

On the actions of Seimas member Kęstutis Pūkas

Case no7/2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

CONCLUSION

ON THE COMPLIANCE OF THE ACTIONS OF KĘSTUTIS PŪKAS, A MEMBER OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA, AGAINST WHOM AN IMPEACHMENT CASE HAS BEEN INSTITUTED, WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

19December 2017, noKT20-I1/2017

Vilnius

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

The court reporter – Daiva Pitrėnaitė

The representatives of the Seimas of the Republic of Lithuania, who were: Seimas member Vytautas Kernagis; Seimas member Dovilė Šakalienė; Andrius Kabišaitis, the Director of the Legal Department of the Office of the Seimas; Paulius Veršekys and Svetlana Zamara, advisers at the Public Law Unit of the same department; and Laima Ragauskienė, an adviser at the Secretariat of the Commissions of the Office of the Seimas

Seimas member Kęstutis Pūkas, the party concerned

The representatives of Seimas member Kęstutis Pūkas, the party concerned, who were the advocates Mantas Arasimavičius and Aušra Ručienė

The Constitutional Court of the Republic of Lithuania, pursuant to Item 4 of Paragraph 3 of Article 105 of the Constitution of the Republic of Lithuania and Paragraph 2 of Article 1 and Item 4 of Article 74 of the Law on the Constitutional Court of the Republic of Lithuania, on 16 and 20 November 2017, at a closed hearing of the Court, considered case no 7/2017 subsequent to the inquiry (no 1B-10/2017), which is set out in Article 2 of the resolution (No XIII-339) of the Seimas of the Republic of Lithuania of 2 May 2017 on beginning an impeachment against Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, and applying to the Constitutional

Court of the Republic of Lithuania, whether the concrete actions of Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania that are specified in the conclusion of the Special Investigation Commission of the Seimas of the Republic of Lithuania for the Investigation into the Reasonableness of the Submitted Proposals to Begin Impeachment Proceedings Against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings are in conflict with the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

I

The inquiry of the petitioner

1. On 2 May 2017, the Seimas, the petitioner, adopted the resolution (No XIII-339) on beginning an impeachment against Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, and applying to the Constitutional Court of the Republic of Lithuania (hereinafter also referred to as the Seimas resolution (No XIII-339) of 2 May 2017). By this resolution, the Seimas began impeachment proceedings against Seimas member Kęstutis Pūkas (Article 1) and applied to the Constitutional Court requesting a conclusion whether the concrete actions of Seimas member Kęstutis Pūkas specified in the conclusion of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings (hereinafter referred to as the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas or the Special Investigation Commission) are in conflict with the Constitution (Article 2).

The inquiry of the Seimas, the petitioner, was received at the Constitutional Court on 9 May 2017.

2. The Seimas resolution (No XIII-339) of 2 May 2017 was adopted due to the fact that the Seimas, on 2 May 2017, adopted the resolution (No XIII-338) on the assent to the conclusion of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings (hereinafter also referred to as the Seimas resolution (No XIII-338) of 2 May 2017).

By Article 1 of the Seimas resolution (No XIII-338) of 2 May 2017, the Seimas assented to the conclusion, attached to this resolution, of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas and, by Article 2 of this resolution, recognised that the Special Investigation Commission had completed its work.

2.1. In the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas on the proposal to begin impeachment proceedings against Seimas member Kęstutis Pūkas (hereinafter also referred to as the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas), the following was held:

“The Commission considers, in the light of the established circumstances and the arguments set forth, that the dignity of the persons holding the positions of the secretaries assistants of Seimas member Kęstutis Pūkas during their working time and the dignity of the applicants for the said positions during the job interviews was degraded by actions, verbally, and by non-verbal body language, the applicants were clearly discriminated on the grounds of their social status; also, the unethical conduct of Seimas member Kęstutis Pūkas discredited the authority of the state and of the Seimas; therefore, the actions of Kęstutis Pūkas should be assessed as a breach of the oath of a member of the Seimas, in which the member of the Seimas undertook to respect and uphold the Constitution and laws; the said actions should correspondingly be assessed as a gross violation of the Constitution.”

In the conclusion of the Special Investigation Commission, it was noted that Seimas member Kęstutis Pūkas by his actions could have violated Article 21 of the Constitution, which guarantees the protection and defence of human dignity, Article 29 thereof, which enshrines the principle of the equality of the rights of persons, as well as Articles 22 and 28 thereof, which guarantee the inviolability of private life and prohibit the restriction of personal rights and freedoms.

2.2. In its conclusion, the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas decided the following:

“1) to recognise the proposals of the Seimas Commission for Ethics and Procedures to begin impeachment proceedings against Seimas member Kęstutis Pūkas to be reasonable;

2) to state that there are grounds for beginning impeachment proceedings against Seimas member Kęstutis Pūkas”.

II

The explanations of the party concerned

3. In the course of the preparation of the case for the hearing of the Constitutional Court, written explanations were received from Seimas member Kęstutis Pūkas, the party concerned, in which he disagrees with the fact that by his actions he has grossly violated the Constitution and breached the oath. The following arguments are presented in the explanations of Seimas member Kęstutis Pūkas.

3.1. The charges formulated in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas are too abstract, it is not clear from them what specific actions

constituted a gross violation of the Constitution. This conclusion does not contain any specific ground on which it would be possible to assert that certain actions contrary to the Constitution have been performed. Although the mass media provided information on accusations of sexual harassment, the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas does not indicate that Seimas member Kęstutis Pūkas could be incriminated for this or any other act that entails legal liability. It only indicates that there is the proposal to begin the impeachment on three factual grounds: the degrading of the dignity of the applicants for the positions of secretaries assistants of a member of the Seimas by actions, verbally, and by non-verbal body language; clear discrimination of the applicants on the basis of their social status; and the discrediting of the authority of the state and of the Seimas by unethical conduct.

Seimas member Kęstutis Pūkas states in his explanations that he has never violated in any form the honour or dignity of any person, has never discriminated against any person, has never discredited the authority the State of Lithuania or of the Seimas. According to the party concerned, all charges are unfounded.

3.2. The abstract and vague charges are aimed at imposing the strictest constitutional liability, which is completely disproportionate to the content of the charges. All the charges are related to the interpretation of supplementary legal norms that contain no sanctions. Such violations must not be equated with the commission of a crime or with the other grounds for impeachment that are established in the Constitution.

3.3. Under the Constitution, only a gross violation of the Constitution, a breach of the oath, and a crime constitute grounds for impeachment. Such an assessment criterion means that the committed violation must be extraordinary, involving violations of the fundamental principles of the state. If the degrading of the dignity of the three persons is assessed as a gross violation of the Constitution, then it is unclear how such acts as treason or cooperation with relevant foreign services should be seen. The dignity of individuals, the right of individuals to non-discrimination, and other similar values are in general remedied only by civil proceedings, while claiming for damages or pursuing another civil remedy. The performed actions may involve liability for violations of employment law. However, these legal processes have nothing to do with constitutional liability.

According to Seimas member Kęstutis Pūkas, the Constitution states *expressis verbis* that misdemeanours do not constitute grounds for an impeachment, therefore, even upon passing an effective court judgment stating that a misdemeanour has been committed, this, according to Article 74 of the Constitution, would not entail a gross violation of the Constitution, as it would not be a crime and could not be grounds for an impeachment. Mere allegations of committing a misdemeanour should not be evaluated more rigorously than the maximum possible criminal liability for committing these actions that have been conclusively proved and established by an effective court judgment. That is all the more reason why the commission of actions that are prohibited by other legal acts, that incur administrative or civil liability, and that are less dangerous than misdemeanours may not create grounds for an impeachment.

3.4. There is an established procedure for the application of constitutional liability, like all other types of legal liability. Failure to comply with this procedure creates preconditions for violating the rights of a person who

is being subjected to liability and the fundamental principles of the protection of human rights. Disrespect for fundamental human rights and freedoms, *inter alia*, for the right to defence, and for the principles of a fair legal process in the course of proceedings in which constitutional liability is applied determines the unlawfulness of the entire legal process.

According to the party concerned, the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas at its meetings committed procedural errors (as, for instance, the Special Investigation Commission relied on evidence gathered in an illegal manner and secretly investigated, did not inform Seimas member Kęstutis Pūkas of the charges against him, did not explain to him the course of the process and did not inform him of his procedural rights; the said commission did not provide him or his defence counsel with the opportunity to participate in all its meetings, to ask questions to the witnesses and experts, to have access to the testimony of the witnesses, to express objections, he was not granted the right of the last reply and the last word, etc.); therefore, its conclusion may not give rise to any legal consequences. The impeachment proceedings begun by the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, which did not ensure the above rights, are not in conformity with the constitutional concept of impeachment and must not be regarded as having been lawfully conducted.

3.5. Assessing the testimony given by witness No 2 before the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the party concerned notes that the testimony does not reflect reality and is based on fictitious information. Contrary to what was stated in the testimony of the witness before the Special Investigation Commission, no person without higher education was employed at the Seimas, nor were attempts made to recruit such persons at the request of Seimas member Kęstutis Pūkas.

III

The material received in the case

4. In the course of the preparation of the case for the hearing of the Constitutional Court, the following material has been received from the Seimas: the documents of the preparation of the meeting of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the correspondence documents on the issues of the organisational work of this commission and the minutes of its meetings, the data of pretrial investigation No 02-2-00154-17 from Division 2 of the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office (*Vilniaus apygardos prokuratūros Vilniaus apylinkės prokuratūros 2-asis skyrius*), which were submitted to the Seimas (hereinafter referred to as the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas).

5. In the course of the preparation of the case for the hearing of the Constitutional Court, the additional pretrial investigation material was received from the prosecutor of Division 2 of the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office: copies of the records of supplementary interrogation, a copy of the record of the interrogation of one of the witnesses, and the letter (No 17/254 S) of Zita Sarakienė, the Director General of UAB Laisvas ir nepriklausomas kanalas, regarding the provision of information, together with which

the Constitutional Court received the material of the television reports broadcast by the television channel Info TV on 8–9 March 2017 and 14 March 2017 (digital media, 1 DVD), the request of witness No 2 to rely in the constitutional justice case on the testimony given before the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas and the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the certificates of incapacity for work and sick notes of Seimas member Kęstutis Pūkas regarding his failure to appear at the hearing of the Constitutional Court, the testimony of the employees of the Constitutional Court that specifies the circumstances of serving the summons on Seimas member Kęstutis Pūkas to appear at the hearing of the Constitutional Court, and the testimony of the journalists of the Marijampolė county newspaper Suvalkietis.

IV

Persons who participated at the hearing of the Constitutional Court

6. At the hearing of the Constitutional Court, the representatives of the Seimas, the petitioner, who were Seimas member Dovilė Šakalienė and Andrius Kabišaitis, the Director of the Legal Department of the Office of the Seimas, took the floor. The representatives of the petitioner substantiated their explanations with the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas and supported the charge formulated therein.

6.1. At the hearing of the Constitutional Court, Seimas member Dovilė Šakalienė, the representative of the Seimas, the petitioner, additionally pointed out the circumstances that, according to her, confirm that the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, in conducting the investigation that was entrusted to it, ensured the procedural rights that are provided for in legal acts and that may be exercised by a person in whose respect the investigation is carried out. At the same time, she pointed out that Seimas member Kęstutis Pūkas had himself disregarded the Statute of the Seimas of the Republic of Lithuania and other legal acts governing the activity of the special investigation commission, and had clearly sought to impede the work of the commission. In response to the argument expressed in the written explanations submitted to the Constitutional Court by Seimas member Kęstutis Pūkas regarding the anonymity of the witnesses who had been questioned by the Special Investigation Commission, Dovilė Šakalienė emphasised that, in carrying out the investigation, this commission sought to ensure not only the rights of the party concerned, but also of the persons who testified to the commission, *inter alia*, the inviolability of their private life and the protection of personal data.

During the oral pleadings, Dovilė Šakalienė explained that, in legal acts, among others, in EU directives, sexual harassment is seen as inseparable from the degrading of the dignity of a person; in assessing actions by which the dignity of other persons has been degraded, what is crucially important is the harm done to the victim by the act itself, and only afterwards should the perpetrator's intentions and purposes to humiliate the person's dignity and offend him/her be judged. The emotional state of the victims and how they feel after being affected by such conduct are particularly important.

