in this Article.”

15. In the constitutional justice case at issue, it is necessary to disclose the characteristics, relevant to this case, constituting the body of the crime – illicit enrichment – established in Paragraph 1 of Article 1891 of the BK.

15.1. Paragraph 1 of Article 1891 of the BK provides for criminal liability for illicit enrichment for both natural and legal persons. When interpreting the legal regulation entrenched in the said paragraph in conjunction with the phrase “A person who takes over the property referred to in Paragraph 1 of this Article from third parties shall be released from criminal liability for illicit enrichment”, which is found in Paragraph 2 of this article, it should be noted that the subjects of illicit enrichment are not only persons who held/hold by right of ownership property whose value was/is higher than the indicated one and that could not have been acquired by them with their legitimate income, but also persons who took over such property that could not have been acquired with legitimate income by other persons.

15.2. The phrase “who holds by right of ownership”, which is found in the provision “A person who holds by right of ownership the property whose value exceeds 500 MSLs” of Paragraph 1 of Article 1891 of the BK, is related to an act – a characteristic of the objective aspect of the body of illicit enrichment.

15.2.1. The phrase “who holds by right of ownership” should be interpreted in the context of the provisions of the Civil Code of the Republic of Lithuania (wording of 18 July 2000 with subsequent amendments and supplements) (*Civilinis kodeksas* (CK), hereinafter referred to as the CK) that govern the ownership relations.

According to Paragraph 1 of Article 4.37, titled “Definition of the Ownership Right”, of the CK, the ownership right is the right to possess, use, and dispose of an object of ownership at one’s volition, without violating the laws and the rights and interests of other persons.

Thus, when interpreting the phrase “who holds by right of ownership” in Paragraph 1 of Article 1891 of the BK in conjunction with the above-mentioned provision of the CK, it should be noted that, pursuant to Paragraph 1 of Article 1891 of the BK, the owner of the property referred to in the said paragraph, i.e. a person who, at his/her volition, without violating the laws and the rights and interests of other persons, had/has the right to possess, use, and dispose of this property, may be held criminally liable.

15.2.2. It should be noted that the phrase “who holds by right of ownership”, which is found in the provision “A person who holds by right of ownership the property whose value exceeds 500 MSLs” of Paragraph 1 of Article 1891 of the BK, should be interpreted in conjunction with the phrase “could not have been acquired”, which is contained in the same article. Thus, although the act of illicit enrichment manifests itself in the possession of the said property by right of ownership, such possession is possible (conceivable) only after the acquisition of this property; therefore, only after it has been established that the person has acquired the ownership of the property, there are grounds for stating that he/she holds this property by right of ownership.

It should be mentioned that, under Article 4.47, titled “Provisions regarding the Acquisition of the Ownership Right”, of the CK, the ownership right may be acquired, among other things, by contract (Item 1), by inheritance (Item 2), on the other grounds provided for in this article (Items 3–11), and on other grounds established by law (Item 12).

It should be noted that a person who has acquired the ownership of the property referred to in Paragraph 1 of Article 1891 of the BK holds this property by right of ownership from the same moment. Thus, having acquired the ownership of property worth more than 500 MSLs where it could not have been acquired with legitimate income, the possession of such property by right of ownership begins at the same time. Therefore, when bringing a person to criminal liability for illicit enrichment, it is necessary to establish not only the fact that the person holds property worth more than 500 MSLs where it could not have been acquired with legitimate income, but also the time when he/she acquired the ownership of this property, i.e. it is necessary to establish the moment of the acquisition of the ownership of this property.

In this context, it needs to be mentioned that, in its rulings, the Supreme Court of Lithuania, which develops the case law of courts of general jurisdiction, has made the interpretation that the possession of property, as provided for in the disposition of Article 1891 of the BK, is regarded as a lasting act, but this act is determined by a particular final act – the acquisition of the property (the Supreme Court of Lithuania, the ruling of 9 June 2015 passed by the Judicial Panel of the Criminal Division in criminal case no 2K-274-511/2015).

15.3. The phrases “the property whose value exceeds 500 MSLs” where it “could not have been acquired with legitimate income”, which are found in Paragraph 1 of Article 1891 of the BK, define the object of the body of illicit enrichment.

15.3.1. When characterising the amount of the value of the property (more than 500 MSLs) referred to in Paragraph 1 of Article 1891 of the BK, it needs to be noted that, according to the Republic of Lithuania’s Law on the Establishment of the Reference Indicators of Social Security Benefits and the Basic Amounts of Punishments and Penalties, the legal acts regulating the classification of crimes and of administrative violations, as well as the definition and the calculation of the amounts of punishments and penalties, use the indicator “minimum subsistence level” or “MSL”, which is identical and equal to the basic amount of punishments and penalties (Paragraph 2 of Article 4); this amount is approved by the Government of the Republic of Lithuania (Paragraph 2 of Article 3). The government resolution (No 1031) of 14 October 2008 on approving the basic amount of punishments and penalties, which came into force on 22 October 2008, approved the basic amount of punishments and penalties of LTL 130, and as from 1 January 2015, when the government resolution (No 897) of 3 September 2014 on amending the resolution of the Government of the Republic of Lithuania (No 1031) of 14 October 2008 on approving the basic amount of punishments and penalties came into force, the said amount is equal to EUR 37.66.

Thus, the object of illicit enrichment is, among other things, property whose value exceeds 500 MSLs, i.e. property whose value exceeded LTL 65 000 until 31 December 2014, and whose value exceeds EUR 18 830 as from 1 January 2015.

It should be noted that the value of the property referred to in Article 1891 of the BK – more than 500 MSLs – is higher than the amount of 250 MSLs specified in Paragraph 1 (wordings of 2 December 2010 and 18 December 2014) of Article 190 of the BK, in which the property is considered to be of high value when the latter value is exceeded. In certain articles of the BK (including, *inter alia*, Paragraph 3 of Article 178 and Paragraph 2 of Article 182), which establish criminal liability for crimes against property, as well as against property rights and interests, property of high value is a characteristic of the bodies of more dangerous crimes, which are called qualified ones in criminal law theory.

15.3.2. It should be noted that the object of illicit enrichment is not any property whose value exceeds 500 MSLs, but only that which could not have been acquired with legitimate income.

The notion “legitimate income”, which is used in Article 1891 of the BK, is explained in Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK. It states: “The legitimate income referred to in Article 1891 [of the BK] shall be income derived from activities not prohibited by legal acts, irrespective of whether or not it has been accounted for in accordance with the procedure laid down by legal acts.” This means that, according to the legal regulation established therein, in the context of Article 1891 of the BK, legitimate income is considered income derived from activities not prohibited by legal acts even if such income has not been properly accounted for in accordance with the procedure laid down by legal acts.

It should to be noted that Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK consolidates what is to be considered legitimate income not in the general sense, but only in the context of the legal regulation established in Article 1891 of the BK.

It should be mentioned that, in its rulings, the Supreme Court of Lithuania has made the interpretation that the logical construction “property that could not have been acquired with legitimate income” in Article 1891 of the BK in fact means that the financial resources for the acquisition of the property have not been precisely determined, but, after verifying all possible lawful methods of acquiring this property, it is clear that the property could not have been acquired in any of them (*inter alia*, the Supreme Court of Lithuania, the ruling of 11 April 2014 passed in the Plenary Session of the Criminal Division in criminal case no 2K-P-93/2014; the ruling of 15 April 2014 passed by the Judicial Panel of this division in criminal case no 2K-75/2014; the ruling of 5 April 2016 passed by the Judicial Panel of this division in criminal case no 2K-119-139/2016).

Thus, when interpreting the legal regulation established in Article 1891 of the BK in conjunction with the one laid down in Paragraph 2 of Article 190 of the BK and in the light of its interpretation in the case law formulated by courts, it should to be noted that property held by a person by right of ownership corresponds to the object of the body of illicit enrichment if it is the property of the value above 500 MSLs where it could not have been acquired with legitimate income and where the person was unable to receive the amount of income from the activities not prohibited by legal acts that could have been sufficient to acquire the ownership of the property of the specified amount. It should be noted that the object of the body of illicit enrichment may also be income itself where it could not have been derived from non-prohibited activity, even though the ownership of no other property has been acquired with the said income.

15.3.3. It should be noted that neither Paragraph 1 of Article 1891 of the BK nor other articles of the BK define the concept of property. In this context, consideration should be given to the legal regulation established in Article 4.38, titled “Object of the Ownership Right”, of the CK, according to which the object of the ownership right may be things and other property.

It should to be noted that Paragraph 1 of Article 4.7 of the CK stipulates that each person may own any things provided they are not taken out of circulation or are not in limited circulation. According to Paragraph 2 of the same article of the CK, things out of circulation are the exclusive property of the state, and, under Paragraph 3 of the same article, things in limited circulation are things with certain properties whose circulation is limited due to safety, health concerns, or other public needs.

Under Paragraph 2 of Article 1.97 of the CK, things and property whose circulation is limited may be considered to be objects of civil rights only in the cases established by law. Consequently, laws must define not only things and property whose circulation is limited – such laws and substatutory legal acts implementing them must establish, among other things, the procedure for their acquisition. Thus, a person may also own such things whose circulation is limited on grounds relating to safety, health, or other public needs, but, in the course of their acquisition, a special procedure established in legal acts must be followed.

It needs to be noted that, for the acquisition or other disposal of things of limited circulation, such as weapons or narcotic substances, which, by their nature (purpose) are more dangerous to public security and human life and health, criminal liability is possible only when such things are acquired, stored, or otherwise disposed of illegally, i.e. in violation of the special procedure established in laws and other legal acts, among other things, without an authorisation or licence issued in accordance with the established procedure (among others, Articles 253, 259, and 260 of the BK).

If it is found that the value of things that are in limited circulation and that have been acquired, held, or otherwise disposed of by a person without violating the established procedure exceeds 500 MSLs, and that they could not have been acquired with legitimate income, those things (property) are the object of illicit enrichment, as provided for in Paragraph 1 of Article 1891 of the BK.

Thus, the danger of the possession of the property referred to in Paragraph 1 of Article 1891 of the BK is determined not by the nature (purpose) of the property, but by the fact that the person could not have acquired with legitimate income the ownership of such property whose value exceeds 500 MSLs.

15.3.4. Summing up the legal regulation laid down in Paragraph 1 of Article 1891 of the BK, as well as the legal regulation related to the said paragraph and defining the object of illicit enrichment, it should be noted that any things or other property whose value exceeds 500 MSLs where such things or property could not have been acquired with legitimate income may constitute the said object.

15.4. The phrase “while being aware or having to be and likely to be aware” of Paragraph 1 of Article 1891 of the BK means that it contains alternative characteristics of the body of the crime that define the guilt of a person, i.e. the person is held criminally liable for illicit enrichment if he/she is aware that the property could not have been acquired with legitimate income or if he/she has to be and is likely to be aware of this fact.

15.4.1. It needs to be noted that, according to Article 15 of the BK, a crime is considered intentional if, among other things, in committing it, a person was aware of the dangerous nature of the criminal act and wanted to perpetrate it, and, according to Article 16 of the BK, a crime is negligent, i.e. it is committed as a result of criminal carelessness, if a person who committed it had not anticipated that his/her act or omission might cause the consequences provided for by this code, although this person could and ought to have anticipated such a result based on the circumstances of the act and his/her personal traits (Paragraph 3).