6.2. At the hearing of the Constitutional Court during the oral pleadings, Andrius Kabišaitis, the Director of the Legal Department of the Office of the Seimas, a representative of the petitioner, while summing up the unlawful actions committed by Seimas member Kęstutis Pūkas, pointed out the following: Seimas member Kęstutis Pūkas had discussed the structure and forms of the bodies of his secretaries assistants and of the persons applying for these positions and had spoken in a humiliating manner about their mental abilities; he had humiliated his female secretaries assistants and the female applicants psychologically and caused feelings of insecurity and inferiority in those women; he had demanded that they do such work or provide such services that are not set out in the job description for the position of a secretary assistant of a member of the Seimas and sought to restrict the freedom of these women to choose how to spend their leisure time or to choose their way of life; he had discussed with third parties the health information of an individual that became available to him due to his position; he had offered to the said individuals services that were not related to work relations at the Seimas; he had attempted to recruit as his secretaries assistants only persons of one gender – women – with certain physical characteristics (appearance), etc. According to the petitioner's representative, by these actions, Seimas member Kęstutis Pūkas had grossly violated Articles 21, 22, 28, and 29 of the Constitution and breached the taken oath.

Andrius Kabišaitis additionally noted that Seimas member Kęstutis Pūkas, the party concerned, contrary to what he had stated in his explanations, had been informed about the charges brought against him, since, as the data about the attendance of the sittings of the Seimas provided by the Seimas website suggests, he took part in the Seimas evening sitting (No 34) of 16 March 2017, in which the proposal of the Seimas Commission for Ethics and Procedures to begin an impeachment against Seimas member Kęstutis Pūkas was discussed, and a draft Seimas Resolution on the Formation of the Special Investigation Commission of the Seimas of the Republic of Lithuania for the Investigation into the Reasonableness of the Proposals Submitted by the Seimas Commission for Ethics and Procedures to Institute Impeachment Proceedings Against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Instituting the Impeachment Proceedings was submitted, discussed, and adopted. These documents indicate in what circumstances and for what actions the beginning of impeachment proceedings against Seimas member Kęstutis Pūkas was proposed. Seimas member Kęstutis Pūkas did not use his right to ask questions to the drafters of the draft resolution, nor did he submit any proposals to amend or supplement the draft.

Andrius Kabišaitis also pointed out that, although in his explanations Seimas member Kęstutis Pūkas asserts that he had not been informed of his procedural rights during the meetings organised by the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, he had repeatedly complained that his procedural rights had been grossly violated, while this indicates that Seimas member Kęstutis Pūkas knew his procedural rights.

Andrius Kabišaitis also emphasised that, given the fact that the actions of Seimas member Kęstutis Pūkas that are indicated in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, by which the Constitution was grossly violated and the authority of the Seimas as the representation of the Nation was discredited, had been performed not once, but, rather, systematically and

continuously, it can be argued that Seimas member Kęstutis Pūkas acted deliberately by using his status as a member of the Seimas and when being aware of the objectives, meaning, and consequences of his actions.

7. At the hearing of the Constitutional Court, the representatives of Seimas member Kęstutis Pūkas, who were the advocates Mantas Arasimavičius and Aušra Ručienė, virtually reiterated the arguments set out in the written explanations of Seimas member Kęstutis Pūkas, submitted requests and additional explanations to the Constitutional Court and answered the questions, put their own questions to the witnesses, and spoke during the oral pleadings. Seimas member Kęstutis Pūkas, the party concerned, participated in the oral pleadings and had the last word.

7.1. The party concerned and his representatives submitted requests at the hearing of the Constitutional Court.

7.1.1. Seimas member Kęstutis Pūkas, the party concerned, submitted to the Constitutional Court a request to postpone the consideration of the case due to his inability for a valid reason – his illness – to attend the hearing of the Constitutional Court on 16 November 2017.

By its decision (which was written down in the minutes), the Constitutional Court did not grant the request of Seimas member Kęstutis Pūkas, the party concerned, and noted, among other things, that the sick note (form No 094-1/a, as approved by the Minister of Health) provided to the Constitutional Court on behalf of Seimas member Kęstutis Pūkas regarding his non-appearance at the hearing of the Constitutional Court had not been filled in correctly – the sick note had failed to specify when the party concerned would have been able to attend court hearings. The decision written down in the minutes states, among other things, that the information available in the case about the state of health of Seimas member Kęstutis Pūkas is controversial. It was decided that the reason for the request for the postponement of the hearing, as indicated in the petition of Seimas member Kęstutis Pūkas, was not sufficiently significant to justify the non-appearance of Seimas member Kęstutis Pūkas, the party concerned, at the hearing of the Constitutional Court.

In the same decision of the Constitutional Court, it was also noted that both representatives of the party concerned – the advocates Mantas Arasimavičius and Aušra Ručienė – were taking part at the hearing of the Constitutional Court; therefore, it was held that the defence of the rights and legitimate interests of Seimas member Kęstutis Pūkas, when considering the case in the absence of Seimas member Kęstutis Pūkas, was ensured properly.

7.1.2. The representatives of the party concerned made a motion to disqualify the whole Constitutional Court for its possible partiality in resolving this constitutional justice case. The alleged impartiality of the Constitutional Court was substantiated with the fact that, during the preparation of the case for judicial consideration, the Constitutional Court investigated certain factual circumstances, collected evidence in the case, and questioned the witnesses, although, according to the representatives of the party concerned, such a right of the Constitutional Court is not provided for in the Law of the Constitutional Court: under Article 30 of this law, the Constitutional Court investigates and resolves only legal issues.

By its decision (which was written down in the minutes), the Constitutional Court refused to grant the disqualification motion put by the representatives of the party concerned. The Constitutional Court did not establish any existing circumstances, specified in Paragraph 1 of Article 48 of the Law on the Constitutional Court, that would not allow individual justices to participate in the consideration of a case. In the same decision, the Constitutional Court noted that the case material indicated by the representatives of the party concerned did not confirm in the case at issue any partiality of justices in deciding whether Seimas member Kęstutis Pūkas had grossly violated the Constitution and breached the oath by his actions. In addition, contrary to what has been pointed out by a representative of the party concerned, the Constitutional Court, when considering, under the Constitution, a constitutional justice case, has the powers to investigate, if necessary, factual circumstances relevant to a decision in the case. Under Article 27 of the Law on the Constitutional Court, the justice of the Constitutional Court who prepares a case for the hearing of the Constitutional Court must perform all actions necessary for the preparation of the case for judicial consideration.

It was also noted that the request of the representative of the party concerned did not comply with the requirements established in the Constitution and the Law on the Constitutional Court. According to the Constitution, *inter alia*, Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court must present its conclusion in an impeachment case, and a situation such as that where the Constitutional Court would excuse itself from fulfilling its constitutional obligation is intolerable. Article 48 of the Law on the Constitutional Court does not provide for a possibility of disqualifying the whole Constitutional Court from considering a case.

7.1.3. The representatives of the party concerned requested the Constitutional Court to postpone the consideration of the constitutional justice case and ask the European Court of Human Rights (hereinafter also referred to as the ECtHR) for an advisory opinion on the interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter also referred to as the Convention).

By its decision (which was written down in the minutes), the Constitutional Court refused to grant this request of the representatives of the party concerned, noting, among other things, that Protocol No 16 of the Convention, according to which national highest courts may request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto, had not entered into force yet. In addition, the Constitutional Court in this case did not have doubts about the interpretation or application of the provisions of the Convention.

7.1.4. At the hearing, the Constitutional Court also adopted decisions on other requests submitted by the representatives of the party concerned.

7.2. Seimas member Kęstutis Pūkas, the party concerned, when speaking on 20 November 2017 at the hearing of the Court during the oral pleadings, disagreed with the charges brought against him, denied having degraded the dignity of his employees or persons applying for the position of a secretary assistant of a member of the Seimas, having discriminated against them on a legal or factual basis, or having sexually harassed them.

Seimas member Kęstutis Pūkas argued that the witnesses who gave the testimony at the hearing had not told the truth and had pointed out circumstances that did not correspond to reality. According to Kęstutis Pūkas, such testimony was given by the witnesses in revenge for his comments on their poorly performed work or his refusal to admit them to the position of a secretary assistant of a member of the Seimas. According to Kęstutis Pūkas, the witnesses are interrelated, they are acquaintances, at the pretrial investigation they are represented by the same lawyer, who is coordinating their actions deliberately directed against him. All the witnesses attended the job interviews voluntarily, and none of them expressed their wish to end the interview.

Seimas member Kęstutis Pūkas additionally indicated that, in his living quarters at the hotel of the Seimas, there is his office, which contains computer equipment necessary for making public the activities of the Seimas Anticorruption Commission and the Seimas Committee on State Administration and Local Authorities, of which he is a member. He had taken by mutual agreement to these premises the women applying for the position of a secretary assistant of a member of the Seimas in order to examine the indicated equipment, because they themselves had wanted to see it.

According to the member of the Seimas, the experiment organised by the journalists should not be considered reliable evidence, as it had been carried out illegally, *inter alia*, in violation of the rules established by the Description of the Procedure for the Accreditation of Representatives of Producers and/or Disseminators of Public Information at the Office of the Seimas of the Republic of Lithuania, which was approved by decision of the Board of the Seimas. During the job interview that was a journalistic experiment, Seimas member Kęstutis Pūkas had been deliberately asked provocative questions, which seemed strange to him already at that time; therefore, the report that had been edited and shown on TV did not correspond to reality.

7.3. The representatives of the party concerned, when submitting requests at the hearing of the Constitutional Court, reiterated the position expressed in the written explanations by Seimas member Kęstutis Pūkas regarding the illegality of the proceedings before the Special Investigation Commission and also pointed out that no one had specified any concrete actions performed by Seimas member Kęstutis Pūkas by which he could have grossly violated the Constitution and could have breached the taken oath.

The representatives of the party concerned, when speaking during the oral pleadings at the hearing of the Constitutional Court, further noted that the words of Seimas member Kęstutis Pūkas that had been indicated by the witnesses and by which their honour and dignity had been allegedly violated, which are quoted in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, expressed the mere opinion of Seimas member Kęstutis Pūkas, which did not apply to a concrete woman applying for the position of a secretary assistant of a member of the Seimas. The words of Seimas member Kęstutis Pūkas about the beauty of the girl or questions about what she had achieved and how old she was, other considerations expressed orally and not related to a particular person (such as that women in their life find themselves in various situations) should not be considered a gross violation of the Constitution, either.

During the oral pleadings, the representatives of the party concerned emphasised that Seimas member Kęstutis Pūkas had been informed of the specific charges against him by the representatives of the petitioner only at the hearing of the Constitutional Court, which, in the opinion of the representatives of the party concerned, was too late to guarantee the defence rights of Seimas member Kęstutis Pūkas.

The representatives of the party concerned also asserted that the following illegal actions had allegedly been performed in respect of Seimas member Kęstutis Pūkas: without the permission of the member of the Seimas, the documents in the office of the member of the Seimas had been photographed and the personal data of other persons had been disclosed. The journalistic experiment conducted by the journalists Rūta Juknevičiūtė and Dovilė Javinskaitė should also be deemed illegal – in the course of this experiment, behind the name, surname, and CV of another person, having fraudulently entered the office of the member of the Seimas, using hidden video and audio recording equipment, a job interview between Dovilė Javinskaitė and Seimas member Kęstutis Pūkas for the position of a secretary assistant of the member of the Seimas had been recorded. During the job interview, the journalist deliberately tried to provoke him into violating the Constitution by his actions. Such actions as performed by the journalist Dovilė Javinskaitė are prohibited.

According to the representatives of the party concerned, the testimony of the witnesses should be considered unreliable, none of the circumstances indicated by them was confirmed, and those circumstances do not prove that a gross violation of the Constitution was committed. The emotional state of the witnesses is not a matter of legal assessment.

8. At the hearing of the Constitutional Court, the following witnesses were questioned: witnesses Nos 4, 3, 5, and 1, as well as Rūta Juknevičiūtė and Dovilė Javinskaitė.

8.1. Witnesses Nos 4, 3, 5, and 1 reiterated the circumstances specified in the testimony given to the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, and answered the questions posed to them.

The witnesses confirmed that the conduct of Seimas member Kęstutis Pūkas toward them had changed their opinion on the members of the Seimas as state officials, called into question their reliability, frustrated them, among other things, because of the non-observance of moral norms, and discredited the Seimas as an institution in their eyes.