Having compared the legal regulation established in Paragraph 3 of Article 16 of the BK, which defines the concept of negligent guilt – criminal carelessness, with the phrase “having to be and likely to be aware” of Paragraph 1 of Article 1891 of the BK, it should be noted that illicit enrichment is also possible as a result of negligence. Such consolidation of negligent guilt in Paragraph 1 of Article 1891 of the BK is in line with Paragraph 4 of Article 16 of the BK, according to which a person is punishable for the commission of a crime through negligence solely in the cases provided for separately in the special part of this code.

It needs to be mentioned that, in its rulings, the Supreme Court of Lithuania has made the interpretation that Paragraph 1 of Article 1891 of the BK consolidates the formal body of the crime, since consequences are not a necessary characteristic of the body of illicit enrichment – this act is deemed a criminal one from the moment of the possession of the corresponding property (the Supreme Court of Lithuania, the ruling of 11 February 2014 passed by the Judicial Panel of the Criminal Division in criminal case no 2K-48/2014; the ruling of 10 November 2015 passed by the Judicial Plenary Session of the same division in criminal case no 2K-P-100-222/2015). It needs to be noted that, according to the interpretation of the Supreme Court of Lithuania, although the definition of negligent guilt – criminal carelessness – is formulated in Paragraph 3 of Article 16 of the BK with regard to the material bodies of crimes, in cases where the BK, in defining the formal bodies of crimes, determines that an act is a crime also when committed through negligence as a result of criminal carelessness, a court is obliged to consider the question of criminal liability also in cases of negligent guilt (the Supreme Court of Lithuania, the ruling of 13 December 2005 passed by the Extended Judicial Panel (comprising seven justices) of the Criminal Division in criminal case no 2K-7-544/2005).

15.4.2. As mentioned above, criminal liability for illicit enrichment is established not only with regard to persons who held/hold property whose value exceeded/exceeds the predefined one and where the said property could not have been acquired with legitimate income, but also with respect to those who took over such property that could not have been acquired with legitimate income by other persons. When interpreting the phrase “while being aware or having to be and likely to be aware” of Paragraph 1 of Article 1891 of the BK in this context, it should be noted that persons who have taken over property worth more than 500 MSLs where it could not have been acquired with legitimate income by other persons can face criminal liability for the crime provided for in Article 1891 of the BK when it has been committed intentionally or when it has been committed through negligence. Thus, illicit enrichment in the form of negligent guilt is only possible when a person accepts property worth more than 500 MSLs where this property could not have been acquired with legitimate income by other persons.

16. As mentioned above, a person who has committed the crime provided for in Paragraph 1 of Article 1891 of the BK is punished by a fine, or by arrest, or by the deprivation of liberty for up to four years.

It follows from this sanction established in Paragraph 1 of Article 1891 of the BK that, under Paragraph 4 of Article 11 of the Criminal Code, illicit enrichment is a less serious crime.

17. Summing up the legal regulation laid down in Paragraph 1 of Article 1891 of the BK, it should be noted that it establishes criminal liability for a less serious crime – illicit enrichment, which may be committed either intentionally or through negligence as a result of criminal carelessness. According to Paragraph 1 of Article 1891 of the BK, a person is held criminally liable if he/she is aware or has to be or is aware that the property above 500 MSLs in value acquired by him/her and held by right of ownership could not have been acquired with legitimate income.

Consequently, illicit enrichment is a dangerous criminal act, among other things, because of the fact that a person acquires, intentionally or through negligence as a result of criminal carelessness, property worth more than 500 MSLs where it could not have been acquired with legitimate income; the property held by the person by right of ownership corresponds to the object of the body of illicit enrichment where he/she could not have received such income from activities not prohibited by law so that such income could have been sufficient for acquiring the ownership of the property of the specified value; the object of the body of illicit enrichment may also be income itself that could not have been derived from non-prohibited activity, even though the ownership of no other property has been acquired with the said income.

18. It needs to be noted that, under Article 7, titled “Implementation of the Law”, of the Law Amending the BK, only such persons are held criminally liable under Paragraph 2 of Article 1891 of the BK who, after the entry into force of this law, have property corresponding to the characteristics specified in this article. As mentioned above, the Law Amending the BK, which was adopted on 2 December 2010, came into force on 11 December 2010; thus, Article 1891 of the BK came into force on the same day as well.

18.1. The legal regulation laid down in Paragraph 2 of Article 7 of the Law Amending the BK is related to the legal regulation governing the term of validity of the criminal law. Article 3, titled “Term of Validity of a Criminal Law”, of the BK, among other things, prescribes:

– “The criminality of an act and the punishability of a person shall be determined by a criminal law in force at the time of the commission of that act. The time of the commission of a criminal act shall be the time of an act (or omission) […]” (Paragraph 1);

– “A criminal law establishing the criminality of an act, imposing a more severe penalty upon, or otherwise aggravating the legal circumstances of, a person who has committed a criminal act shall have no retroactive effect. The provisions of this Code establishing liability for genocide (Article 99), treatment of persons prohibited under international law (Article 100), killing of persons protected under international humanitarian law (Article 101), deportation or transfer of civilians (Article 102), causing bodily harm to, torture, or other inhuman treatment of, persons protected under international humanitarian law or violation of the protection of their property (Article 103), forcible use of civilians or prisoners of war in the armed forces of the enemy (Article 105), the destruction of protected objects or plunder of national valuable properties (Article 106), aggression (Article 110), prohibited military attack (Article 111), the use of prohibited means of warfare (Article 112), negligent performance of a commander’s duties (Article 1131) shall constitute an exception” (Paragraph 3 (wordings of 26 September 2000 and 22 March 2011)).

While interpreting the legal regulation established in Paragraph 1 of Article 3 of the BK in conjunction with the regulation set out in Paragraph 2 of Article 7 of the Law Amending the BK and Paragraph 1 of Article 1891 of the BK, it should be noted that a person may be punished for illicit enrichment if the act that conforms to the body of the crime defined in Paragraph 1 of Article 1891 of the BK was committed not earlier than on 11 December 2010, when Article 1891 of the BK came into force, in which the criminality of illicit enrichment was established. Taking into consideration the fact that Article 1891 of the BK is not on the list set out in Paragraph 3 of Article 3 of the BK specifying the articles of the BK the provisions whereof have retroactive effect, it should be noted that the legal regulation established in Article 1891 of the BK does not have retroactive effect.

18.2. As mentioned above, although the act of illicit enrichment provided for in Paragraph 1 of Article 1891 of the BK manifests itself in the fact that a person holds by right of ownership property worth more than 500 MSLs where it could not have been acquired with legitimate income, such possession is possible (conceivable) only after the acquisition of the ownership of this property. It has also been mentioned that, having acquired the ownership of property worth more than 500 MSLs where it could not have been acquired with legitimate income, the possession of such property by right of ownership begins at the same time. Consequently, when bringing a person to criminal liability for illicit enrichment, it is necessary to establish not only the fact that the person held/holds property worth more than 500 MSLs where it could not have been acquired with legitimate income, but also the time when he/she acquired the ownership of the property of the specified amount, i.e. it is necessary to establish the moment of the acquisition of the ownership of this property.

Thus, it follows from the legal regulation established in Paragraph 1 of Article 1891 of the BK and in Paragraph 2 of Article 7 of the Law Amending the BK that, where a person acquired the ownership of the property of the value referred to in Paragraph 1 of Article 1891 of the BK prior to the entry into force of Article 1891 of the BK, he/she may not be held criminally liable under this article of the BK.

18.3. As mentioned above, Paragraph 2 of Article 1891 of the BK exempts a person who has taken over the property referred to in Paragraph 1 of this article from third parties from criminal liability for illicit enrichment where he/she gives a notice thereof to law enforcement institutions before he/she is served a notice of suspicion and where he/she actively cooperates in determining the origin of the property. Consequently, even in cases where, after 11 December 2010, a person acquired and held/holds by right of ownership property worth more than 500 MSLs where he/she had taken it over from third parties while being aware or having to be and likely to be aware that the property could not have been acquired with legitimate income, he/she is released from criminal liability if he/she complies with the conditions specified in the law.

18.4. Summing up the legal regulation established in Paragraph 1 of Article 1891 of the BK and in Paragraph 2 of Article 7 of the Law Amending the BK, it should be noted that this legal regulation should be interpreted as applicable only in situations where a person acquired the property referred to in Paragraph 1 of Article 1891 of the BK not earlier than on the day (11 December 2010) of the entry into force of Article 1891 of the BK.

19. The presence of the characteristics of the bodies of the criminal acts referred to in the BK, *inter alia*, of the crime provided for in Paragraph 1 of its Article 1891, i.e. illicit enrichment, are proved under the procedure set out in the BPK (wording of 14 March 2002 with subsequent amendments and/or supplements), which, among other things, establishes the right to defence and the rules of adversarial procedure.

19.1. In the context of the constitutional justice case at issue, mention should be made of the following legal regulation established in the BPK, specifying the powers of the prosecutor and pretrial investigation institutions in the process of providing proof:

– “In every case where the characteristics of a criminal act transpire, a prosecutor and pretrial investigation establishments must, within their competence, take all the measures provided for in laws in order that an investigation is carried out and the criminal act is disclosed within the shortest possible time” (Article 2);

– “Pretrial investigation shall be carried out by pretrial investigation officials. Pretrial investigation is organised and directed by a prosecutor. The prosecutor may decide to carry out the whole or part of the pretrial investigation on his/her own” (Paragraph 1 of Article 164);

– “After commencing a pretrial investigation, the prosecutor shall either carry out all pretrial investigation actions on his/her own or shall assign that for a pretrial investigation institution” (Paragraph 2 of Article 169);

– “A pretrial investigation official shall […] perform procedural actions necessary in order to disclose criminal acts quickly and thoroughly” (Item 1 of Paragraph 2 of Article 172 (wording of 21 June 2011));

– “Bringing charges on behalf of the state shall be the activities of the prosecutor whereby it shall be proved that a person accused of the commission of a criminal act is guilty” (Article 42).

Summarising this legal regulation established in the BPK, it should be noted that, under the said legal regulation, the prosecutor and pretrial investigation establishments must take all measures provided for in laws and carry out required procedural actions so that any criminal act is disclosed. When upholding charges on behalf of the state, the prosecutor must prove that a criminal act has been committed and that the person accused of its commission is guilty.

19.2. In the context of the constitutional justice case at issue, mention should be made of the following legal regulation, established in the BPK, that defines the rights (*inter alia*, the right to defence) of the suspect/accused and the obligations of counsel for the defence in the process of providing proof:

– “The suspect shall have the right: to know what he/she is suspected of; have counsel for the defence as of the moment of apprehension or from the first questioning; […] testify or keep silent; provide documents and items relevant for the investigation; make requests; […] get access to the pretrial investigation file; […]” (Paragraph 4 of Article 21 (wording of 15 May 2014));

– “The accused shall have the right: to know what he/she is accused of and receive a copy of the indictment; get access to the case-file at a court; […] have counsel for the defence; […] make requests; […] submit evidence and take part during their examination; ask questions during the court hearing; make explanations about the circumstances investigated by the court and express his/her opinion regarding the requests made by other participants in the judicial proceedings; take part in closing arguments when there is no counsel for the defence; address the court with the last statement; […]” (Paragraph 3 of Article 22 (wording of 15 May 2014));

– “The suspect, the accused, and the convicted person shall have the right to defence. This right shall be ensured to them from the moment of detention or from the first questioning”; “The court, the prosecutor, the pretrial investigation official shall ensure the possibility to the suspect, the accused, and the convicted person to defend himself/herself from suspicions and accusations by means and ways provided for in laws and take the measures necessary to ensure the protection of their personal and property interests” (Paragraphs 1 and 2 of Article 10);

– “Every person suspected or accused of the commission of a criminal act may defend himself/herself on his/her own or through counsel for the defence of his/her choice or, if he/she does not have sufficient means to pay for counsel for the defence, shall receive legal aid free of charge under the procedure prescribed by the law regulating the provision of state-guaranteed legal aid” (Paragraph 8 of Article 44);

– “Counsel for the defence shall: […] use all remedies referred to in laws to ascertain the circumstances in the defence of the defendant or mitigating his/her liability and provide the legal assistance necessary for the defendant” (Item 1 of Paragraph 2 of Article 48).

Summarising this legal regulation established in the BPK, it should be noted that it grants the right rather than the obligation to the defendant to defend himself/herself; he/she can do that himself/herself or through counsel for the defence, can give testimony or keep silent, provide the documents and things (evidence) relevant for the investigation and hearing, however, counsel for the defence must use all remedies and ways specified in laws in order to ascertain the circumstances in the defence of the defendant or mitigate his/her liability.

19.3. In the context of the constitutional justice case at issue, mention should be made of the following legal regulation established in the BPK, specifying the process of providing proof when the case is heard at a court and the powers of the court:

– “Cases shall be heard at a court on the basis of the principle of adversarial argument”; “The parties of accusation and defence shall have equal rights during case hearing at a court to provide evidence, take part in the investigation of evidence, submit applications, dispute arguments of the other party, and express their opinion on all issues arising during the case hearing and relevant for its correct adjudication” (Paragraphs 1 and 2 Article 7);

– “Whether the data received may be considered evidence shall in each case be decided by the judge or the court seized of the case”; “Judges shall evaluate evidence according to their inner belief based on comprehensive and impartial consideration of all circumstances of the case and following the law” (Paragraphs 2 and 5 of Article 20);

– “Case hearing at the court shall be led by the chairperson of the trial […]”; “The chairperson of the trial shall take all the measures provided for by law in order to investigate the circumstances of the case thoroughly and impartially […]” (Paragraphs 1 and 2 Article 241);

– “The court shall support its judgment only by the evidence that has been examined in a trial hearing” (Paragraph 1 of Article 301);

– “Everyone suspected or charged with a criminal act shall be presumed innocent until proved guilty under the procedure prescribed in this Code and declared guilty by an effective court judgment” (Paragraph 6 of Article 44).

Summarising this legal regulation established in the BPK, it should be noted that it requires a court to take all measures provided for in laws to investigate the case circumstances thoroughly and impartially, evaluate the evidence according to its inner belief based on comprehensive and impartial consideration of all circumstances of the case and following the law, and support its judgment only by the evidence that has been examined in a trial hearing, among other things, by paying regard to the principles of adversarial argument and the presumption of innocence.

20. Thus, summarising the entire above-indicated legal regulation established in the BPK, it should be noted that, in accordance with the BPK, the prosecutor is under the obligation to prove that a criminal act has been committed, including the act referred to in Paragraph 1 of Article 1891 of the BK, and that the person who has committed it is guilty. The suspect/accused is not obliged to provide evidence and prove that the criminal act has not been committed and that he/she is not guilty of its commission, but has the right to do so in the exercise of his/her right to defence. The court, following, *inter alia*, the principles of impartiality, adversarial argument, the presumption of innocence, and other requirements of the BPK, is obliged to examine the case thoroughly, evaluate the evidence, and use it to support its judgment.

The fact that it is necessary to abide by the principle of the presumption of innocence and the resulting requirements when proving the body of the crime – illicit enrichment, which is provided for in Paragraph 1 of Article 1891 of the BK – is also emphasised in the rulings of the Supreme Court of Lithuania. According to the interpretation provided in the rulings of the said court, while proving that property could not have been acquired with legitimate income, the principle of the presumption of innocence must not be violated (the Supreme Court of Lithuania, the ruling of 11 February 2014 passed by the Judicial Panel of the Criminal Cases Division in criminal case no 2K-48/2014; the ruling of 11 April 2014 passed in the Plenary Session of this division in criminal case no 2K-P-93/2014; the ruling of 15 April 2014 passed by the Judicial Panel of this division in criminal case no 2K-75/2014). Following the principle of the presumption of innocence, the accused has no obligation to prove the legitimacy of his/her enrichment. To prove that the person held the relevant property by right of ownership being aware or having to be and likely to be aware that the said property could not have been acquired with legitimate income is the obligation of the accusing party (the Supreme Court of Lithuania, the ruling of 9 June 2015 passed by the Judicial Panel of the Criminal Cases Division in criminal case no 2K-274-511/2015; the ruling of 19 April 2016 passed by the same panel in criminal case no 2K-111-677/2016). Therefore, as such, the owner’s inability to reasonably explain his/her property in relation to his/her legitimate income is not sufficient to hold him/her guilty. For this purpose, it is necessary to assess the data about the circumstances of the acquisition of the property, as well as the data related to the property owner and his/her family members – their life style, the type of, and years in, their working activities, businesses held, income included and, possibly, not included into accounting, loans taken by them, property inherited by them, their expenses, their relations with persons known to be engaged in illegal activities, etc. As far as the ability of the accused person to acquire the property with legitimate income is concerned, account should be taken not only of his/her own income, but also of the income of his/her family members, of the property situation and possibilities of accumulating the existing property over the entire working activities rather than only over a certain period of time (the Supreme Court of Lithuania, the ruling of 11 February 2014 passed by the Judicial Panel of the Criminal Cases Division in criminal case no 2K-48/2014; the ruling of 11 April 2014 passed in the Plenary Session of this division in criminal case no 2K-P-93/2014; the ruling of 15 April 2014 passed by the Judicial Panel of this division in criminal case no 2K-75/2014).

21. In the context of the constitutional justice case at issue, notice should be made of certain aspects of the legal regulation that is established in the Law on Tax Administration (wording of 13 April 2004 with subsequent amendments and/or supplements) and that defines violations of tax laws and sanctions applicable for them.

21.1. Article 138 of the Law on Tax Administration states that any illegal conduct by persons in breach of the requirements of tax laws is considered a violation of tax laws. It should be noted that, under Paragraph 1 of Article 41 of this Law (wordings of 13 April 2004 and 25 June 2015), the taxpayer was and is obliged to submit to the tax administrator explanations about the sources of acquisition of property and the receipt of income, as well as justify them.

Under Paragraph 1 of Article 139 of the Law on Tax Administration, if the tax administrator determines that a taxpayer has failed to calculate taxes not subject to declaration (including the tax to be calculated in the customs declaration), or has failed to declare taxes subject to declaration, or has illegally applied a lower tax rate, which has resulted in an illegal reduction of payable tax, the amount of tax underpayment is calculated in respect of the taxpayer and a penalty equal to 10–50 per cent of the said amount is imposed, unless the relevant tax law provides otherwise.

Thus, under Paragraph 1 of Article 139 of the Law on Tax Administration, if the tax administrator finds out that a taxpayer has, among other things, failed to calculate taxes not subject to declaration or has failed to declare taxes subject to declaration and, as a result, illegally reduced payable tax, he/she may be punished by a fine of the established amount.

21.2. It should be noted that, under Article 143 of the Law on Tax Administration, taxpayers, third persons and/or the management and other responsible staff of a legal person are also held liable under the Code of Administrative Offences of the Republic of Lithuania (according to Article 143 (wording of 14 April 2016) of the Law on Tax Administration, which came into force on 1 January 2017, the said persons are liable under the Code of Administrative Violations) or under the BK for failure to fulfil or properly fulfil the obligations set out in the Law on Tax Administration.

Thus, violations of tax laws can incur not only the liability established in the Law on Tax Administration with resultant fines, but also criminal liability if those violations correspond to the bodies of the criminal acts defined in the BK. This means that such a legal regulation may also lead to legal situations where a person may be punished for a certain violation both with a fine referred to in the Law on Tax Administration and, in addition, with a punishment provided for in the BK.

It should be mentioned in this context that the legal regulation established in Article 1891 of the BK, under which a person is held criminally liable for the possession of property worth more than 500 MSLs where it could not have been acquired with legitimate income, and the legal regulation established in the Law on Tax Administration, under which a violation of tax laws for which a fine is imposed, *inter alia*, means the failure by a person to calculate taxes not subject to declaration or to declare taxes subject to declaration, do not *per se* imply that the above-referred crime and violation of tax laws are identical.

On the other hand, it should be mentioned that, in its rulings, the Supreme Court of Lithuania has made the interpretation that if, considering the circumstances of a specific case, a violation of tax laws coincides by its essential characteristics with the act referred to in Article 1891 of the BK and if a person is first of all given a fine under tax laws (administrative penalty) and then he/she is also sentenced under the BK, in order to avoid a violation of the principle of *non bis in idem*, the issue concerning the revocation of the administrative penalty imposed on the convicted person should be decided (the Supreme Court of Lithuania, the ruling of 13 November 2007 passed by the Judicial Panel of the Criminal Cases Division in criminal case no 2K-686/2007; the ruling of 22 April 2014 passed by the same panel in criminal case no 2K-226/2014).