8.2. The witnesses Rūta Juknevičiūtė and Dovilė Javinskaitė confirmed the data gathered during the journalistic experiment, answered the questions, and provided additional explanations.

Dovilė Javinskaitė testified that, even knowing the circumstances of the upcoming conversation with Seimas member Kęstutis Pūkas, during the conversation she felt uncomfortable and was shocked at his conduct.

The Constitutional Court

holds that:

I

The investigation limits

9. On 30 October 2016, the Central Electoral Commission of the Republic of Lithuania adopted the decision (No Sp-270) on the determination and publication of the final results of the 9 October 2016 election of the Seimas of the Republic of Lithuania, which was officially published on its website on the same day. In Item 4 of this decision, it was decided to determine, according to the final results of the election, the members of the Seimas of the Republic of Lithuania elected in multi-member and single-member constituencies. This decision set out the list of such persons in its Annex 4, titled “The Persons Elected to the Seimas of the Republic of Lithuania”, which stipulates that Kęstutis Pūkas was elected a member of the Seimas.

At the sitting of the Seimas of 14 November 2016, Kęstutis Pūkas, an elected member of the Seimas, swore to be faithful to the Republic of Lithuania, to respect and uphold its Constitution and laws and to protect the integrity of its lands, to strengthen, to the best of his ability, the independence of Lithuania, and to conscientiously serve his Homeland, democracy, and the welfare of the people of Lithuania. After taking the oath, he acquired all the rights of a representative of the Nation.

10. On 16 March 2017, the Seimas Commission for Ethics and Procedures, having assessed the information and film footage made publicly available in the mass media, by a majority of the votes of all members of the Commission submitted to the Seimas the proposal to start an impeachment of Seimas member Kęstutis Pūkas. The proposal stated: Seimas member Kęstutis Pūkas, “when looking for an individual for the position of a secretary assistant of a member of the Seimas, paid attention to the gender, appearance, age, and the circumstances of the personal life of such an individual”; he invited the applying women to the hotel of the Seimas; when talking to them, he did not refrain himself from making comments of an intimate nature and discussed the appearance of the female candidates in a disrespectful manner; Seimas member Kęstutis Pūkas offered to the candidates “an informal salary and financial help and promised to buy clothes to them”; he “possibly abused his official position and sought a benefit for himself by possibly sexually harassing the applying women”; by such actions, which are incompatible with the Constitution, Seimas member Kęstutis Pūkas discredited the Seimas as one of the most important state institutions, grossly violated the Constitution, and breached the oath of a member of the Seimas.

11. By Article 1 of the resolution (No XIII-232) of 16 March 2017 on the formation of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings (hereinafter referred to as the Seimas resolution (No XIII-232) of 16 March 2017), the Seimas formed the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas. By Article 5 of the same resolution, the Seimas commissioned this commission to carry

out, by 1 May 2017, an investigation into the reasonableness of the proposal submitted by the Seimas Commission for Ethics and Procedures.

The Seimas resolution (No XIII-232) of 16 March 2017 was amended by the Seimas resolution (No XIII-272) of 4 April 2017 on amending the resolution (No XIII-232) of the Seimas of the Republic of Lithuania of 16 March 2017 on the formation of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings. By the latter resolution, the composition of this commission was changed.

12. On 28 April 2017, the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas adopted the conclusion acknowledging that the proposals of the Seimas Commission for Ethics and Procedures to begin impeachment proceedings against Seimas member Kęstutis Pūkas were reasonable and stating that there were grounds to commence impeachment proceedings against Seimas member Kęstutis Pūkas.

12.1. As mentioned above, it was held in the conclusion of the Special Investigation Commission that “the dignity of the persons holding the positions of the secretaries assistants of Seimas member Kęstutis Pūkas during their working time and the dignity of the applicants for the said positions during the job interviews was degraded by actions, verbally, and by non-verbal body language, the applicants were clearly discriminated on the grounds of their social status; also, the unethical conduct of Seimas member Kęstutis Pūkas discredited the authority of the state and of the Seimas; therefore, the actions of Kęstutis Pūkas should be assessed as a breach of the oath of a member of the Seimas, in which the member of the Seimas undertook to respect and uphold the Constitution and laws; the said actions should correspondingly be assessed as a gross violation of the Constitution”.

12.2. It has also been mentioned that the conclusion of the Special Investigation Commission pointed out that, by such actions, Seimas member Kęstutis Pūkas violated Articles 21, 22, 28, and 29 of the Constitution.

13. By Article 1 of the Seimas resolution (No XIII-338) of 2 May 2017, the Seimas assented to the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas.

By Article 1 of the Seimas resolution (No XIII-339) of 2 May 2017, the Seimas decided to begin impeachment proceedings against Seimas member Kęstutis Pūkas and applied to the Constitutional Court, requesting a conclusion whether the concrete actions of Seimas member Kęstutis Pūkas that are specified in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas were in conflict with the Constitution.

14. It is clear from the content of the Seimas resolution (No XIII-339) of 2 May 2017, which set out the inquiry for the Constitutional Court, and from the content of the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, which, as already mentioned above, was

assented to by the Seimas resolution (No XIII-338) of 2 May 2017, that the Seimas requests the Constitutional Court to present a conclusion whether the actions of Seimas member Kęstutis Pūkas (specified in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas) that were performed in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions, by which, in the opinion of the Special Investigation Commission, the dignity of those persons was degraded, their private life was interfered with, and they were discriminated against, were in conflict with the Constitution.

II

The official constitutional doctrine of the constitutional status of a member of the Seimas

15. The Seimas, as the representation of the Nation, through which the Nation exercises the supreme sovereign power, consists of members of the Seimas; each member of the Seimas represents the entire Nation; when fulfilling his/her constitutional obligation to represent the Nation, a member of the Seimas participates in performing all constitutional functions of the Seimas and exercises all powers of a member of the Seimas (the Constitutional Court's ruling of 1 July 2004).

16. The status of members of the Seimas as representatives of the Nation is different from that of all other citizens (the Constitutional Court's ruling of 8 May 2000). The status of a member of the Seimas, a representative of the Nation, arises out of the provisions of the Constitution whereby the State of Lithuania is an independent democratic republic (Article 1), the Nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4), etc. (the Constitutional Court's ruling of 30 May 2003).

17. In its acts, *inter alia*, its rulings of 25 May 2004, 1 July 2004, and 4 April 2006, as well as its conclusions of 27 October 2010 and 3 June 2014, the Constitutional Court has formulated the official constitutional doctrine of the constitutional status of a member of the Seimas:

– under the Constitution, a member of the Seimas is a professional politician, i.e. such a representative of the Nation whose work at the Seimas is his/her professional activity; the constitutional status of a member of the Seimas, as a representative of the Nation, implies the constitutional obligation of a member of the Seimas to represent the Nation;

– the constitutional status of a member of the Seimas integrates the duties, rights, guarantees of the activity, as well as responsibility, of a member of the Seimas as a representative of the Nation, and is based upon the constitutional principle of the free mandate of a member of the Seimas; the free mandate of a member of the Seimas is not a privilege of a representative of the Nation, but one of the legal measures ensuring that the Nation will be properly represented in its democratically elected representation, the Seimas, and that the representation of the Nation, the Seimas, will act only in the interests of the Nation and the State of Lithuania; the free mandate of a member of the Seimas must be used in such a way that the Seimas could act effectively in the interests of the Nation and the State of Lithuania, and that it would properly discharge its constitutional obligation; the duty of a

member of the Seimas to act in the way that the oath taken by the member of the Seimas obliges, while paying regard to the requirements stemming from the Constitution and the laws that are not in conflict with it, may not be interpreted as meaning a restriction of the constitutional principle of the free mandate of a member of the Seimas;

– while in office, and implementing their rights, members of the Seimas are guided by the Constitution, state interests, and their own consciences; under the Constitution, a member of the Seimas not only acquires respective rights, but he/she must also discharge certain duties stemming from the Constitution and the laws that are not in conflict with it; the Constitution implies such a notion of the discretion of a member of the Seimas and the conscience of a member of the Seimas whereby no gap must exist between the discretion of a member of the Seimas and the conscience of a member of the Seimas, on the one hand, and the requirements of the Constitution, as well as the values protected and defended by the Constitution, on the other hand: according to the Constitution, the discretion of a member of the Seimas and his/her conscience must be oriented towards the Constitution, and the interests of the Nation and the State of Lithuania.

18. Paragraph 2 of Article 59 of the Constitution prescribes that an elected member of the Seimas acquires all the rights of a representative of the Nation only after taking at the Seimas an oath to be faithful to the Republic of Lithuania. The text of the oath of a member of the Seimas is established in Article 5 of the Republic of Lithuania's Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which is a constituent part of the Constitution:

“I, (full name),

swear to be faithful to the Republic of Lithuania;

swear to respect and uphold its Constitution and laws and to protect the integrity of its lands;

swear to strengthen, to the best of my ability, the independence of Lithuania, and to conscientiously serve my Homeland, democracy, and the welfare of the people of Lithuania.

So help me God.”

Under this article, the oath may also be taken by omitting the last sentence.

18.1. By taking the oath, a member of the Seimas assumes an unconditional obligation to observe all the values referred to in the oath; thus, the act of the oath of a member of the Seimas is constitutionally legally significant: when taking the oath, an elected member of the Seimas publicly and solemnly assumes an obligation to act in the way that the oath taken obliges and to breach the oath under no circumstances (the Constitutional Court's rulings of 25 May 2004 and 1 July 2004, and its conclusion of 27 October 2010). The oath of a member of the Seimas gives rise to the duty a member of the Seimas to respect and execute the Constitution and laws, as well as to conscientiously perform the duties of a representative of the Nation in the manner as the Constitution obliges him/her to act (*inter alia*, the Constitutional Court's ruling of 1 July 2004).

18.2. According to the Constitution, after an elected member of the Seimas takes an oath and acquires all rights of a representative of the Nation, his/her constitutional duty to be unconditionally faithful to the Republic of Lithuania arises; in discharging their functions and implementing state authority, members of the Seimas must follow the Constitution and law and obey them, also, they must act in the interests of the Nation and the State of Lithuania, not in their personal or group interests, and not make use of their status in order to gain personal advantage either for themselves, persons close to them, or other persons (the Constitutional Court's conclusions of 27 October 2010 and 3 June 2014).

18.3. It is noted in the jurisprudence of the Constitutional Court that the oath of a member of the Seimas and the constitutional status of a member of the Seimas give rise to the requirement that a member of the Seimas, *inter alia*, must act in good faith and avoid conduct that degrades the reputation and authority of the Seimas – the representation of the Nation (the Constitutional Court's conclusion of 27 October 2010).

19. In the context of the constitutional justice case at issue, it should be noted that the requirements, arising from the oath of a member of the Seimas and from the constitutional status of a member of the Seimas, to respect and uphold the Constitution and laws, to perform in good faith the duties of a representative of the Nation, to act in the interests of the Nation and the State of Lithuania, and to refrain from conduct degrading the reputation and authority of the Seimas also determine the duty to respect the human rights entrenched in, and protected by, the Constitution and not to use the constitutional status of a member of the Seimas as a representative of the Nation to violate the constitutional rights and freedoms of other persons.

The constitutional nature of the Seimas as the state institution through which the Nation exercises the supreme sovereign power and the peculiarities of the constitutional status of a member of the Seimas as a representative of the Nation (this status, as mentioned above, is different from the legal status of all other citizens) determine the fact that the actions of a member of the Seimas that violate the constitutional rights or freedoms of other persons, especially if they are carried out using the constitutional status of a member of the Seimas, regardless of whether such conduct of a member of the Seimas is related to his/her parliamentary activities, can grossly violate the Constitution and breach the oath of a member of the Seimas, as well as degrade the reputation and authority of the Seimas – the representation of the Nation.

20. The human rights and freedoms that are entrenched in the Constitution constitute a coherent and harmonious system (the Constitutional Court's ruling of 29 December 2004). In the constitutional justice case at issue, the constitutional status of a member of the Seimas and the requirement, which stems from the said status, for a member of the Seimas not to violate the constitutional rights and freedoms of other persons must be interpreted by taking into account, among other things, the human rights and freedoms enshrined in the provisions of Articles 21, 22, and 29 of the Constitution, which are specified by the petitioner.

20.1. Article 21 of the Constitution establishes the human rights to the inviolability of a human person and the protection of human dignity.