22. To sum up the impugned legal regulation, which is set out in Paragraph 1 of Article 1891 of the BK, as well as the related legal regulation, it should be noted in the constitutional justice case at issue that:

– the legislature has assessed an act where a person acquires, either intentionally or through negligence as a result of criminal carelessness, and holds by right of ownership property worth more than 500 MSLs where it could not have been acquired with legitimate income as a dangerous criminal act and, by choosing a legal measure, i.e. criminal liability, has prohibited it by Paragraph 1 of Article 1891 of the BK and recognised it as a less serious crime;

– the crime referred to in Paragraph 1 of Article 1891 of the BK may be committed either intentionally or through negligence as a result of criminal carelessness; illicit enrichment in the form of negligent guilt is possible only with respect to persons who have taken over the property worth more than 500 MSLs where it could not have been acquired with legitimate income by other persons;

– according to the legal regulation established in Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK, legitimate income should, in the context of Article 1891 of the BK, be considered income derived from activities not prohibited by legal acts even if such income has not been properly accounted for in accordance with the procedure laid down by legal acts;

– under the legal regulation established in Paragraph 1 of Article 1891 and Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK, the property held by right of ownership by a person corresponds to the object of the body of illicit enrichment if it is the property of the value above 500 MSLs where it could not have been acquired with legitimate income and where the person was unable to receive the amount of income from the activities not prohibited by legal acts that could have been sufficient to acquire the ownership of the property of the specified amount;

– under the BPK, the prosecutor has the obligation to prove that the crime provided for in Paragraph 1 of Article 1891 of the BK has been committed, *inter alia*, that the property above 500 MSLs in value held by the person by right of ownership could not have been acquired with legitimate income and that the person who has committed it is guilty. The court, following, *inter alia*, the principles of impartiality, adversarial argument, the presumption of innocence, and other requirements of the BPK, is obliged to examine the case thoroughly, evaluate the evidence, and use it to support its judgment. The suspect/accused is not obliged to provide evidence and prove that the criminal act provided for in Paragraph 1 of Article 1891 of the BK has not been committed and that he/she is not guilty of its commission, but has the right to do so in the exercise of his/her right to defence;

– the legal regulation established in Paragraph 1 of Article 1891 of the BK and in Paragraph 2 of Article 7 of the Law Amending the BK should be interpreted as applicable only in situations where a person acquired the property referred to in Paragraph 1 of Article 1891 of the BK not earlier than on the day (11 December 2010) of the entry into force of Article 1891 of the BK;

– the legal regulation established in Article 1891 of the BK, under which a person is held criminally liable for illicit enrichment, and the legal regulation established in the Law on Tax Administration, under which a violation of tax laws, for which a fine is imposed, *inter alia*, means the failure by a person to calculate taxes not subject to declaration or to declare taxes subject to declaration, do not *per se* imply that the above-referred crime and violation of tax laws are identical.

**II**

**The provisions of the Constitution and the official constitutional doctrine**

23. In the constitutional justice case at issue, the Constitutional Court investigates the compliance of the provision of the BK whereby criminal liability for illicit enrichment is imposed with Articles 23 and 31 of the Constitution and the constitutional principle of a state under the rule of law.

24. When interpreting the provisions of Article 23 of the Constitution, the Constitutional Court has held that the right of ownership is one of fundamental human rights. The inviolability and protection of ownership, as consolidated in this article, *inter alia*, means that owners have the right to perform any actions with regard to their property, with the exception of those prohibited by law, as well as to use their property and determine its future in any way that does not violate the rights and freedoms of other persons (*inter alia*, the Constitutional Court’s rulings of 14 March 2006 and 7 June 2016). Laws must protect the rights of ownership of all owners (*inter alia*, the Constitutional Court’s rulings of 30 September 2003, 7 June 2016, and 5 October 2016). When using his/her property, the owner must behave responsibly and carefully (the Constitutional Court’s rulings of 30 October 2008, 7 June 2016, and 5 October 2016).

Under the Constitution, the right of ownership is not absolute; it can be limited by means of a law, *inter alia*, due to the character of the object of ownership and due to the committed acts that are contrary to law. In all cases where the rights of ownership are limited, the following conditions must always be observed: the rights of ownership may be limited only by invoking the law; the limitations must be necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, and the constitutionally important objectives that are essential to society; regard must be paid to the principle of proportionality, under which the measures provided for in laws must be in line with the objectives sought that are essential to society and are constitutionally justified (*inter alia*, the Constitutional Court’s rulings of 21 December 2000, 10 April 2009, and 20 December 2013).

The Constitution, while guaranteeing the protection of ownership, also establishes the constitutional right to acquire property and guarantees the protection of this right (the Constitutional Court’s rulings of 14 March 2002, 20 May 2008, and 30 October 2008). Under the Constitution, the ways of the acquisition of the right of ownership may be varied ones; however, they may not be in conflict with the requirements that stem from the Constitution, *inter alia*, with the principles of justice and good faith (the Constitutional Court’s ruling of 30 October 2008).

25. The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law integrates various values entrenched in, and protected and defended by, the Constitution, and that the content of this principle reveals itself in various provisions of the Constitution; the essence of this principle is the rule of law; the constitutional principle of a state under the rule of law is especially broad and comprises a wide range of various interrelated imperatives; this principle must be followed both in lawmaking and in the implementation of law (*inter alia*, the Constitutional Court’s rulings of 29 June 2010, 19 November 2015, and 2 February 2016).

25.1. Under the Constitution, the principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, means that the measures provided for in legal acts must be in line with the legitimate objectives that are important to society, and that these measures must be necessary in order to reach the said objectives and must not restrict the rights and freedoms of the person clearly more than necessary in order to reach the said objectives (*inter alia*, the Constitutional Court’s rulings of 31 October 2012, 14 February 2014, and 17 February 2016).

The Constitutional Court has held that the entire legal system must be based on the constitutional principle of a state under the rule of law; the said principle also implies the proportionality of established legal liability (the Constitutional Court’s rulings of 2 October 2001 and 31 January 2011). The constitutional principles of justice and a state under the rule of law also imply that the measures established by the state for violations of law must be proportionate (adequate) to the violation of law, they must be in line with the legitimate and generally important objectives sought, they may not restrain a person clearly more than necessary in order to reach these objectives; there must be a fair balance (proportionality) between, on the one hand, the pursued objective to punish the violators of law and to ensure the prevention of the violations of law and, on the other hand, the measures chosen for reaching this objective (*inter alia*, the Constitutional Court’s rulings of 6 December 2000, 21 January 2008, and 31 January 2011). Thus, in the course of the legislative establishment of liability and its implementation, a fair balance must be sustained between the interests of society and those of a person so as to avoid unreasonable limitations on the rights of persons. On the basis of this principle, the rights of persons may be limited by law to the extent only necessary for the protection of public interests, and there must be a reasonable relation between the adopted measures and the legitimate and generally important objective sought. To achieve this objective, such measures may be established that would be sufficient and would limit the rights of the person not more than it is necessary (the Constitutional Court’s rulings of 2 October 2001, 10 April 2009, and 31 January 2011).

25.2. When establishing in laws the kind of acts that are contrary to law, as well as establishing legal liability for such acts, the legislature has wide discretion, which also includes the discretion to establish the circumstances that would determine the sanctions to be applied for violations of law (the Constitutional Court’s rulings of 10 November 2005 and 15 March 2008). The legislature, paying regard to the Constitution, *inter alia*, to the imperatives of consistency and internal non-contradiction of the legal system, which arise from the Constitution, may choose by means of which norms of a particular branch of law to define certain violations of law and what sanctions (criminal, administrative, etc.) to establish for them; when establishing sanctions for violations of law, it is necessary to respect the constitutional principle of a state under the rule of law, *inter alia*, the requirements of reasonableness, justice, and proportionality (the Constitutional Court’s rulings of 10 November 2005 and 13 November 2005).

25.3. The Constitutional Court has held that the striving for an open, just, and harmonious civil society and a state under the rule of law, as established in the Preamble to the Constitution, implies that it is obligatory to try to ensure the security of each person and all society against criminal attempts (*inter alia*, the Constitutional Court’s rulings of 16 January 2006, 4 June 2012, and 27 June 2016). It is one of the duties of the state and one of its priority tasks to ensure such safety (the Constitutional Court’s rulings of 8 May 2000, 29 December 2004, and 4 June 2012). The Constitution consolidates such a concept of a democratic state whereby the state not only seeks to protect and defend a person and society from crimes and other dangerous violations of law, but also is able to do this effectively (the Constitutional Court’s rulings of 29 December 2004, 16 January 2006, and 15 March 2008). In a state under the rule of law, it is not allowed to disregard the general principle of law whereby no one may enjoy any profit from a violation of law committed by him/her (the Constitutional Court’s rulings of 14 March 2006 and 15 March 2008).

Thus, in a democratic state under the rule of law, the legislature has the right and duty to prohibit by means of laws such acts that may essentially harm the interests of persons, society or the state or there might be a threat of such harm to appear (*inter alia*, the Constitutional Court’s rulings of 8 June 2009, 21 June 2011, and 4 June 2012). The laws define as to what acts are considered crimes and establish punishment for their commission (the Constitutional Court’s rulings of 10 June 2003 and 8 June 2009).

In its ruling of 13 November 1997, the Constitutional Court held that, taking account of the changes taking place in society, the evolution of legal regulation in the sphere of criminal law is, first of all, manifested by criminalisation or decriminalisation of acts, i.e. certain acts are either deemed to be criminal or the responsibility for them is removed from criminal laws; the process of criminalisation of acts is linked with social phenomena taking place in society. In an attempt to prevent unlawful acts, it is not always expedient to recognise such acts as crime and to apply the strictest measure – criminal punishment. Therefore, every time when it is necessary to decide whether a particular act is a crime or another violation of law, it is very important to assess what results may be achieved when applying other measures (administrative, disciplinary, civil sanctions, or measures of public influence, etc.), which are not linked with the application of criminal punishments (the Constitutional Court’s rulings of 13 November 1997 and 10 November 2005).

When interpreting the content of the constitutional principle of a state under the rule of law, the Constitutional Court has also held that the measures, established and applied by the state, for preventing crimes, as well as restricting and reducing crime, must be effective (the Constitutional Court’s ruling of 8 May 2000).

A law may recognise as criminal acts only such acts that are truly dangerous and by which harm is really inflicted on the interests of persons, society, or the state, or if a threat occurs where, due to such acts, the said damage will be inflicted (the Constitutional Court’s rulings of 8 May 2000, 16 January 2006, and 28 May 2010).

25.4. The legislature, when regulating the relations related to the establishment of criminal liability for criminal acts, enjoys broad discretion; in view of the nature, danger (gravity), scale and other characteristics of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, consolidate a differentiated legal regulation and establish different legal liability for corresponding criminal acts. However, this discretion of the legislature is not absolute: the legislature must pay regard to the norms and principles of the Constitution, *inter alia*, the imperatives of the consistency and internal non-contradiction of the legal system, which stem from the Constitution (the Constitutional Court’s rulings of 16 January 2006, 8 June 2009, and 18 March 2014).

25.5. In the context of the constitutional case at issue, it should be noted that, under the Constitution, the criminalisation of concrete acts and the differentiation of criminal liability for them is, first of all, a matter of the criminal policy pursued by the state, which is decided by the legislature by using its wide discretion and taking into account the dangerousness and scale of the said acts, the priorities of crime prevention, as well as other important circumstances, but without violating the Constitution and the imperatives arising therefrom. Thus, even though the legislature must evaluate in every concrete case the expediency of declaring a concrete act as a criminal one by assessing at the same time what results may be achieved by means of other measures, as such, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution, unless it transpires that the same legal regulation at the time of its consolidation in legal acts was clearly directed against the welfare of the Nation, the interests of the State of Lithuania and its society, and clearly denied the values consolidated in, and defended and protected by, the Constitution.

25.6. The constitutional principle of a state under the rule of law implies various requirements for the legislature and other law-making entities, *inter alia*, the following ones: in order to ensure that the subjects of legal relations are aware of the requirements put forward to them by law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible; the legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent, the formulations in legal acts must be precise, the consistency and internal harmony of the legal system must be ensured, and legal acts may not contain provisions simultaneously regulating the same social relations in a different manner; in order that the subjects of legal relations could act in accordance with the requirements of law, a legal regulation must be relatively stable; legal acts may not demand impossible things *(lex non cogit ad impossibilia)*; the effect of legal acts is prospective, and the retroactive effect of laws and other legal acts is not permitted *(lex retro non agit)*, unless the situation of a subject of legal relations would be alleviated without prejudice to other subjects of legal relations *(lex benignior retro agit)* (*inter alia*, the Constitutional Court’s rulings of 13 December 2004, 16 January 2006, and 15 February 2013).