20.1.1. Paragraph 1 of Article 21 of the Constitution prescribes: "The human person shall be inviolable."

The Constitutional Court has noted that the content of the inviolability of a human person as a value protected by law is composed of physical and psychological inviolability (the Constitutional Court's rulings of 8 May 2000 and 4 June 2012). Article 21 of the Constitution gives rise to the duty of the legislature to establish such a legal regulation that would ensure the human right to the inviolability of a human person and would take all necessary measures to protect this right; the protection of the physical and psychological inviolability of a human being, *inter alia*, from criminal acts, is a constitutionally important purpose and a public interest (the Constitutional Court's ruling of 4 June 2012).

20.1.2. Paragraph 2 of Article 21 of the Constitution prescribes: "Human dignity shall be protected by law." Paragraph 3 of the same article consolidates a prohibition, *inter alia*, on degrading human dignity.

When interpreting these constitutional provisions, the Constitutional Court has held that dignity is an inalienable characteristic of a human being as the greatest social value; every member of society has innate dignity (*inter alia*, the Constitutional Court's rulings of 29 December 2004, 2 September 2009, and 26 May 2015). Human dignity should be regarded as a special constitutional value (the Constitutional Court's ruling of 9 December 1998); dignity is characteristic of every human being, irrespective of how he/she assesses himself/herself or other people assess him/her (the Constitutional Court's ruling of 29 December 2004).

It needs to be emphasised that only such a state that has respect for the dignity of every human being can be considered to be truly democratic. The Constitution establishes the duty of the state to ensure the protection and defence of human dignity (the Constitutional Court's rulings of 8 May 2000 and 2 September 2009, as well as its decision of 20 April 2010). State institutions and officials have the duty to respect human dignity as a special value (the Constitutional Court's rulings of 29 December 2004 and 2 September 2009, as well as its decision of 20 April 2010). This means, among other things, that state institutions and officials may not unreasonably limit human rights and freedoms, treat an individual solely as a subject belonging to a particular social, economic, professional, or other category; in every case, an individual must be regarded as a free personality, whose human dignity should be respected (the Constitutional Court's ruling of 29 December 2004).

20.1.3. The fact that the legislature, while regulating relations linked with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for the ensuring of human dignity as a constitutional value; violations of the rights and freedoms of persons may also undermine their dignity (the Constitutional Court's rulings of 29 December 2004 and 2 September 2009, as well as its decision of 20 April 2010).

In this context, it should be noted that the dignity of an individual as a free personality is inseparable from the inviolability of a human person and, as mentioned above, the content of the inviolability of a human person is composed of physical and psychological inviolability. The inviolability of a human person is a necessary precondition for the expression of his/her freedom of physical activity, of his/her intellectual and creative freedoms, thus, also the expression of his/her free personality; an encroachment on the inviolability of a human person disturbs his/her physical, mental, or spiritual state; thus, human dignity as a special constitutional value is

also violated. Therefore, the guarantee of the inviolability of a human person, consolidated in Paragraph 1 of Article 21 of the Constitution, should be regarded as one of the elements of the constitutional protection of human dignity.

20.2. The constitutional protection of human dignity is also enshrined in other provisions of the Constitution, for instance, in Paragraph 4 of Article 22 thereof, whereby no one may be subject to arbitrary or unlawful interference with his/her private and family life, as well to encroachment upon his/her honour and dignity. Thus, under the Constitution, the protection of human dignity is inseparable from the protection of the private life of a person, which is guaranteed in Paragraph 1 of Article 22 of the Constitution, according to which private life is inviolable.

20.2.1. The Constitutional Court has held that private life is the personal life of an individual: the way of life, marital status, living surroundings, relations with other people, the views, convictions, or habits of an individual, his/her physical or psychological state, health, honour, dignity, etc. (the Constitutional Court's rulings of 19 September 2002 and 24 March 2003). The inviolability of private life, which is enshrined in the Constitution, gives rise to the right of a person to privacy (the Constitutional Court's ruling of 19 September 2002), which includes private, family, and home life, the physical and psychological inviolability of a person, his/her honour and reputation, the secrecy of personal facts, the prohibition on publishing received or collected confidential information, etc. (*inter alia*, the Constitutional Court's rulings of 21 October 1999, 23 October 2002, and 24 March 2003). If the private life of an individual is interfered with in an arbitrary and unlawful manner, then, at the same time, his/her honour and dignity are encroached upon (*inter alia*, the Constitutional Court's rulings of 29 December 2004 and 21 December 2006).

20.2.2. It has been mentioned that the physical and mental inviolability of a person comprises the content of the inviolability of a person and is covered by the right of a person to privacy. Accordingly, an encroachment on the inviolability of a person – his/her physical and mental inviolability – simultaneously interferes arbitrarily and unlawfully with his/her private life, thus, also encroaches on his/her honour and dignity. In view of this fact, the guarantee of the inviolability of an individual's private life, which is consolidated in Paragraph 1 of Article 22 of the Constitution, as also the guarantee of the inviolability of a person, enshrined in Paragraph 1 of Article 21 of the Constitution, should be considered to be one of the elements of the constitutional protection of human dignity.

20.3. The prohibition on discrimination against persons on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, which arises from Article 29 of the Constitution and which consolidates the principle of the equality of the rights of persons, should also be considered to be an element of the constitutional protection of human dignity.

The Constitutional Court has noted that discrimination is most often understood as a restriction of the rights of an individual or as the establishment of certain privileges according to one's gender, race, nationality, language, origin, social status, belief, convictions, or views (the Constitutional Court's ruling of 11 November 1998). Paragraph 2 of Article 29 of the Constitution is a derivative of Paragraph 1 of the same article, because the

former does not allow a violation of the equality of rights, stipulating that “Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views” (the Constitutional Court’s conclusion of 24 January 1995).

As mentioned above, dignity is an inalienable characteristic of a human being as the greatest social value. All people by nature are to be deemed equal in their dignity and rights. Thus, the discrimination prohibited under Article 29 of the Constitution, when human rights are restricted on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, also degrades the dignity of a discriminated individual.

20.4. In the context of the constitutional justice case at issue, it needs to be emphasised that one of the forms of discrimination (including the degrading of human dignity), prohibited under Article 29 of the Constitution, is harassment, which is understood as offensive, unacceptable, or unwanted conduct that has the purpose or effect of violating a person’s dignity, or of creating a hostile, intimidating, humiliating, or offensive environment for him/her on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as well as other attributes such as disability, age, or sexual orientation. It should be noted that harassment also inevitably encroaches on a person’s physical or psychological inviolability, *inter alia*, disturbs his/her physical, mental, or spiritual state, restricts the expression of his/her freedom of physical activity, of his/her intellectual and creative freedoms, thus, also the expression of his/her free personality, and can make his/her relations with other persons more complicated. Harassment can lead to long-term or even permanent consequences that adversely affect a person’s private and social life.

In view of this fact, it should be held that harassment violates the human rights to the protection of dignity and to the inviolability of the human person and of private life, as well as the right of non-discrimination, which are protected under Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 of the Constitution.

20.5. The constitutional justice case at issue focuses on harassment based on gender, *inter alia*, sexual harassment, which is understood as unacceptable or unwanted conduct related to a person’s gender, which is expressed by physical, verbal, or non-verbal actions, *inter alia*, by means of touch or gestures, verbally, in writing, or by means of pictures, and which, among other things, has the purpose or effect of violating a person’s dignity, or of creating an intimidating, hostile, humiliating, or offensive environment for him/her. The characteristic feature of sexual harassment, which is one of the forms of harassment based on gender, is conduct of a sexual nature seen as unwanted by a harassed person.

21. As mentioned above, the constitutional nature of the Seimas as the state institution through which the Nation exercises the supreme sovereign power and the peculiarities of the constitutional status of a member of the Seimas as a representative of the Nation (this status is different from the legal status of all other citizens) determine the fact that the actions of a member of the Seimas that violate the constitutional rights or freedoms of other persons, especially if they are carried out using the constitutional status of a member of the Seimas,

regardless of whether such conduct of a member of the Seimas is related to his/her parliamentary activities, can grossly violate the Constitution and breach the oath of a member of the Seimas, as well as degrade the reputation and authority of the Seimas – the representation of the Nation.

In the context of the constitutional justice case at issue, it should be held that, due to the discriminatory nature of harassment, which brings about the degradation of human dignity, as well as because of the consequences of harassment, such conduct of a member of the Seimas that may be considered to be harassment inevitably undermines the reputation and authority of the Seimas – the representation of the Nation – and discredits state authority irrespective of whether the said conduct of a member of the Seimas is related to his/her parliamentary activity or the use of his/her constitutional status. The conduct of a member of the Seimas that is discriminatory, degrades human dignity, and can also be regarded as harassment based on gender, *inter alia*, as sexual harassment, should be considered a gross violation of the Constitution, *inter alia*, of Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 thereof, as well as a breach of the oath of a member of the Seimas.

III

The official constitutional doctrine of impeachment

22. The Constitution is the supreme law, which imposes limitations on state power; in a democratic state under the rule of law, all state institutions and officials must follow the Constitution and law (the Constitutional Court's ruling of 1 July 2004 and its conclusions of 27 October 2010 and 3 June 2014).

State officials must enjoy the confidence of the citizens, i.e. the national community (the Constitutional Court's rulings of 25 May 2004 and 13 May 2010, and its conclusions of 27 October 2010 and 3 June 2014). However, in order that the citizens – the national community – could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens – the national community – is needed, it is necessary to ensure a public democratic control over the activity of the state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions (the Constitutional Court's rulings of 25 May 2004, 1 July 2004, 13 December 2004, and 13 May 2010).

23. One of the forms of this public democratic control is the constitutional institution of impeachment (the Constitutional Court's ruling of 25 May 2004 and its conclusions of 27 October 2010 and 3 June 2014). Under Article 74 of the Constitution, the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have

committed a crime, may be removed from office or have the mandate of a member of the Seimas revoked by a 3/5 majority vote of all the members of the Seimas.

As noted in the jurisprudence of the Constitutional Court, the application of the constitutional sanction of removal from office, which is entrenched in the Constitution, in respect of the President of the Republic, members of the Seimas, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, and the President and judges of the Court of Appeal, is one of the measures of the self-protection of the national community, the civil Nation, a way of its own defence from the aforesaid high officials of state power if they ignore the Constitution and law, where they are prohibited from holding a certain office, as they do not fulfil their obligation unconditionally to follow the Constitution and law and to follow the interests of the Nation and the State of Lithuania, and who bring discredit on state authority by their actions (the Constitutional Court's ruling of 25 May 2004).

24. Various aspects of the constitutional concept of impeachment have been disclosed in the jurisprudence of the Constitutional Court, *inter alia*, in the Constitutional Court's ruling of 11 May 1999, its conclusion of 31 March 2004, its rulings of 15 April 2004 and 25 May 2004, its conclusions of 27 October 2010 and 3 June 2014, and its ruling of 24 February 2017:

– the objective of impeachment proceedings is to decide the question of the constitutional liability of the persons listed in Article 74 of the Constitution; impeachment is not the application of criminal liability even if its ground is a crime; when voting on impeachment takes place at the Seimas, the question of the constitutional liability rather than criminal liability of a person is decided;

– the application of a constitutional sanction may not be dissociated from the establishment of the fact of a violation; sometimes the same unlawful actions may incur both constitutional and other legal liability, for example, criminal liability; the fact whether, in addition to constitutional liability, they also incur other legal liability, depends on whether the legal system recognises that the same unlawful actions may violate not only constitutional, but also other legal relations; on the other hand, the constitutional sanction is applied primarily because of the fact that, in the course of committing the violation, a person discredited state power, therefore, he/she must be removed from office or his/her mandate must be revoked; otherwise, public confidence in state power, its institutions and officials will not be guaranteed; it is the parliament that decides on the application of the constitutional sanction;

– the content of the constitutional sanction (constitutional liability) applied upon the procedure for impeachment proceedings is composed both of the removal from office of a person who has grossly violated the Constitution and breached the oath, and also of the prohibition stemming therefrom preventing such a person from holding any office provided for in the Constitution that can be entered only after taking the oath established in the Constitution.

25. As mentioned above, for a gross violation of the Constitution, a breach of the oath or, if it transpires that a crime has been committed, *inter alia*, the mandate of a member of the Seimas may be revoked under the procedure for impeachment proceedings.