25.7. It should be noted that the constitutional principle of a state under the rule of law would be violated if: 1) legal liability were established in a law for such an act that is not dangerous to society; therefore, such an act need not be legally prohibited; 2) a law established such a strict sanction (legal liability) for an unlawful act under which a punishment or penalty imposed on a violator would obviously be too big, because it would be disproportionate (inadequate) for the committed violation of law; therefore, the said sanction would be unjust; 3) persons who are held liable were not able to make use of certain rights (*inter alia*, the right to due process) that they have under the Constitution (the Constitutional Court’s ruling of 10 November 2005).

26. The Constitutional Court has held that, if certain sanctions established in laws by their size (strictness) amount to criminal punishments, no matter whether these sanctions may be categorised as belonging to a certain type of legal liability (criminal, administrative, disciplinary, or other legal liability), and no matter how respective sanctions are named in laws, the laws must necessarily establish procedural guarantees (which stem from the Constitution, *inter alia*, from Article 31 thereof) to persons who are held criminally liable, as well as to persons held legally liable under corresponding laws (*inter alia*, the Constitutional Court’s rulings of 3 November 2005, 28 May 2008, and 12 April 2013).

In the context of the constitutional justice case at issue, the following doctrinal provisions related to the interpretation of Article 31 of the Constitution should be mentioned.

26.1. Paragraph 1 of Article 31 of the Constitution prescribes: “A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment.”

The presumption of innocence established by this provision of the Constitution is one of the most important guarantees of the administration of justice in a democratic state. It is a fundamental principle of administering justice in the process of criminal cases and an important guarantee of human rights and freedoms; a person is presumed innocent of the crime until proved guilty according to the procedure established by law and declared guilty by an effective court judgement (*inter alia*, the Constitutional Court’s rulings of 29 December 2004, 7 July 2011, and 27 June 2016).

26.2. As it has been held by the Constitutional Court on more than one occasion, the constitutional principle of a state under the rule of law implies the right of a person to due process; due process includes court proceedings; thus, the constitutional principle of a state under the rule of law gives rise to the right of a person to due court process; certain requirements for court proceedings arise out of Paragraph 2 of Article 31 of the Constitution, too, which prescribes: “A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.” Paragraph 2 of Article 31 of the Constitution and the principle of a state under the rule of law give rise to the right of a person to due court process, which is a necessary condition for resolving a case in a fair manner; the said right means that, in criminal proceedings before a court, it is necessary to pay regard to the clarity of the proceedings, the equality of the rights of the participants of proceedings, their participation in the process of providing proof, their right to a translator, the principle of adversarial argument, and other principles in order that the circumstances of committing a criminal act would be investigated comprehensively, objectively, and impartially and that a fair decision would be adopted in a criminal case (the Constitutional Court’s rulings of 16 January 2006, 8 June 2009, and 27 June 2016). The stipulation of the Constitution that cases must be considered in a fair manner implies the fact that courts must correctly establish the actual circumstances of cases and that they must correctly apply criminal laws (*inter alia*, the Constitutional Court’s rulings of 16 January 2006, 15 November 2013, and 27 June 2016). While considering a criminal case, a court must act in such a way that the truth is established in a criminal case and the question of the guilt of a person accused of having committed a criminal act is fairly resolved (*inter alia*, the Constitutional Court’s rulings of 16 January 2006, 7 April 2011, and 27 June 2016). The Constitution obliges the legislature to establish, while regulating the relations of criminal procedure, such a legal regulation so that the rights of participants in criminal procedure could be ensured as well, *inter alia*, the criminal procedure must ensure that the constitutional rights of a person suspected of the commission of a criminal act would not be violated: the right to defence, the right to an advocate, the right to be informed about the accusation, etc. must be ensured (*inter alia*, the Constitutional Court’s rulings of 16 January 2006, 9 July 2015, and 27 June 2016).

26.3. Paragraph 3 of Article 31 of the Constitution prescribes: “It shall be prohibited to compel anyone to give evidence against himself, or his family members or close relatives.”

This guarantee, which is consolidated in the Constitution, means that a natural person may refuse to give evidence on whose basis this person himself/herself, his/her family member, or his/her close relative could be brought to criminal liability, as well as to another type of legal liability, if a possible sanction by its nature and size (strictness) amounted to a criminal punishment. In addition, this legal regulation must be interpreted as meaning that a natural person may voluntarily (i.e. without anybody compelling him/her) give evidence against himself/herself, his/her family members, or his/her close relatives (the Constitutional Court’s rulings of 8 June 2009 and 12 April 2013).

26.4. Paragraph 4 of Article 31 of the Constitution prescribes: “Punishment may be imposed or applied only on the grounds established by law.” Thus, the principle of *nulla poena sine lege*, which is consolidated in this provision of the Constitution, means that no person may be punished for an act that was not punishable by law at the time when it was committed.

It should be noted that the said principle also stems from the constitutional principle of a state under the rule of law. As the Constitutional Court noted in its rulings of 13 December 2004 and 16 January 2006, when law is applied, *inter alia*, it is necessary to observe the following requirements arising under the constitutional principle of a state under the rule of law: liability (sanction, punishment) for any violations of law must be established in advance *(nulla poena sine lege)*; no act is criminal unless it is defined as such by law *(nullum crimen sine lege)*. Thus, the constitutional principle of a state under the rule of law integrates the following two interrelated principles: *nulla poena sine lege* and *nullum crimen sine lege* (the Constitutional Court’s ruling of 18 March 2014)*.*

The principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, would be disregarded if criminal laws provided that they have a retroactive effect on the crimes defined exclusively under national law (the Constitutional Court’s ruling of 18 March 2014).

26.5. Paragraph 5 of Article 31 of the Constitution provides: “No one may be punished twice for the same offence.” This provision of the Constitution establishes the principle of *non bis in idem* (the Constitutional Court’s ruling of 10 November 2005).

The constitutional principle of *non bis in idem* means the prohibition on punishing anyone twice for the same unlawful act, i.e. for the same crime, as well as for the same violation of law that is not a crime. However, the above-mentioned constitutional principle also means that, in general, a person may be subject to different kinds of liability for a violation of law (*inter alia*, the Constitutional Court’s rulings of 10 November 2005, 21 January 2008, and 8 June 2009). Moreover, as such, the constitutional principle of *non bis in idem* does not deny the possibility of applying more than one sanction of the same kind (i.e. defined by the norms of the same branch of law) to a person for the same violation, i.e. the main and additional punishment or the main and additional administrative penalty (the Constitutional Court’s rulings of 10 November 2005 and 21 January 2008).

The constitutional principle of *non bis in idem* also means, *inter alia*, that, if a person who commits an unlawful act is held administratively, but not criminally, liable, i.e. he/she is imposed a sanction – a penalty for an administrative violation of law, but not for a crime, he/she must not additionally be held criminally liable for the said act. As such, the exemption of a person from one kind of legal liability on the grounds and procedure established in laws may not be an obstacle for solving the issue on bringing him/her to legal liability of another kind on the grounds and procedure established in laws (the Constitutional Court’s ruling of 10 November 2005).

26.6. Paragraph 6 of Article 31 of the Constitution prescribes: “A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate.” This provision of the Constitution establishes the right of an individual suspected of the commission of a crime and that of the accused to defence (*inter alia*, the Constitutional Court’s rulings of 8 June 2009, 15 November 2013, and 9 July 2015).

The right of the accused to defence implies that the accused must be guaranteed sufficient procedural means of defending himself/herself against the brought accusation and that he/she must have an opportunity to make use of such means. The right of the accused to defence is one of the guarantees for the establishment of the truth in the case. This right is considered a necessary condition in the implementation of the task of criminal procedure, which is justly to punish every person who committed a crime, and in ensuring that an innocent person would not be brought to criminal responsibility and convicted (*inter alia*, the Constitutional Court’s rulings of 5 February 1999, 8 June 2009, and 15 November 2013). The prosecutor and the court must ensure that the accused should have an opportunity to defend himself/herself from the accusation brought against him/her by means and ways as provided for by law, as well as to ensure the protection of his/her personal and property rights (the Constitutional Court’s rulings of 5 February 1999, 12 February 2001, and 15 November 2013).

The right of a person to defence and his/her right to an advocate are absolute: these rights may not be denied or restricted on any grounds or any conditions (the Constitutional Court’s rulings of 12 February 2001 and 15 November 2013).

**III**

**The jurisprudence of the European Court of Human Rights**

27. The Constitutional Court has held on more than one occasion that the jurisprudence of the ECtHR is also important for the interpretation and application of Lithuanian law. Therefore, as far as the aspects relevant for this constitutional justice case are concerned, it is necessary to take into consideration the rights set out in Articles 6 and 7 of the Convention and Article 4 of Protocol No 7 as they are interpreted and applied in the case law of the ECtHR.

28. Paragraph 1 of Article 7, titled “No Punishment without Law”, of the Convention stipulates that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This guarantee, established in Article 7 of the Convention, should be interpreted and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction, and punishment. This article of the Convention also embodies the principle that only the law can define a crime and prescribe a penalty *(nullum crimen, nulla poena sine lege)*. The provisions of Article 7 of the Convention imply quality requirements, including those of accessibility and foreseeability, for a legal regulation that defines criminal acts (*inter alia*, the ECtHR, the judgment of 12 February 2008, *Kafkaris v Cyprus* [GC], no 21906/04, paragraph 140; the judgment of 19 September 2008, *Korbely v Hungary*, no 9174/02, paragraph 70).

Offences and the relevant penalties must be clearly (precisely) defined by law. It should be held that this requirement is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the courts’ interpretation of it and after taking appropriate legal advice, what acts and omissions will make him/her criminally liable and what penalty he/she faces on that account. However clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (*inter alia*, the ECtHR, the judgment of 21 October 2013, *Del Rio Prada v Spain* [GC], no 42750/09, paragraphs 77–79, 92, and 93; the judgment of 27 January 2015, *Rohlena v Czech Republic*, no 59552/08, paragraph 50).

29. Paragraph 1 of Article 4, titled “Right Not to Be Tried or Punished Twice”, of Protocol No 7 to the Convention states: “No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

The ECtHR, interpreting the right established in this paragraph, has held a number of times that the proceedings for imposition of certain tax surcharges should be treated as criminal proceedings for the purposes of Article 4 of Protocol No 7 to the Convention (the ECtHR, the decision on admissibility of 8 April 2003, *Manasson v Sweden*, no 41265/98; the judgment of 27 November 2014, *Lucky Dev v Sweden*, no 7356/10).

The ECtHR has also held that states have the right legitimately to choose complementary legal responses to socially offensive conduct (such as non-payment/evasion of taxes) through different procedures forming a coherent whole so as to address different aspects of the social problem involved, provided that the accumulated legal responses do not represent an excessive burden for the individual concerned. The object of Article 4 of Protocol No 7 to the Convention is to prevent the injustice of a person’s being prosecuted or punished twice for the same criminalised conduct. It does not, however, outlaw legal systems which take an “integrated” approach to the social wrongdoing in question, and in particular an approach involving parallel stages of legal response to the wrongdoing by different authorities and for different purposes (the ECtHR, the judgment of 15 November 2016, *A and B v Norway* [GC], nos 24130/11 and 29758/11, paragraphs 121–123).