As stated in the jurisprudence of the Constitutional Court on more than one occasion, a breach of the oath is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath. A breach of the oath and a gross violation of the Constitution may incur the revocation of the mandate of a member of the Seimas.

However, not every violation of the Constitution is in itself a gross one; when deciding whether a member of the Seimas has grossly violated the Constitution by his/her actions, it is necessary in each case to assess the nature of the actions, the content, circumstances, time, place, systematicity, repeatedness, and duration of their performance, the conduct of the person who carried out the said actions after their commission, and other significant circumstances (the Constitutional Court's conclusions of 27 October 2010 and 3 June 2014).

26. Under Item 4 of Paragraph 3 of Article 105 of the Constitution, the Constitutional Court presents a conclusion on whether the concrete actions of members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution. It has been mentioned that, under Article 74 of the Constitution, the Seimas may revoke, under the procedure for impeachment proceedings, the mandate of a member of the Seimas by a 3/5 majority vote of all the members.

Paragraph 3 of Article 107 of the Constitution stipulates that, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues specified in Paragraph 3 of Article 105 of the Constitution.

27. It should be noted that, in its rulings of 15 April 2004 and 25 May 2004, when interpreting Item 4 of Paragraph 3 of Article 105 and Paragraph 3 of Article 107 of the Constitution, the Constitutional Court held that:

- under the Constitution, only two state institutions – the Seimas and the Constitutional Court – have powers in impeachment proceedings; no other institutions are granted powers by the Constitution to participate in the conduct of impeachment;

- each of these state institutions are assigned, under the Constitution, the powers that are in line with their functions in impeachment proceedings: an impeachment case may be instituted only on a proposal (initiative) of members of the Seimas; a conclusion on whether the concrete actions of a person against whom an impeachment case has been instituted are in conflict with the Constitution is presented by the Constitutional Court; if the Constitutional Court draws the conclusion that the person against whom an impeachment case has been instituted has grossly violated the Constitution, the Seimas may remove such a person from office or may revoke his/her mandate of a member of the Seimas by not less than 3/5 majority vote of all the members of the Seimas;

– under the Constitution, only the Constitutional Court has the powers to decide whether the persons specified in Article 74 of the Constitution have grossly violated the Constitution if against them an impeachment case has been instituted (in view of the fact that a gross violation of the Constitution is also a breach of the oath, it has the powers to decide whether such persons have breached the oath); the conclusion of the Constitution Court that a person has grossly violated the Constitution (and, thus, has breached the oath) is final; no state institution, no state official, no other subject may change or revoke such a conclusion of the Constitution Court;

– if the Seimas, while following the Constitution, removes from office a state official specified in Article 74 of the Constitution or revokes his/her mandate of a member of the Seimas through impeachment proceedings, such a decision of the Seimas is final.

As noted in the Constitutional Court's ruling of 24 February 2017, under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on the beginning in the Seimas of impeachment proceedings against a concrete person.

28. The Constitution imposes on the Constitutional Court the constitutional duty to investigate whether a specific member of the Seimas has carried out the concrete actions specified in the respective inquiry to the Constitutional Court and to assess whether these actions are in conflict with the Constitution, and whether the Constitution has been violated grossly. While investigating whether the concrete actions of a member of the Seimas, which are specified in the corresponding inquiry of the Seimas, are in conflict with the Constitution, and whether the Constitution has been grossly violated, the Constitutional Court investigates and assesses the evidence provided, together with the inquiry, to the Constitutional Court, as well as all the other evidence obtained in the course of the consideration of the case before the Constitutional Court, which either confirms or denies the fact that a particular member of the Seimas has carried out the concrete actions specified in the inquiry, that these actions are in conflict with the Constitution, and that the Constitution has been grossly violated (the Constitutional Court's conclusions of 27 October 2010 and 3 June 2014).

29. The Constitutional Court has also held that the constitutional concept of impeachment implies fair legal proceedings, in which the priority is given to the protection of the rights of a person; the norms regulating impeachment must not only create an opportunity to remove a person from office, but also to ensure the rights of an impeached person (the Constitutional Court's rulings of 11 May 1999 and 27 April 2016); the protection of the rights of a person is guaranteed only if the proceedings are public, the parties to the proceedings have equal rights, and the legal disputes, in particular those regarding the rights of a person, are decided by ensuring that the said person has the right and opportunity to defend these rights (the Constitutional Court's ruling of 11 May 1999, its conclusion of 3 June 2014, and its ruling of 27 April 2016); in order that impeachment proceedings could be recognised to be in compliance with the principles of a state under the rule of law, these proceedings must be fair, which means that individuals must be equal both before the law and before the institutions carrying out impeachment, they must have both the right to be heard and a legally guaranteed opportunity enabling them to defend their rights; in a state under the rule of law, the right of persons to defend their rights is unquestionable; if the principles of fair legal proceedings were not observed in the course of impeachment, this would indicate the

failure to meet the requirements of a state under the rule of law (the Constitutional Court's ruling of 11 May 1999).

The requirement for fair legal proceedings gives rise to the duty of the legislature to establish a legal regulation that would create the preconditions for a member of the Seimas or a state official against whom impeachment is being, or has been, instituted to defend his/her rights at all stages of impeachment proceedings; the requirement for fair legal proceedings implies the duty of the state institutions that have constitutional powers in impeachment proceedings, i.e. the Seimas and the Constitutional Court, when they implement their respective functions in impeachment proceedings, to enable a person against whom impeachment is, or has been, instituted to implement his/her rights in these proceedings (the Constitutional Court's conclusion of 3 June 2014 and its ruling of 27 April 2016).

A member of the Seimas or a state official against whom impeachment is being, or has been, instituted has the right, as well as the obligation stemming from his/her oath, to participate in the impeachment proceedings; a member of the Seimas or a state official who has taken the oath to be faithful to the Republic of Lithuania and to respect and execute its Constitution and laws must respect state power institutions; thus, a member of the Seimas or a state official against whom impeachment is being, or has been, instituted has the obligation to arrive, when requested, at the state institutions that have constitutional powers in impeachment proceedings and to provide explanations for the actions that are a subject matter of the investigation and assessment carried out by these institutions (the Constitutional Court's conclusion of 3 June 2014).

30. In the context of the constitutional justice case at issue, it should be noted that, under the Constitution, the above-mentioned requirements for fair legal proceedings that apply to impeachment are not absolute. The Constitutional Court has noted that the values consolidated in the Constitution constitute a harmonious system, there is a balance among them; at the junction of the values protected by the Constitution, it is necessary to find the decisions ensuring that none of these values will be denied or unreasonably limited; otherwise, the balance among the values protected by the Constitution, the constitutional imperative of a harmonious and civil society, as well as the constitutional principle of a state under the rule of law, would be denied (*inter alia*, the Constitutional Court's rulings of 23 October 2002 and 4 March 2003).

31. Against this background, it should be noted that the requirement for the publicity of impeachment proceedings, which is meant to ensure the rights of an impeached person, must also be interpreted in the context of other constitutional values.

31.1. Paragraph 1 of Article 117 of the Constitution prescribes: "In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret."

The Constitutional Court has held that the provision "in all courts" of Paragraph 1 of Article 117 of the Constitution embraces the courts of all systems, the courts of all levels, and the courts of all instances (the Constitutional Court's ruling of 6 December 2012). The Constitutional Court is a part of the judicial power system

(the Constitutional Court's rulings of 6 June 2006 and 13 May 2010). Thus, Paragraph 1 of Article 117 of the Constitution also applies to court proceedings before the Constitutional Court, *inter alia*, in the course of considering a case for the purpose of determining whether the actions of an impeached person are in conflict with the Constitution.

31.2. In its ruling of 6 December 2012, the Constitutional Court, when interpreting Paragraph 1 of Article 117 of the Constitution, noted that the principle of the public consideration of cases in a court is not absolute; Paragraph 1 of Article 117 of the Constitution, in which the said principle is consolidated, provides both for certain exceptions to the publicity of the consideration of cases and for situations where a closed court hearing may be held; the publicity is limited for the purposes of protecting the private or public interest; the principle of the public consideration of cases in a court may also be limited by law with a view to protecting other constitutional values; in order to protect human dignity, the inviolability of private life (Article 22 of the Constitution), and other values whose protection stems from the Constitution, it is permitted to limit by law the publicity of separate elements of the process of the consideration of cases.

It should be mentioned that, under Paragraph 4 of Article 22 of the Constitution, also courts must protect everyone from arbitrary or unlawful interference in his/her private and family life, from encroachment upon his/her honour and dignity.

31.3. Thus, in the light of Paragraph 1 of Article 117 of the Constitution, in the context of the constitutional justice case at issue, it should be noted that, for the protection of the private or public interest, *inter alia*, in order to protect constitutional values such as human dignity and the inviolability of private life, certain elements of proceedings before the Constitutional Court in the course of considering a case on the constitutionality of the actions of an impeached person (*inter alia*, the hearing of the Constitutional Court in which evidence is examined, witnesses are questioned, and oral pleadings take place) may be not open to the public by a decision of the Constitutional Court.

This is also applicable *mutatis mutandis* when launching and carrying out impeachment proceedings at the Seimas.

32. In the context of the constitutional justice case at issue, it should also be noted that the requirement to enable a member of the Seimas or a public official against whom impeachment is being, or has been, instituted to defend his/her rights at all stages of the impeachment proceedings should also be interpreted in the context of other provisions of the official constitutional doctrine.

32.1. As mentioned above, under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on the beginning in the Seimas of impeachment proceedings against a concrete person. Thus, actions preceding the beginning of impeachment, i.e. before the Seimas adopts such a resolution (where such actions include, *inter alia*, the initiative of members of the Seimas to begin impeachment or the investigation of the reasonableness of the charges brought by them in a commission formed by the Seimas or in another structural unit of the Seimas), do not constitute a stage of impeachment proceedings; therefore, in the course of such actions,

a person against whom impeachment may be instituted need not be given the same conditions for the protection of his/her rights as a person against whom impeachment has been instituted and is under way. It should be noted that the creation of different conditions for defending his/her rights for a person against whom impeachment may be instituted can also be based, *inter alia*, on the above-mentioned purpose of protecting the private or public interest, among other things, on the objective to protect constitutional values such as human dignity and the inviolability of private life.

32.2. It is also necessary to take into account the fact that the Seimas by its nature and essence is an institution of a political character, whose decisions reflect the political will of the majority of the members of the Seimas and are based on political agreements and various political compromises (the Constitutional Court's conclusion of 31 March 2004 and its ruling of 27 May 2014). Therefore, the actions preceding impeachment, i.e. before the Seimas adopts a resolution on the beginning in the Seimas of impeachment proceedings against a concrete person (*inter alia*, the initiative of the members of the Seimas to begin impeachment, the investigation into the reasonableness of the charges filed by them in a commission formed by the Seimas or in another structural unit of the Seimas), which, as mentioned above, do not constitute a stage of impeachment proceedings, is a parliamentary procedure, which must not be regarded as a legal process *stricto sensu*, since, in the course of this parliamentary procedure, the Seimas does not decide on the application of constitutional liability of a person, but only whether there is a basis for beginning an impeachment. This parliamentary procedure must be regulated in such a way that would ensure due process, which means, *inter alia*, that a person against whom impeachment may be instituted must have a real opportunity to know what he/she is being accused of, to submit his/her explanations to the Seimas, or to a commission formed by the Seimas or to another structural unit of the Seimas that investigates the reasonableness of the charges brought against the said person, or, at the sitting of the Seimas in which it is decided on whether to begin impeachment, to respond to the arguments on which the charges against this person are based.

33. It has been mentioned that, under the Constitution, only two state institutions – the Seimas and the Constitutional Court – have powers in impeachment proceedings; an impeachment case may be instituted only on a proposal (initiative) of members of the Seimas; under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on the beginning in the Seimas of impeachment proceedings against a concrete person; a conclusion on whether the concrete actions of a person against whom an impeachment case has been instituted are in conflict with the Constitution is presented by the Constitutional Court; if the Constitutional Court draws the conclusion that the person against whom an impeachment case has been instituted has grossly violated the Constitution, the Seimas may remove such a person from office or may revoke his/her mandate of a member of the Seimas by not less than 3/5 majority vote of all the members of the Seimas.