Article 4 of Protocol No 7 to the Convention does not exclude the conduct of dual proceedings regarding the same conduct provided that certain conditions are fulfilled. The state must demonstrate convincingly that the dual proceedings in question have been “sufficiently closely connected in substance and in time”. This implies that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, and also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected (the ECtHR, the judgment of 15 November 2016, *A and B v Norway* [GC], nos 24130/11 and 29758/11, paragraph 130).

The ECtHR has noted that the determination as to whether the offences investigated and examined in different proceedings are the same depends on a facts-based assessment rather than on the formal assessment consisting of comparing only the essential elements of the offences (the ECtHR, the judgment of 10 February 2009, *Zolotuhin v Russia* [GC], no 14939/03, paragraph 84; the judgment of 15 November 2016, *A and B v Norway* [GC], nos 24130/11 and 29758/11, paragraph 108).

30. Paragraph 2 of Article 6, titled “Right to a Fair Trial”, of the Convention states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. The ECtHR, while interpreting in its jurisprudence the content of the presumption of innocence enshrined in this paragraph, has noted a number of times that this presumption is one of the elements of a fair trial required in Paragraph 1 of Article 6 of the Convention.

The ECtHR has also stated that a person’s right to be presumed innocent and to require the prosecution to bear the onus of proving the allegations against him/her is not absolute. The Convention does not, in itself, prohibit the presumptions of fact and law that operate in each national criminal system, however, requires the states to confine the presumptions within reasonable limits that take into account the importance of what is at stake and effectively ensure the persons’ right to defence (the ECtHR, *inter alia*, the judgment of 7 October 1988, *Salabiaku v France*, no 10519/83, paragraph 28; the judgment of 18 March 2010, *Krumpholz v Austria*, no 13201/05, paragraph 34).

**IV**

**The official constitutional doctrine of foreign states**

31. In the context of the constitutional justice case at issue, it is important to reveal the case law of the constitutional courts of certain foreign states in investigating the constitutionality of a legal regulation that imposes criminal liability for illicit enrichment.

31.1. The Constitutional Court of the Republic of Italy has considered whether the Constitution of the Republic of Italy was contravened by the statutory provision under which criminal liability was imposed on persons holding money or property whose value was not proportionate to their economic activities and whose origin could not be justified, and where criminal proceedings were pursued with regard to such persons for the concealment of stolen property, money laundering, unlawful origin of the money, property use or obtaining benefit of such origin, as well as for smuggling, organised association, property extortion, illegal deprivation of liberty, usury, drug-related crimes (the Constitutional Court of the Republic of Italy, the judgment of 17 February 1994 in case no 48/1994).

The Constitutional Court held that this legal regulation was contrary to the Constitution and, *inter alia*, to the presumption of innocence, because, under the law, it was sufficient for recognising that a crime had been committed (a person had enriched himself/herself criminally) solely on the grounds that criminal proceedings regarding the crimes listed in the impugned provisions were taking place with respect to the person who held property disproportionate to his/her income and economic situation, i.e. the fact that the person must already be sentenced for them was not necessary. It has also ruled that such a legal regulation also violated the right to a fair trial and the right to defence, because it did not ensure the person’s right to be silent.

31.2. The Portuguese Constitutional Court held in the preliminary constitutional review that the law whereby it was sought to criminalise illicit enrichment was anticonstitutional (the Portuguese Constitutional Court, the ruling of 4 April 2012 in case no 179/12; the ruling of 27 July 2015 in case no 377/15).

The Constitutional Court noted that, under the Constitution of the Republic of Portugal, the legislature has the right to provide for new criminal acts in laws and punishments for offenders when forming the criminal policy of the state; however, when doing so, it must abide by constitutional requirements. The legislature, taking into consideration the fact that criminal liability is a measure of last resort, should provide for it only in order to ensure the protection of the most important constitutional values. When criminalising acts, it is necessary to observe the principle of legal clarity, which presupposes the obligation of the legislature to describe the act for the commission of which a person would be held criminally liable as clearly as possible without any ambiguities. Moreover, a legislative provision may not be formulated so that the commission of a crime would be presumed.

Article 335-A of the Criminal Code of the Republic of Portugal provided for criminal liability for persons who, either on their own or through a mediator, whether a natural person or a legal entity, acquired, managed, and held property that did not correspond to their income and property that had been declared by them or did not correspond to their income and property whose declaration was required. The Constitutional Court held that the criminal act (illicit enrichment) provided for in the impugned provision consisted of two elements: the acquisition, holding, or another control of tangible property and the mismatch between such property value and the income amount declared or undeclared by a natural person or legal entity. It noted that it was not clear from the definition of the criminal act to what persons that provision applied, whether any mismatch (even objectively justified) between the value of the property held by a person and the income amount received by him/her would render him/her criminally liable. Thus, the Constitutional Court recognised that the impugned legal regulation was not in line with the principle of legal clarity.

It was also pointed out in the ruling that the word “illicit” had been used incorrectly, because it was presumed that that a person who held property whose value did not match the amount of the income received had committed a criminal act. Such a legal regulation had shifted to the suspect the burden of proof that the mismatch between the property value and the income amount was justified. Thus, the impugned provision violated the principle of the presumption of innocence.

31.3. The Constitutional Court of the Republic of Moldova held in its judgment that Article 3302 of the Criminal Code of the Republic of Moldova, which stipulated that criminal liability for illicit enrichment of an official or a public person who, either in person or by using third persons, held by right of ownership property that considerably exceeded the income received by him/her and in respect of whom it had been ascertained with reference to evidence that the property could not have been acquired legally, did not conflict with the Constitution of the Republic of Moldova (the Constitutional Court of the Republic of Moldova, the judgment of 16 April 2015 in case no 60a/2014).

This judgment, *inter alia*, was supported by the argument that, under the Constitution, the state has powers to decide whether certain relations should be regulated by the norms of criminal law. It was held that the decision to criminalise illicit enrichment complied with the requirement arising out of the principle of a state under the rule of law to regulate the relations of this nature by law and also ensured that the criminal law was not interpreted broadly and the analogy was applied that it had no retroactive effect if it aggravated the situation of a person.

The Constitutional Court noted in the judgment that the presumption of the legitimacy of property acquisition is one of the forms of the presumption of innocence, but it is not an obstacle to investigate the illegitimacy of acquired property; it also held that this presumption, along with the presumption of innocence, was not violated by the impugned legal regulation, because the obligation to prove illicit enrichment fell on state authorities.

It was also pointed out in the judgment that the impugned provision of the Criminal Code, which embodied criminal liability for illicit enrichment, did not conflict with the principle that a criminal statute does not operate retroactively, because the said provision did not have retroactive effect and applied only if property was acquired after its entry into force.

31.4. It should be noted that Article 321-6 of the Criminal Code of the Republic of France provides for criminal liability of a person who is unable to justify the income corresponding to his/her lifestyle or the origin of his/her assets and maintains habitual contact with the perpetrator or perpetrators of crimes, which are subject to a penalty of at least five years’ imprisonment and which have brought him/her a direct or indirect benefit, or with victims of such crimes. Criminal liability under the above-indicated article of the Criminal Code is also imposed on persons who facilitate the justification of fictitious resources for persons who have committed the offences that are subject to a penalty of at least five years’ imprisonment and have brought them a direct or indirect benefit.

It should also be mentioned that, in 2012 and 2013, the Court of Cassation of France received several applications from the courts of lower instance to apply to the Constitutional Council of the Republic of France concerning the constitutionality of the regulation of illicit enrichment established in the Criminal Code (*inter alia*, the issues of clarity in the legal regulation and the presumption of innocence were raised); however, all these applications were dismissed as unfounded.

By its decision no 5480 of 26 September 2012, the Court of Cassation substantiated its refusal to apply to the Constitutional Council by the fact that the regulation of illicit enrichment as set out in the Criminal Code clearly and accurately defines that liability is incurred for failure to justify funds and that it provides for a specific criminal offence to be proved by the prosecutor rather than a presumption of criminal liability.

**V**

**The assessment of the compliance of Paragraph 1 of Article 1891 of the Criminal Code with Articles 23 and 31 of the Constitution and the principle of a state under the rule of law**

32. The Supreme Court of Lithuania, the Marijampolė District Local Court, the Vilnius Regional Court, the Šiauliai Regional Court, and the Joniškis District Local Court, the petitioners, request an investigation into whether Paragraph 1 of Article 1891 of the BK is in conflict with Article 23 and 31 of the Constitution.

33. As mentioned above, Paragraph 1 of Article 189 of the BK states: “A person who holds by right of ownership the property whose value exceeds 500 MSLs, while being aware or having to be and likely to be aware that such property could not have been acquired with legitimate income, shall be punished by a fine, or by arrest, or by the deprivation of liberty for up to four years.”

34. In the opinion of the petitioners, the legal regulation referred to above, which establishes criminal liability for illicit enrichment, among other things, does not conform to the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law, because it establishes a disproportionate, inexpedient, and inefficient measure of legal liability; according to the petitioners, the legislature was able to choose other measures to fight illicit enrichment instead of choosing the measure in question.

34.1. As mentioned above, under the Constitution:

– the content of the constitutional principle of a state under the rule of law reveals itself in various provisions of the Constitution; the constitutional principle of a state under the rule of law is especially broad and comprises a wide range of various interrelated imperatives; one of the elements of the constitutional principle of a state under the rule of law is the constitutional principle of proportionality;

– the constitutional principle of a state under the rule of law, on which the entire legal system must be based, also implies the proportionality of established legal liability. According to the said principle, the measures established by the state for violations of law must be proportionate (adequate) to the violation of law, they must be in line with the legitimate and generally important objectives sought, they may not restrict the person clearly more than it is necessary in order to reach these objectives; there must be a fair balance (proportionality) between the pursued objective to punish the violators of law and to ensure the prevention of the violations of law and the measures chosen for reaching this objective;

– when establishing in laws the kind of acts that are contrary to law, as well as establishing legal liability for such acts, the legislature has wide discretion; paying regard to the Constitution, *inter alia*, to the imperatives of consistency and internal non-contradiction of the legal system, which arise from the Constitution, the legislature may choose by means of which norms of a particular branch of law to define certain violations of law and what sanctions (criminal, administrative, etc.) to establish for them;

– taking account of the changes taking place in society, the evolution of legal regulation in the sphere of criminal law is, first of all, manifested by criminalisation or decriminalisation of acts; the legislature has the right and the duty to prohibit by law criminal acts; a law may recognise as criminal acts only such acts that are truly dangerous and by which harm is inflicted on the interests of persons, society, or the state, or if a threat occurs where, due to such acts, the said damage will be inflicted;

– the legislature, when regulating the relations pertaining to the establishment of criminal liability for criminal acts, has broad discretion; in view of the nature, danger (gravity), scale, and other characteristics of criminal acts, as well as in view of other significant circumstances, it may, *inter alia*, consolidate a differentiated legal regulation and establish different legal liability for particular criminal acts;

– even though the legislature must evaluate in every concrete case the expediency of declaring a concrete act as a criminal one, as such, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution, unless it transpires that the same legal regulation at the time of its consolidation in legal acts was clearly directed against the welfare of the Nation, the interests of the State of Lithuania and its society, and that the said legal regulation would clearly deny the values consolidated in, and defended and protected by, the Constitution.

34.2. When deciding whether Paragraph 1 of Article 189 of the BK is in conflict with the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the legislature has assessed by the impugned legal regulation as a dangerous criminal act such an act where a person acquires, either intentionally or through negligence as a result of criminal carelessness, and holds by right of ownership property worth more than 500 MSLs where it could not have been acquired with legitimate income and has prohibited the said act by Paragraph 1 of Article 1891 of the BK. Thus, the legislature, seeking, *inter alia*, to make economically not viable the commission of crimes related to corruption, property, economy, finance, as well as other selfish crimes, and to prevent such acts and damage inflicted on the state and society, has chosen to establish the legal measure – criminal liability for illicit enrichment – and has thereby implemented the criminal policy of the state.

Thus, by establishing criminal liability for illicit enrichment in Paragraph 1 of Article 1891 of the BK, the legislature has implemented its wide discretion to choose the norms of a particular branch of law in order to define certain violations of law and to impose concrete sanctions for these violations; considering the dangerousness of illicit enrichment and the important overall objective to protect society from dangerous criminal attempts, the legislature implemented its wide discretion in the area of criminal policy and, having criminalised illicit enrichment, categorised it as a less serious crime.

It should be noted that the sanction set out in Paragraph 1 of Article 1891 of the BK establishes alternative punishments – a fine, arrest, or the deprivation of liberty, whereas the maximum sentence of four years of the deprivation of liberty is much lower than the maximum possible sentence of six years of the deprivation of liberty for the commission of less serious crimes (Paragraph 4 of Article 11 of the BK). Moreover, the amount of property value set out in Paragraph 1 of Article 1891 of the BK, i.e. more than 500 MSLs, is not manifestly too low, in particular considering the fact that, as mentioned above, it is higher than 250 MSLs as established in Paragraph 1 of Article 190 of the BK, beyond which property is held to be of high value.

Having assessed the purpose for which the impugned legal regulation has been introduced, the dangerousness of illicit enrichment, and the sanction imposed for this crime in Paragraph 1 of Article 1891 of the BK, it should be held that there is no ground for stating that, as a legal measure, criminal liability established for illicit enrichment is disproportionate.

34.3. It should be noted that once it comes to light that milder legal measures than criminal liability are possible in the fight against illicit enrichment, it may not be held that this fact alone means that the regulation set out in Paragraph 1 of Article 1891 of the BK violates the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law. In the opposite case, the legislature would be unable to exercise the wide discretion granted to it under the Constitution to pursue national criminal policy, *inter alia*, regulate the relations pertaining to the establishment of criminal liability.

34.4. Thus, it should be held that there is no ground for stating that the legislature, by setting criminal liability for illicit enrichment in Paragraph 1 of Article 1891 of the BK, has violated the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law.

35. At the same time, it should be stated that, as mentioned above, even though the legislature must evaluate in every concrete case the expediency of declaring a concrete act as a criminal one, as such, the mere existence of doubts as to the expediency of criminalising a certain act or as to the effectiveness of such a legal regulation does not give grounds for questioning the compliance of this legal regulation with the Constitution. Likewise, there is no ground for stating that the legal regulation established in Paragraph 1 of Article 1891 of the BK was, at the time of its consolidation, clearly directed against the welfare of the Nation, the interests of the of State of Lithuania and its society, or clearly denied the values established in, and protected and defended by, the Constitution.

36. It has been mentioned that the petitioners also impugn the compliance of the legal regulation established in Paragraph 1 of Article 1891 with Article 23 of the Constitution.

They claim that the impugned legal regulation violates the constitutional requirements for the protection of ownership, because the rights of ownership have been restricted disproportionately. Thus, the doubt of the petitioners regarding the compliance of the impugned legal regulation with Article 23 of the Constitution is based on the same arguments as that regarding the compliance of this legal regulation with the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law.

36.1. As mentioned above, under the Constitution, the right of ownership is not absolute and it may be restricted only by law for legitimate purposes, *inter alia*, in order to protect the values enshrined in the Constitution, the constitutionally important goals necessary for society, as well as paying regard to the constitutional principle of proportionality. It has also been mentioned that, under the Constitution, the ways of the acquisition of the right of ownership may be varied ones; however, they may not be in conflict with the requirements that stem from the Constitution, *inter alia*, with the principles of justice and good faith.

36.2. When deciding whether the legal regulation established in Paragraph 1 of Article 1891 of the BK is in conflict with Article 33 of the Constitution, it should be noted that, as mentioned above, this doubt is based on the same arguments as that regarding the compliance of this legal regulation with the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law. Thus, after it has been held in this ruling of the Constitutional Court that the impugned Paragraph 1 of Article 1891 of the BK does not violate the constitutional principle of proportionality, which is one of the elements of the constitutional principles of a state under the rule of law, it should also be held that there is no ground for stating that this provision disproportionately restricts the ownership rights that are protected under Article 23 of the Constitution.

37. Thus, it should be held that the legal regulation set out in Paragraph 1 of Article 1891 of the BK is not in breach of Article 23 of the Constitution and of the constitutional principle of proportionality, which is one of the elements of the constitutional principle of a state under the rule of law.

38. It has been mentioned that, in the constitutional justice case at issue, the petitioners also request an investigation into the compliance of Paragraph 1 of Article 1891 of the BK with Article 31 of the Constitution. While impugning the compliance of the legal regulation established in Paragraph 1 of Article 1891 of the BK with Paragraphs 2, 4, and 6 of Article 31 of the Constitution, the petitioners also request an investigation into whether this legal regulation is in conflict with the constitutional principle of a state under the rule of law and the requirements deriving from it to set out a clear, understandable, consistent legal regulation prohibiting the retroactive effect of laws.

39. The petitioners, impugning the compliance of Paragraph 1 of Article 1891 of the BK with Paragraphs 1 and 3 of Article 31 of the Constitution, claim that the phrase “property could not have been acquired with legitimate income” in Article 1891 of the BK means that the illegitimacy of income is established based on the lack of official income and from the inability of the accused to provide a credible explanation for the sufficiency of his/her officially received income enabling him/her to acquire the property that he/she possesses. Consequently, the conclusion regarding the illegality of income is based on the assumption that everything that could not have been acquired by lawful means has been acquired illegally. Such reliance on assumptions in determining a person’s guilt and the shifting of the burden of proof to the accused violate the principle of the presumption of innocence, which is established in Paragraph 1 of Article 31 of the Constitution, as well as the prohibition, consolidated in Paragraph 3 of this article, on giving evidence against himself/herself.

39.1. It has been mentioned that, under the legal regulation established in Paragraph 1 of Article 1891 and Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK, the property held by right of ownership by a person corresponds to the object of the body of illicit enrichment if it is the property of the value above 500 MSLs where it could not have been acquired with legitimate income and where the person was unable to receive the amount of income from the activities not prohibited by legal acts that could have been sufficient to acquire the ownership of the property of the specified amount.

It has also been mentioned that, under the BPK, the prosecutor is obliged to prove that the crime provided for in Paragraph 1 of Article 1891 of the BK has been committed and that the person who has committed it is guilty. The court, following, *inter alia*, the principles of impartiality, adversarial argument, the presumption of innocence, and other requirements of the BPK, is obliged to examine the case thoroughly, evaluate the evidence, and use it to support its judgment. The suspect/accused is not obliged to provide proof and to prove that the criminal act provided for in Paragraph 1 of Article 1891 of the BK has not been committed and that he/she is not guilty of its commission, but has the right to do so in the exercise of his/her right to defence.

39.2. As mentioned above, the presumption of innocence, which is consolidated in Paragraph 1 of Article 31 of the Constitution, means that a person is presumed innocent of the crime until proved guilty according to the procedure established by law and declared guilty by an effective court judgement; the guarantee consolidated in Paragraph 3 of Article 31 of the Constitution means that a natural person may refuse to give evidence on the basis of which this person himself/herself, his/her family member, or his/her close relative could be brought to criminal liability; the same guarantee also means that a natural person may voluntarily (i.e. without anybody compelling him/her) give evidence against himself/herself, his/her family members, or his/her close relatives.

39.3. When deciding whether Paragraph 1 of Article 1891 of the BK is in conflict with Paragraphs 1 and 3 of the Constitution, it should be noted that, as held by the Constitutional Court in its ruling of 25 June 2012, Article 1891 of the BK does not regulate the process of providing proof of this criminal act. As mentioned above, the said process is regulated by the rules of the BPK, under which the prosecutor is under the obligation to prove that the crime provided for in Paragraph 1 of Article 1891 of the BK has been committed, while the court is obliged to examine the case comprehensively, evaluate evidence, and use the evidence to support its judgment. Implementing his/her right to defence, the suspect/accused has the right to give evidence and challenge the suspicions (charges) brought against him/her; however, the suspect/accused is not obliged to prove the fact that the criminal act of illicit enrichment has not been committed. It should also be noted that, as such, the situations where the suspect/accused opts to be silent may not be treated as aggravating his/her situation in criminal proceedings.

Thus, it should be held that the legal regulation laid down in Paragraph 1 of Article 1891 of the BK does not shift the burden of proof to a person suspected of (charged with) illicit enrichment, does not compel such a person to give evidence against himself/herself, and does not violate the principle of the presumption of innocence, as set out in Paragraphs 1 and 3 of Article 31 of the Constitution.

39.4. As mentioned above, the Supreme Court of Lithuania has also held that the principle of the presumption of innocence must not be violated when proving that property could not have been acquired with legitimate income**.** As such, an owner’s inability to reasonably explain his/her property in relation to his/her legitimate income is not sufficient to hold him/her guilty. For this purpose, among other things, it is necessary to assess the data about the circumstances of the acquisition of the property, as well as the data related to the property owner and his/her family members – their life style, the type of, and years in, their working activities, businesses held, income included and, possibly, not included into accounting, loans taken by them, property inherited by them, their expenses, and their relations with persons known to be engaged in illegal activities.

39.5. It should be noted that if investigations and hearings of criminal cases where persons are suspected and accused of having committed the crime referred to in Article 1891 of the BK do not establish (prove) any characteristics of illicit enrichment, *inter alia*, that the person was unable to have enough legitimate income to acquire the ownership of property worth more than 500 MSLs, but reveal characteristics of other criminal acts or those of other violations of law, public authorities and officials are not released from the obligation to investigate them and, where there is a basis, bring the persons to the relevant legal liability.