33.1. As mentioned above, under the Constitution, only the Constitutional Court has the powers to decide whether the persons specified in Article 74 of the Constitution have grossly violated the Constitution if against them an impeachment case has been instituted (in view of the fact that a gross violation of the Constitution is also a breach of the oath, it has the powers to decide whether such persons have breached the oath). Therefore, when ensuring that impeachment proceedings as a whole would comply with the requirements of fair legal proceedings,

special importance is attached to the process of the consideration of the case before the Constitutional Court, during which it is decided whether the actions of an impeached person are in conflict with the Constitution. As mentioned above, during this process, the Constitutional Court may investigate and assess the evidence provided, together with the inquiry, to the Constitutional Court, as well as all the other evidence obtained in the course of the consideration of the case before the Constitutional Court, which either confirms or denies the fact that a particular member of the Seimas has carried out the concrete actions specified in the inquiry, the fact that these actions are in conflict with the Constitution, and the fact that the Constitution has been grossly violated and the oath of the member of the Seimas has been breached (the Constitutional Court's conclusions of 27 October 2010 and 3 June 2014). The rights of an impeached person are properly ensured in such a hearing of the Constitutional Court that is held in compliance with the principles of the right to defence, adversarial argument, and the equality of the rights of the parties, by giving a person against whom impeachment has been instituted and/or his/her representatives an opportunity to put forward their arguments concerning the evaluation of all significant evidence in deciding the issue of constitutional liability and by enabling the party concerned and/or his/her representatives to use other rights that are envisaged for the party concerned and/or his/her representatives.

33.2. In view of all the above, in the context of the constitutional justice case at issue, it should be held that, under the Constitution, impeachment proceedings as a whole should be considered fair and appropriate if, in compliance with the requirements of fair legal proceedings, a member of the Seimas the issue of whose constitutional liability is being decided and/or his/her representatives is/are given an opportunity to defend their interests both at the hearing of the Constitutional Court and at the Seimas where, following the entry into force of the conclusion of the Constitutional Court that the concrete actions of the person against whom the impeachment case was instituted are in conflict with the Constitution, impeachment proceedings are continued in accordance with the procedure established in the Statute of the Seimas.

IV

The legal regulation enshrined in international and EU legislation

34. In the context of the constitutional justice case at issue, it should be noted that the obligation to protect and defend human dignity and the inviolability of private life and the prohibition on discrimination based on sex or social status are enshrined in numerous international legal acts on the protection of human rights, such as:

– the Universal Declaration of Human Rights of 1948, Article 1 whereof provides that all human beings are born free and equal in dignity and rights; Article 5 whereof states, among other things, that no one shall be subjected to degrading treatment; Article 7 whereof stipulates that all are equal before the law and are entitled without any discrimination to equal protection of the law, and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination; and Article 12 whereof prescribes, *inter alia*, that no one shall be subjected to arbitrary interference with his/her privacy, family, nor to attacks upon his/her honour and reputation;

– the International Covenant on Civil and Political Rights of 1966, Article 3 whereof prescribes that States Parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights; Article 7 whereof states that no one shall be subjected to degrading treatment; Article 17(1) whereof provides, among other things, that no one shall be subjected to arbitrary or unlawful interference with his/her privacy or family, nor to unlawful attacks on his/her honour and reputation; and Article 26 whereof states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, which, in this respect, shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

– the International Covenant on Economic, Social and Cultural Rights of 1966, Article 2 whereof obliges States Parties to guarantee that the rights enunciated in this Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and Article 3 whereof obliges States Parties to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights;

– the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 1979, condemning all forms of discrimination against women; according to Article 11 whereof, on a basis of equality of men and women, women must be ensured the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment, and, according to Article 15 whereof, women are accorded equality with men before the law;

– the International Labour Organisation Convention (No 111) concerning Discrimination in Respect of Employment and Occupation of 1958, Article 1 whereof provides that discrimination means any distinction, exclusion, or preference made, *inter alia*, on the basis of sex, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, where “employment” and “occupation” include terms and conditions of employment, access to employment and to particular occupations, and access to vocational training;

– the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Article 3 whereof, *inter alia*, provides that no one shall be subjected to degrading treatment; Article 8 whereof states that everyone has the right to respect for his/her private and family life; and Article 14 whereof prohibits discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status;

– the European Social Charter (revised) of 1996, Article 26 whereof provides that, with a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, *inter alia*, to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work, and of recurrent reprehensible or distinctly negative and offensive actions directed against

individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;

– the Council of Europe Convention (2011) on preventing and combating violence against women and domestic violence, Article 40 whereof consolidates a prohibition on sexual harassment, obliges the Parties to take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment, is subject to criminal or other legal sanction.

35. It should also be noted that the protection of personal dignity, the right to inviolability of private life, as well as a prohibition on discrimination based on gender, are also enshrined in EU primary law:

– Article 2 of the Treaty on European Union provides, *inter alia*, that the European Union is founded on the following values: respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights; these values are common to the Member States in a society in which non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail;

– according to Article 1 of the Charter of Fundamental Rights of the European Union, human dignity is inviolable, it must be respected and protected; Article 7 of the Charter stipulates that everyone has the right to respect for his/her private and family life; Article 20 thereof states that everyone is equal before the law; Article 21 thereof prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation; under Article 31 thereof, every worker has the right to working conditions that respect, *inter alia*, his/her dignity.

36. EU secondary legislation consolidates *expressis verbis* a prohibition on conduct that has the characteristics of harassment and sexual harassment:

– the Council Resolution on the protection of the dignity of women and men at work (29 May 1990), which identifies sexual harassment as one of the causes of inequality; the Resolution states that conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work, including conduct of superiors and colleagues, constitutes an intolerable violation of the dignity of workers or trainees and is unacceptable if: such conduct is unwanted, unreasonable, and offensive to the recipient; a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision that affects that person's access to vocational training, access to employment, continued employment, promotion, salary, or any other employment decisions; and/or such conduct creates an intimidating, hostile, or humiliating work environment for the recipient;

– Commission Recommendation 92/131/EEC of 27 November 1991 on the protection of the dignity of women and men at work, which incorporates provisions similar to those of the Council Resolution of 29 May 1990;

– Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, according to which harassment is deemed to be any direct or indirect discrimination, when unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 2(3));

– Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (as amended), which states that “psychological harassment” means any improper conduct that takes place over a period, is repetitive or systematic, and involves physical behaviour, spoken or written language, gestures, or other acts that are intentional and that may undermine the personality, dignity, or physical or psychological integrity of any person (Article 12a(3) of the Staff Regulations of officials of the European Communities); “sexual harassment” means conduct relating to sex that is unwanted by the person to whom it is directed and that has the purpose or effect of offending that person or creating an intimidating, hostile, offensive, or disturbing environment; sexual harassment shall be treated as discrimination based on gender (Article 12a(4) of the Staff Regulations of officials of the European Communities);

– Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, whose Recital 6 states that “Harassment and sexual harassment are contrary to the principle of equal treatment between men and women and constitute discrimination on grounds of sex [...]. These forms of discrimination occur not only in the workplace, but also in the context of access to employment, vocational training and promotion. They should therefore be prohibited and should be subject to effective, proportionate and dissuasive penalties”; for the purposes of this Directive, “harassment” is understood as unwanted conduct related to the sex of a person occurring with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 2(1)(c)), and “sexual harassment” is understood as any form of unwanted verbal, non-verbal, or physical conduct of a sexual nature occurring with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating, or offensive environment (Article 2(1)(d)).

37. In the context of the constitutional justice case at issue, mention should also be made of the fact that the European Union Civil Service Tribunal, in its jurisprudence on psychological harassment, has noted that, in determining whether psychological harassment has occurred, two conditions must be satisfied: firstly, physical behaviour, spoken or written language, gestures must take place over a certain period, must be repetitive or systematic, i.e. psychological harassment must be perceived as a long and not accidental process, which means that the actions are repetitive or continuous, as well as “intentional”; secondly, this physical behaviour, spoken or written language, or gestures must have the effect of undermining the personality, dignity, or physical or

psychological integrity of a person. Physical behaviour, spoken or written language, gestures, or other actions must be conscious. Thus, it is not a requirement that such physical behaviour, spoken or written language, gestures, or other acts were committed with the intention of undermining the personality, dignity, or physical or psychological integrity of a person. There can be psychological harassment without the harasser's having intended, by his/her actions, to defame or humiliate the victim (the European Union Civil Service Tribunal, the judgment of 25 September 2012, *Moises Bermejo Garde*, F-41/10, Paragraphs 82 and 83). A contrary interpretation would result in depriving the provision of any useful effect, on account of the difficulty of proving the malicious intent of the perpetrator of an act of psychological harassment, and would not be in line with the concepts used in Council Directive 2000/78/EC of 27 November 2000; while there are cases where such intent can be inferred naturally from the reprehensible conduct of the person responsible for it, the fact is that such cases are rare and that, in the majority of situations, the alleged harasser is careful to avoid any conduct that could indicate his/her intention to discredit his/her victim or to impair the latter's working conditions. Psychological harassment cannot be interpreted as mere reprehensible conduct "with the purpose" of discrediting a person or impairing his/her working conditions; in order for there to be psychological harassment, it is sufficient that the reprehensible conduct to which it refers, namely "physical behaviour, spoken or written language, gestures", has "undermined the personality, dignity or physical or psychological integrity of any person", regardless of whether that conduct was committed with the intention to harm (the European Union Civil Service Tribunal, the judgment of 9 December 2008, *Q v Commission of the European Communities*, F-52/05).

38. Summing up the above-mentioned international and EU legislation, which is relevant to the constitutional justice case at issue, it should be held that both international law and EU law guarantee the protection and defence of the dignity of each individual, the inviolability of private and family life, as well as protection from any discrimination, *inter alia*, discrimination based on gender.

According to EU law, one of the forms of discrimination is harassment, *inter alia*, harassment based on gender, as well as sexual harassment; harassment degrades human dignity (*inter alia*, the personality of an individual), as well as disturbs the private life of an individual (*inter alia*, his/her physical and psychological integrity). Under EU law, harassment is understood as unwanted conduct that is expressed by physical actions or gestures, verbally, or in writing, and takes place over a period of time (*inter alia*, such conduct is repetitive or systematic) and that violates human dignity and creates an intimidating, hostile, humiliating, or offensive environment for an individual, regardless of whether or not such an environment was intended to be created; harassment based on gender is related to the sex of a person, and conduct of such a nature is understood as sexual harassment (sexual harassment is understood in the same way as in the Council of Europe Convention (2011) on preventing and combating violence against women and domestic violence).

V

The jurisprudence of foreign constitutional courts

39. In the context of the constitutional justice case at issue, it should be noted that the issues related to situations where conduct understood as sexual harassment brings about the degradation of the honour and dignity of a person have been examined in the jurisprudence of the constitutional courts of foreign countries on more than one occasion.

40. In its judgment passed as far back as on 13 December 1999, the Constitutional Court of Spain stated that sexual harassment is an attack on a particularly personal space that is closely linked to human dignity. Sexual harassment violates one of the fundamental rights and freedoms of a person – a person’s right to privacy – and degrades human dignity, this conduct may also be related to the prohibition, entrenched in the Constitution, on discrimination based on sex. In this judgment, sexual harassment is understood as physical or verbal (expressed in actions, gestures, or words) indecent and unwanted conduct that is unacceptable to a victim and that, according to intensity, frequency, and impact on the employee’s psychological integrity, should objectively be assessed as sufficiently serious as to create a hostile, offensive, and unpleasant environment in the workplace. The constitutional provisions guaranteeing a person’s right to privacy (Article 18 of the Spanish Constitution) protect a person only from such conduct of a sexual nature where the person who is subjected to this conduct does not yield to it. However, specific conduct is considered sexual harassment even if the victim does not show clear and categorical resistance, if it is obvious that the person sees such conduct as unwanted, and this conduct is always considered sexual harassment if the conduct is serious enough to be considered offensive.

The treatment of conduct as offensive cannot depend solely on the sensitivity of a person to such conduct, although this must be taken into account. The conduct must be assessed objectively, taking into consideration all the circumstances of a particular case, such as the intensity and frequency of the conduct, the existence of humiliating physical contact, or just signs of such contact, and also whether the conduct was manifested in the way of a tone that was too bold, whether it constituted insolent comments, or whether it affected the work performance; the impact on the psychological balance of the victim should also be assessed as an important factor in order to determine whether the atmosphere in the workplace seemed to be repressive for him/her.