40. The petitioners, challenging the compliance of Paragraph 1 of Article 1891 of the BK with Paragraphs 2 and 6 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law, note that the definition laid down in Paragraph 2 of Article 190 of the BK of what should be regarded as legitimate income as referred to in Article 1891 of the BK establishes a mutually exclusive and unintelligible legal regulation, which defines the concept of “legitimate income”, under which legitimate income is recognised to be income that has been received from activities not prohibited by legal acts, although the activities where income is not accounted for is also prohibited under legal acts, including under the BK. According to the petitioners, the phrase “having to be and likely to be aware” of Article 1891 of the BK is characteristic of criminal carelessness, which is a type of negligent guilt. According to Article 16 of the BK, this form of guilt can be inherent in the commission of criminal acts whose necessary constitutive characteristics include consequences, whereas consequences are not a necessary characteristic of the body of illicit enrichment. Assessing the BK as an integral criminal law, it is unclear in general, according to the petitioners, how it is possible to become enriched illicitly in the context of Article 1891 of the BK.

Thus, according to the petitioners, the legal regulation established in Article 1891 of the BK, when interpreted in conjunction with Paragraph 2 of Article 190 of the BK, may be regarded as contradictory, unclear, and ambiguous, preventing the charges from being formulated in such a manner that counsel for the defence could know a precise factual and legal basis and be able to challenge these charges effectively.

It can be seen from these arguments of the petitioners that the compliance of Paragraph 1 of Article 1891 of the BK with the principle of the right of a person to due court process is impugned only insofar as, according to them, the contradictory, unclear, and ambiguous regulation does not ensure the right to defence for persons.

40.1. It has been mentioned that, according to the legal regulation established in Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK, legitimate income should, in the context of Article 1891 of the BK, be considered income derived from activities not prohibited by legal acts even if such income has not been properly accounted for in accordance with the procedure laid down by legal acts. It has also been mentioned that, under the legal regulation consolidated in Paragraph 1 of Article 1891 of the BK, the crime specified in the said paragraph may be committed either intentionally or through negligence as a result of criminal carelessness; illicit enrichment in the form of negligent guilt is only possible when a person accepts property worth more than 500 MSLs where this property could not have been acquired with legitimate income by other persons.

40.2. It has also been mentioned that:

– Paragraph 2 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law give rise to the right of a person to due court process, which is a necessary condition for resolving a case in a fair manner; the said right means that, in criminal proceedings before a court, it is necessary to pay regard to, *inter alia*, the equality of the rights of the participants of proceedings in order that the circumstances of committing a criminal act would be investigated comprehensively and objectively, and that a fair decision would be adopted in a criminal case. The Constitution obliges the legislature to establish such a legal regulation that would also ensure the rights of participants in criminal proceedings, *inter alia*, the right to defence, the right to an advocate, the right to know the accusation, etc.;

– the right of the accused to defence, which is enshrined in Paragraph 6 of Article 31 of the Constitution, implies that the accused must be guaranteed sufficient procedural means of defending himself/herself against the brought accusation and that he/she must have an opportunity to make use of such means. The prosecutor and the court must ensure that the accused should have an opportunity to defend himself/herself from the charge brought against him/her by means and ways as provided for by law, as well as to guarantee the protection of his/her personal and property rights;

– the constitutional principle of a state under the rule of law implies various requirements for the legislature, *inter alia*, that the legal regulation established in laws and other legal acts must be clear, comprehensible, and coherent, the formulations in legal acts must be precise, the consistency and internal harmony of the legal system must be ensured.

40.3. When deciding whether the legal regulation established in Paragraph 1 of Article 1891 of the BK is in conflict with a person’s right to due court process, as set out in Paragraph 2 of Article 31 of the Constitution, and with the right to defence, as provided for in Paragraph 6 of Article 31 thereof, it should be noted that Paragraph 2 (wording of 2 December 2010) of Article 190 of the BK clearly states that legitimate income should, in the context of Article 1891 of the BK, be considered income obtained from activities not prohibited by legal acts even where it has not been duly accounted for under the procedure laid down by legal acts. Thus, it is clear from the legal regulation established in Paragraph 1 of Article 1891 of the BK that a person may be held criminally liable for illicit enrichment if he/she has committed this crime either intentionally or through negligence as a result of criminal carelessness, i.e. alternative forms of guilt can be inherent in the commission of this crime; illicit enrichment in the form of negligent guilt is only possible when a person accepts property worth more than 500 MSLs where this property could not have been acquired with legitimate income by other persons.

Thus, it should be held that there is no ground for stating that the established and related legal regulation is contradictory, unclear, ambiguous, and that, as a result, it violates the constitutional principle of a state under the rule of law.

Having held this, there is also no ground for stating that the legal regulation established in Paragraph 1 of Article 1891 of the BK prevents the charges from being formulated so that the defence could know a precise factual and legal basis and be able to challenge these charges effectively and that this legal regulation is of the kind that violates the right of a person to defence, which is enshrined in Paragraph 6 of Article 31 of the Constitution, together with the right to due process, which is provided for in Paragraph 2 of Article 31 thereof.

40.4. As mentioned above, the Supreme Court of Lithuania has also made the interpretation that Paragraph 1 of Article 1891 of the BK establishes the formal body of the crime and that, in cases where the BK states in the definitions of the formal bodies of crimes that a certain act is a crime also when it is committed through negligence as a result of criminal carelessness, a court is obliged to consider the issue of criminal liability also in case of negligent guilt.

41. The petitioners, impugning the compliance of Paragraph 1 of Article 1891 of the BK with Paragraph 4 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law, note that the impugned legal regulation can potentially violate the prohibition, deriving out of the above-mentioned provisions of the Constitution, on the retroactive effect of a law, because the applicability of the legal regulation established in Article 1891 of the BK has been linked with the possession of the property referred to therein after the entry into force of the law rather than with its acquisition.

41.1. As mentioned above, the legal regulation established in Paragraph 1 of Article 1891 of the BK and in Paragraph 2 of Article 7 of the Law Amending the BK should be interpreted as applicable only in situations where a person acquired the property referred to in Paragraph 1 of Article 1891 of the BK not earlier than on the day (11 December 2010) of the entry into force of Article 1891 of the BK.

41.2. It has also been mentioned that the principle of *nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution, means that no person may be punished for an act that was not punishable by law at the time when it was committed. The principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, would be disregarded if criminal laws provided that they have retroactive effect on crimes defined exclusively under national law.

41.3. When deciding whether the legal regulation established in Paragraph 1 of Article 1891 of the BK is in conflict with the principle of *nullum crimen, nulla poena sine lege*, which is consolidated in Paragraph 4 of Article 31 of the Constitution and stems from the constitutional principle of a state under the rule of law, it should be noted that, if the legal regulation established in Paragraph 1 of Article 1891 of the BK and in Paragraph 2 of Article 7 of the Law Amending the BK is interpreted as applicable only in situations where a person acquired the property referred to in Paragraph 1 of Article 1891 of the BK not earlier than on the day (11 December 2010) of the entry into force of Article 1891 of the BK, it should also be stated that the person may not be held criminally liable under this article of the BK if he/she acquired the ownership of the property referred to in Paragraph 1 of Article 1891 of the BK before the entry into force and held/holds it after the entry into force of this article. Since the impugned and related legal regulation is to be understood exclusively in this way, there are no legal grounds for stating that the impugned legal regulation has established the retroactive effect of the criminal law or that it violates Paragraph 4 of Article 31 of the Constitution and the constitutional principle of a state under the rule of law.

41.4. At the same time, it should be noted that the fact that a person may not be held criminally liable under Article 1891 of the BK if he/she acquired the ownership of the property referred to in Paragraph 1 of Article 1891 of the BK before the entry into force of this article and held/holds it after the entry into force of this law does not mean that state institutions and officials are released from the duty to investigate other criminal acts or other violations of law if characteristics of such acts or violations are detected.

42. The petitioners, impugning the compliance of Paragraph 1 of Article 1891 of the BK with the principle of the prohibition on punishing anyone twice for the same violation, which is enshrined in Paragraph 5 of Article 31 of the Constitution, claim that the manner how illicit enrichment is criminalised creates the preconditions for violating the said principle, where a person, due to the acquisition of the same property and the failure to pay taxes for such property, is subject not only to criminal liability in accordance with Article 1891 of the BK, but also to a fine under the Law on Tax Administration.

42.1. It has been mentioned that the legal regulation established in Article 1891 of the BK, under which a person is held criminally liable for illicit enrichment, and the legal regulation established in the Law on Tax Administration, under which a violation of tax laws, for which a fine is imposed, *inter alia*, means the failure by a person to calculate taxes not subject to declaration or to declare taxes subject to declaration, do not *per se* imply that the above-referred crime and violation of tax laws are identical.

42.2. As mentioned above, the principle of *non bis in idem*, which is established in Paragraph 5 of Article 31 of the Constitution, *inter alia*, means the prohibition on punishing anyone twice for the same act that is contrary to law, i.e. for the same crime, as well as for the same violation of law that is not a crime; however, this constitutional principle also means that a person may be subject to different kinds of liability for a violation of law.

42.3. When deciding whether the legal regulation established in Paragraph 1 of Article 1891 of the BK is in conflict with the prohibition on punishing anyone twice for the same violation, which is entrenched in Paragraph 5 of Article 31 of the Constitution, it should be noted that, as mentioned above, the legal regulation laid down in Paragraph 1 of Article 1891 of the BK and the legal regulation established in the Law on Tax Administration do not *per se* imply that the above-referred crime and violation of tax laws are identical.

It should be noted that the fact whether illicit enrichment and a violation of tax laws are identical can be ascertained only in the course of considering concrete criminal cases and cases of tax law violations. Consequently, such ascertainment is a matter of the application of law.

The Constitutional Court has held on more than one occasion that, under the Constitution and the Law on the Constitutional Court, it does not decide the questions concerning the application of legal acts: such questions are decided by the institution that has the powers to apply legal acts; the issues of the application of law that have not been solved by the legislature are a matter of case law (*inter alia*, the Constitutional Court’s decisions of 20 November 2006, 17 June 2014, 9 May 2016).

42.4. Thus, it should be held that, as such, the legal regulation laid down in Paragraph 1 of Article 1891 of the BK does not violate the principle of *non bis in idem*, which is established in Paragraph 5 of Article 31 of the Constitution.

43. Consequently, there are no grounds for stating that the legal regulation established in Paragraph 1 of Article 1891 of the BK violates the procedural guarantees specified in Article 31 of the Constitution and the requirement, which stems from the constitutional principle of a state under the rule of law, that the legal regulation that is provided for in laws must be clear, understandable, consistent, and that the retroactive effect of laws is not allowed.

44. In the light of the foregoing arguments, the conclusion should be drawn that Paragraph 1 of Article 1891 of the BK is not in conflict with Articles 23 and 31 of the Constitution and the constitutional principle of a state under the rule of law.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 531, 54, 55, and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania gives the following

**ruling:**

To recognise that Paragraph 1 (wording of 2 December 2010; Official Gazette *Valstybės* ž*inios*, 2010, No 145-7439) of Article 1891 of the Criminal Code of the Republic of Lithuania is not in conflict with the Constitution of the Republic of Lithuania.

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

Justices of the Constitutional Court:                    Elvyra Baltutytė

                                                                                         Vytautas Greičius

                                                                                         Danutė Jočienė

                                                                                         Pranas Kuconis

                                                                                         Vytas Milius

                                                                                         Egidijus Šileikis

                                                                                         Algirdas Taminskas

                                                                                         Dainius Žalimas