The judgment also noted that the prohibition on harassment is in no way intended to create a cold working environment – the objective is rather to avoid such conduct that, if assessed objectively, would create a harsh and restraining environment at work, which would be felt not exclusively by the victim (the Constitutional Court of Spain, the judgment of 13 December 1999 in case no 224/1999).

41. In its judgment of 4 May 1989, the Supreme Court of Canada noted that sexual harassment is a form of sex discrimination. Sexual harassment is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. Sexual harassment is an abuse of power, i.e. using a position of power to import sexual requirements into the workplace. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

This judgment of the Supreme Court of Canada emphasised that the fact that only some, and not all, persons were subject to sexual harassment is not a valid reason to conclude that sexual harassment could not amount to discrimination on the basis of sex. While the concept of discrimination is rooted in the notion of treating an individual as part of a group rather than on the basis of the individual's personal characteristics, discrimination does not require uniform treatment of all members of a particular group. It is sufficient that the ascribing of a group characteristic to an individual is a factor in the treatment of that individual. If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value (the Supreme Court of Canada, the judgment of 4 May 1989 in case no 20241).

VI

The legal regulation relevant to the constitutional justice case

42. When assessing in this constitutional justice case whether Seimas member Kęstutis Pūkas has grossly violated the Constitution and breached the oath by the actions (specified in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas) that he performed in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions, the legal regulation consolidated in legal acts and establishing the rules of conduct of state politicians, as well as prohibiting conduct that has the characteristics of harassment, is of relevance.

43. The right of a member of the Seimas to have his/her assistants at work is entrenched in Article 16, titled "State Servants of Political (Personal) Confidence and Public Consultants of the Speaker of the Seimas and Members of the Seimas", of the Statute of the Seimas. Paragraph 2 of this article stipulates that state servants of political (personal) confidence of a member of the Seimas – secretaries assistants of a member of the Seimas – help the member of the Seimas to carry out parliamentary activity.

In the context of the constitutional justice case at issue, it should be noted that secretaries assistants of a member of the Seimas have the duty to assist the member of the Seimas to carry out parliamentary activity. Neither the Statute of the Seimas nor other legal acts provide for any other duties of assistants of a member of the Seimas.

44. The procedure and conditions of the recruitment of a secretary assistant of a member of the Seimas (who is a state servant of political (personal) confidence) and his/her legal status are regulated by the Republic of Lithuania's Law on State Service.

Item 2 of Paragraph 3 of Article 10 of this law provides that state servants of political (personal) confidence of the Seimas are recruited by the Secretary General of the Seimas in accordance with the procedure established in Article 12 of the Law on State Service and in the Statute of the Seimas. According to Article 12 of

the Law on State Service, state servants of political (personal) confidence are recruited without competition on the basis of a choice made by a state politician or a state institution as a collegial body.

It needs to be noted in an aspect relevant to this constitutional justice case that, according to the legal regulation laid down in the Law on State Service, the employer of a secretary assistant of a member of the Seimas is deemed to be the Office of the Seimas as a state institution, whose head – the Secretary General of the Seimas – recruits, among others, state servants of political (personal) confidence without competition, i.e. on the basis of a choice of the member of the Seimas. Such a legal regulation implies the duty of the member of the Seimas to perform and exercise separate functions and powers assigned to an employer and an employer's representative, *inter alia*, to decide on the selection and recruitment of the state servants of political (personal) confidence – secretaries assistants.

45. The principles and the basics of requirements in respect of the conduct of state politicians in public life are regulated by the Code of Conduct for State Politicians of the Republic of Lithuania. Article 4 thereof, titled "Principles of Conduct of State Politicians", provides that, in public life, a state politician (according to Paragraph 1 of Article 2 of this code, a member of the Seimas is also deemed a state politician) adheres, *inter alia*, to the following principles of conduct:

– "respect for an individual person and the state", which means "to respect and ensure fundamental human rights and freedoms, act in compliance with the Constitution and law, and increase confidence in the state and its institutions" (Item 1);

– "honesty", which means "to perform his/her duties honestly and adhere to the highest standards of conduct, and avoid situations that may influence taking the decisions that may raise doubts in society" (Item 3);

– "decency", which means "to act properly according to the office held, avoid situations when the politician's conduct could damage his/her, or the institution's in which he/she holds office, reputation and standing, avoid unfair ways of seeking advantage, and use the received official information only for performing his/her duties and not to make profit from it" (Item 5);

– "exemplariness", which means "to act properly in the public and respect the universally accepted norms of morality, morals, and ethics" (Item 6);

– "responsibility", which means "to bear responsibility for his/her conduct in public life, the decisions taken, and account for them to the public" (Item 9).

In this context, it should be noted that "the public life of a state politician" is deemed a state politician's political activities and his/her conduct not related to his/her private life (Paragraph 8 of Article 2).

It needs to be noted in an aspect relevant to this constitutional justice case that, under Article 4 of the Code of Conduct for State Politicians, a member of the Seimas, when performing his/her functions, must, in

his/her activities not related to his/her private life, among other things, follow the Constitution and law, respect human rights and freedoms and ensure them, increase confidence in the state and its institutions, adhere to the highest standards of conduct, avoid situations when the conduct of the member of the Seimas could damage his/her reputation and standing or those of the Seimas, respect the universally accepted norms of morality, morals, and ethics.

46. As mentioned above, the conclusion of the Special Investigation Commission pointed out that the actions of Seimas member Kęstutis Pūkas discriminated against the persons holding the positions of the secretaries assistants of the member of the Seimas and against the persons applying for these positions, and the Seimas Commission for Ethics and Procedures in its proposal indicated, *inter alia*, that Seimas member Kęstutis Pūkas “sought a benefit for himself by possibly sexually harassing the applying women”.

46.1. The implementation of equal rights for women and men is guaranteed and all discrimination on the grounds of sex is prohibited by the Republic of Lithuania’s Law on Equal Opportunities for Women and Men (wording of 8 November 2016).

Article 6, titled “An Employer’s or Employer’s Representative’s Responsibility for the Equal Rights of Women and Men at Work”, of this law (wording of 8 November 2016) establishes an obligation of an employer or an employer’s representative to implement equal rights for women and men, *inter alia*, when recruiting employees, to apply uniform selection criteria and conditions, except the case provided for in this law (Item 1), as well as to ensure that an employee is not subjected to harassment and sexual harassment (Item 4), which, in accordance with Article 2 of this law, are understood as unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, humiliating, or offensive environment (Paragraph 5), and as unwanted and insulting verbal, written, or physical conduct of a sexual nature directed against a person, with the purpose or effect of violating the dignity of the person, in particular, when creating an intimidating, hostile, humiliating, or offensive environment (Paragraph 6).

46.2. The implementation of the principle of non-discrimination is ensured by the Republic of Lithuania’s Law on Equal Treatment (wording of 8 November 2016). Article 7 thereof, titled “Duty of an Employer to Implement Equal Treatment at Work or in State Service”, stipulates that, when implementing equal treatment, an employer, regardless of an employee’s gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin, or religion, *inter alia*, must: apply equal selection criteria and conditions when recruiting, with the exception of the case referred to in this law (Item 1); take measures to prevent harassment of an employee or a state servant at work and to prevent giving instructions to discriminate against persons (Item 6); take measures to prevent sexual harassment of an employee or state servant (Item 7).

Paragraph 5 of Article 2 of this law (wording of 8 November 2016) defines harassment as unwanted conduct that has the purpose or effect of violating a person’s dignity, or of creating an intimidating, hostile,

humiliating, or offensive environment for him/her on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin, or religion.

46.3. To sum up the legal regulation laid down in Items 1 and 4 of Article 6, Paragraphs 5 and 6 of Article 2 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016), Items 1, 6, and 7 of Article 7 and Paragraph 5 of Article 2 of the Law on Equal Treatment (wording of 8 November 2016), as well as the provisions set out, in the aspects relevant to the constitutional justice case at issue, in the Statute of the Seimas and the Law on State Service, it should be noted that, according to them, a member of the Seimas, when acting as an entity performing and exercising the functions and powers of an employer and an employer's representative that are assigned to him/her by law, *inter alia*, when participating in the recruitment of his/her secretaries assistants, must apply uniform selection criteria and conditions and ensure that his/her secretaries assistants are not subject to harassment or sexual harassment; according to the legal regulation established in these legal acts, harassment is considered to be unwanted conduct related to the sex of a person that has the purpose or effect, *inter alia*, of violating the dignity of a person, and of creating an intimidating, hostile, humiliating, or offensive environment, whereas sexual harassment is understood as unwanted conduct of a sexual nature with the above-mentioned characteristics of harassment based on gender.

VII

Ensuring the requirements for fair legal proceedings in the impeachment proceedings against Seimas member Kęstutis Pūkas

47. In his explanations to the Constitutional Court, Seimas member Kęstutis Pūkas, the party concerned, pointed out and, when speaking at the hearing of the Constitutional Court, said that, during its meetings, the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas had committed procedural violations, barring the right to defence of the party concerned, *inter alia*, the right to know what he was being charged with, the right to be heard and provide explanations, and to ask questions to witnesses; therefore, the impeachment proceedings commenced by the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas did not conform to the constitutional concept of impeachment and could not be regarded as lawful.

48. It has been mentioned in this conclusion that, under the Constitution, impeachment proceedings begin only after the Seimas adopts a resolution on the beginning in the Seimas of impeachment proceedings against a concrete person; thus, actions preceding the beginning of impeachment, i.e. before the Seimas adopts such a resolution (where such actions include, *inter alia*, the initiative of members of the Seimas to begin impeachment or the investigation of the reasonableness of the charges brought by them in the Special Investigation Commission formed by the Seimas), do not constitute a stage of impeachment proceedings; therefore, in the course of such actions, a person against whom impeachment may be instituted need not be given the same conditions for the protection of his/her rights as a person against whom impeachment has been instituted and is under way; the above-mentioned actions preceding the beginning of impeachment is a parliamentary procedure that cannot be

regarded as a legal process *stricto sensu*: in the course of such a parliamentary procedure, the Seimas does not decide on the application of constitutional liability of a person, but only whether there is a basis for impeachment; the creation of different conditions for defending his/her rights for a person against whom impeachment may be instituted can be based, *inter alia*, on the objective to protect constitutional values such as human dignity and the inviolability of private life; in order to ensure due process in this procedure, a person against whom impeachment may be instituted must have a real opportunity to know what he/she is being accused of, to submit his/her explanations to the Seimas, to a commission formed by the Seimas, or to another structural unit of the Seimas that investigates the reasonableness of the charges brought against the said person, or to respond to the arguments on which the charges against this person are based at the sitting of the Seimas in which it is decided on whether to begin impeachment. It has also been mentioned that certain elements of the process when launching an impeachment at the Seimas may also be not open to the public.

48.1. In this context, it should be noted that Seimas member Kęstutis Pūkas participated in the Seimas evening sitting (No 34) of 16 March 2017, in which the proposal of the Seimas Commission for Ethics and Procedures to begin an impeachment against Seimas member Kęstutis Pūkas was discussed and the Seimas resolution (No XIII-232) of 16 March 2017 on the formation of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings was submitted, discussed, and adopted (list of attendance of members of the Seimas at the Seimas evening sitting (No 34) of 16 March 2017, placed on the website of the Seimas). At this sitting, Seimas member Kęstutis Pūkas did not speak (the short-hand record of the Seimas evening sitting (No 34) of the 2nd (spring) session of the Seimas).

48.2. It should be noted that, as it is clear from the material of this case and the speeches of the representatives of the petitioner at the hearing of the Constitutional Court, it was decided to organise non-public meetings of the Special Investigation Commission in order to protect the identity and private life of the persons who gave testimony during those meetings.

48.3. It is also clear from the material of this constitutional justice case that Seimas member Kęstutis Pūkas and/or his representative gave their explanations to the special investigation commission (formed by the Seimas) that investigated the reasonableness of the charges formulated in the proposal, submitted by the Seimas Commission for Ethics and Procedures, to begin impeachment proceedings against Seimas member Kęstutis Pūkas (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas; the shorthand records of the meetings of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas held on 19 and 26 April 2017; the Constitutional Court's case no 7/2017 (hereinafter referred to as the CCc), vol. II, pp. 139–152, 171b–176a; written explanations by Seimas member Kęstutis Pūkas to the Special Investigation Commission, the CCc, vol. III, pp. 96–102, 108–112)

48.4. Seimas member Kęstutis Pūkas also participated at the Seimas morning sitting (No 55) of 2 May 2017, in which the Seimas resolution (No XIII-338) on the assent to the conclusion of the Special Investigation Commission of the Seimas for the Investigation into the Reasonableness of the Proposal Submitted by the Seimas Commission for Ethics and Procedures to Begin Impeachment Proceedings against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings and the Seimas resolution (No XIII-339) of the Seimas of the Republic of Lithuania of 2 May 2017 on beginning an impeachment against Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, and applying to the Constitutional Court of the Republic of Lithuania were adopted (the list of attendance of members of the Seimas at the Seimas morning sitting (No 55) of 2 May 2017, placed on the website of the Seimas); thus, it was decided to begin the impeachment, however, after the request of the chairperson of the sitting to express opinions on the aforementioned draft legal acts, Seimas member Kęstutis Pūkas did not speak at the sitting (the shorthand record of the morning sitting (No 55) of the 2nd (spring) session of the Seimas).

49. Against this background, it should be held that, before the Seimas adopted the resolution to begin impeachment proceedings at the Seimas, Seimas member Kęstutis Pūkas, the party concerned, had the opportunity to know what he was being charged with; in addition, when considering the proposal of the Seimas Commission for Ethics and Procedures to begin an impeachment against Seimas member Kęstutis Pūkas, on whose basis, as mentioned above, it was decided to form the Special Investigation Commission, as well as in the Special Investigation Commission and in the sitting of the Seimas when considering the draft resolution of the Seimas whereby it was decided to begin the impeachment proceedings, Seimas member Kęstutis Pūkas was able to submit his explanations and respond to the arguments on which the charges against him were based.

50. As mentioned above, when ensuring, according to the Constitution, that impeachment proceedings as a whole would comply with the requirements of fair legal proceedings, special importance is attached to the process of the consideration of the case before the Constitutional Court, during which it is decided whether the actions of an impeached person are in conflict with the Constitution; impeachment proceedings as a whole should be considered fair and appropriate if, in compliance with the requirements of fair legal proceedings, a member of the Seimas the issue of whose constitutional liability is being decided and/or his/her representatives is/are given an opportunity to defend their interests both at the hearing of the Constitutional Court and at the Seimas where, following the entry into force of the conclusion of the Constitutional Court that the concrete actions of the person against whom the impeachment case was instituted are in conflict with the Constitution, impeachment proceedings are continued in accordance with the procedure established in the Statute of the Seimas; the rights of a person against whom an impeachment was commenced are properly ensured in such a hearing of the Constitutional Court that is held in compliance with the principles of the right to defence, adversarial argument, and the equality of the rights of the parties, by giving a person against whom impeachment has been instituted and/or his/her representatives an opportunity to put forward their arguments concerning the evaluation of all significant evidence in deciding the issue of constitutional liability and by enabling the party concerned and/or his/her representatives to use other rights that are envisaged for the party concerned and/or his/her representatives.

It has also been mentioned that, under the Constitution, the requirements for fair legal proceedings applicable to impeachment are not absolute, *inter alia*, the principle that judicial proceedings must be public is not absolute; in order to protect constitutional values such as human dignity and the inviolability of private life, certain elements of impeachment proceedings before the Constitutional Court (including the hearing of the Constitutional Court in which evidence is examined, witnesses are questioned, and oral pleadings take place) may be not open to the public by a decision of the Constitutional Court.

50.1. It should be noted that a letter from a justice of the Constitutional Court was sent to Seimas member Kęstutis Pūkas, requesting him to provide written explanations on the case under preparation (including explanations regarding the arguments of the petitioner in this case); representatives appointed by Seimas member Kęstutis Pūkas, representing Seimas member Kęstutis Pūkas, the party concerned, in this constitutional justice case, were provided access to the case file, Seimas member Kęstutis Pūkas and his representatives were sent summonses, which were signed by the President of the Constitutional Court and were duly served on them, to appear at the hearing of the Constitutional Court (the CCc, vol. I, pp. 43–44, 53–54, 150–152, 160).

50.2. In this constitutional justice case, written explanations of Seimas member Kęstutis Pūkas, the party concerned, are set out in the 22 August 2017 letter by Seimas member Kęstutis Pūkas (the CCc, vol. I, pp. 84–101).

50.3. At the hearing of the Constitutional Court that was held on 16 November 2017, the representatives of Seimas member Kęstutis Pūkas, the party concerned, were heard; during the oral pleadings, Seimas member Kęstutis Pūkas himself was heard at the hearing that took place on 20 November 2017.

As mentioned above, the specified reason of the non-appearance of Seimas member Kęstutis Pūkas, the party concerned, at the hearing of the Constitutional Court on 16 November 2017 was recognised to be not sufficiently significant.

50.4. The representatives of Seimas member Kęstutis Pūkas, the party concerned, were able to submit to the Constitutional Court requests and evidence and to participate in the investigation of evidence, to put questions in the case to other persons involved, to give explanations; Seimas member Kęstutis Pūkas, the party concerned, and his representatives were able to participate (and participated) in the oral pleadings, and could have the last word.

51. It should be held that, when considering at the Constitutional Court the case on the compliance of the actions of Seimas member Kęstutis Pūkas with the Constitution, a closed hearing of the Constitutional Court was held in order to protect the dignity and inviolability of the private life of the persons who gave testimony at the same hearing; the rights of Seimas member Kęstutis Pūkas to defend his rights in the court were ensured by allowing him and his representatives, *inter alia*, to have access to the constitutional justice case material, giving him the right to be heard, either by himself or his representatives, and present explanations in the case, as well as the rights to submit requests, to make disqualification motions, to put questions to witnesses, to participate in the oral pleadings, and to have the last word. Consequently, the impeachment proceedings when considering at the

Constitutional Court the case on whether the actions of Seimas member Kęstutis Pūkas were in conflict with the Constitution met the requirements of a fair legal process.

52. Thus, given the fact that, as mentioned above, the requirement to ensure due process in the course of performing corresponding actions at the Seimas before the adoption of the resolution of the Seimas to begin impeachment was not violated, as well as given the fact that the rights of Seimas member Kęstutis Pūkas to defence were ensured at the hearing of the Constitutional Court, there are grounds for asserting that, as a whole, the impeachment proceedings concerning the compliance of the actions of Seimas member Kęstutis Pūkas with the Constitution were fair and appropriate and, for this reason, should be considered legal.

VIII

The assessment of the compliance of the actions of Seimas member Kęstutis Pūkas, against whom impeachment proceedings have been commenced, with the Constitution

53. In the inquiry set out in Article 1 of its resolution (No XIII-339) of 2 May 2017, the Seimas requests the Constitutional Court to present a conclusion whether the actions of Seimas member Kęstutis Pūkas pointed out in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas are in conflict with the Constitution.

As mentioned above, it is clear from the Seimas resolution (No XIII-339) of 2 May 2017 and the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas that the Seimas requests the Constitutional Court to present a conclusion whether the actions (specified in the said conclusion) of Seimas member Kęstutis Pūkas that were performed in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions, by which, in the opinion of the Special Investigation Commission, the dignity of those persons was degraded, their private life was interfered with, and they were discriminated against, are in conflict with the Constitution.

Such actions of Seimas member Kęstutis Pūkas were evaluated in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas as a gross violation of the Constitution, *inter alia*, a gross violation of Articles 21, 22, and 29 thereof, as well as a breach of the oath of a member of the Seimas.

54. In the explanations submitted to the Special Investigation Commission, and in the written explanations received at the Constitutional Court in the course of the preparation of the case for the hearing of the Constitutional Court, also when speaking at the hearing of the Constitutional Court, Seimas member Kęstutis Pūkas disagreed with the charges formulated against him, denied that his actions in respect of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions had grossly violated the Constitution and breached the oath of a member of the Seimas (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the CCC, vol. III, pp. 96–102, 108–112; vol. I, pp. 84–94; the audio record of the hearing of the Constitutional Court, CD No 1).

55. In this constitutional justice case, the following has been established:

55.1. *Inter alia*, witnesses Nos 2 and 4 were recruited on the basis of political (personal) confidence as secretaries assistants of Seimas member Kęstutis Pūkas (witness No 2 worked as a secretary assistant of Seimas member Kęstutis Pūkas from 7 December 2016 until 3 January 2017 and witness No 4 worked as a secretary assistant of Seimas member Kęstutis Pūkas from 4 January 2017 until 2 February 2017) (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the letter on the provision of information, received from the Office of the Seimas, the CCc, vol. III, p. 28)

55.2. In January–February 2017, Seimas member Kęstutis Pūkas was selecting future employees to the position of his secretaries assistants. Seimas member Kęstutis Pūkas met with witnesses Nos 1, 3, and 5 among other persons applying for this job.

56. It should be mentioned that, subsequent to the applications of four persons, a pretrial investigation was launched by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office under Article 152, titled "Sexual harassment", of the Criminal Code of the Republic of Lithuania (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the shorthand record of the meeting of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas held on 29 April 2017, the CCc, vol. II, p. 23; the list of documents in pretrial investigation No 02-2-00154-17 submitted by a prosecutor from Division 2 of the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the CCc, vol. IV, p. 14).

57. The reasonableness of the charges formulated against Seimas member Kęstutis Pūkas in the conclusion of the Special Investigation Commission is to be evaluated on the basis of the following evidence examined in this case.

57.1. Witness No 4, when giving testimony at the pretrial investigation conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the record of the interrogation of the same witness of 17 March 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the CCc, vol. IV, pp. 79–85; the record of the interrogation of the same witness of 5 May 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the CCc, vol. I, pp. 60–61) and at the hearing of the Constitutional Court, stated, among other things, that:

– her official work as an assistant of Seimas member Kęstutis Pūkas began only as from 4 January 2017, although, in fact, she started work in this position as from 28 December 2016 and, without her consent, she did not receive any remuneration for that period;

– during the working hours, Seimas member Kęstutis Pūkas talked to her in a disrespectful and offensive manner, degraded her honour and dignity, commented on her appearance and physical qualities (for example:

“you are all so straight, graceful, sitting so beautifully”, “you are similar to a plank, like a spindly teenager [...]”, “what a girl you are today with a puffed skirt”), talked to witness No 4 about unacceptable intimate topics (for example, about the depilation of the area surrounding genital organs), allegedly sexually harassed her (according to the witness, he ran his hand over her back, over her thigh, touched her several times while talking to her), making witness No 4 feel confused, uncomfortable, and frightened;

– she was forced to carry out tasks related to the company UAB Pūkas, but not to her duties, as well as to take care of the personal well-being of the member of the Seimas (for example, to buy food, to perform daily chores, to cook); whenever she refused to do so, offensive, degrading, and disrespectful epithets followed her (for example: “good for nothing, incapable of doing anything”, “stupid, insolent”); in her presence, he spoke in a disrespectful and humiliating manner about his former secretary assistant, who is witness No 2;

– Seimas member Kęstutis Pūkas invited her to visit his living quarters at the hotel of the Seimas, to spend time together (for example, to prepare food, to watch movies);

– comments made by Seimas member Kęstutis Pūkas on her appearance and physical characteristics violated her personal space, were insulting, degrading her honour and dignity, and comments of an intimate nature and the unnecessary physical contact made her feel uncomfortable and unpleasant;

– one of the tasks assigned to her was to select other secretaries assistants of Seimas member Kęstutis Pūkas; the main selection criteria were the appearance of female candidates applying for this position (“required to be beautiful”) and their marital and social status (“without commitments”, “without a family, [...] with no better half”); job offer letters were sent to more than a hundred selected female applicants; there were no selected male applicants; more than 10 female applicants were invited to the job interview; witness No 4 was told not to tell them which member of the Seimas was seeking a secretary assistant; some of the candidates who refused their intention to take this position pointed out that this had been caused by the disrespectful conduct of Seimas member Kęstutis Pūkas during the job interviews;

– on 2 February 2017, almost a month after she began her official work, witness No 4 left the position of a secretary assistant of Seimas member Kęstutis Pūkas as a result of his above-mentioned conduct; the offensive, vulgar attitude and conduct of Seimas member Kęstutis Pūkas aimed at witness No 4 at the time when she worked with him caused her significant emotional and mental harm (for example, she subsequently refused a job where she would have had to work in the same office with her boss).

57.2. Witness No 3, when giving testimony at the pretrial investigation conducted by the Vilnius Local Prosecutor’s Office of the Vilnius District Prosecutor’s Office (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the record of the interrogation of the same witness of 22 March 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor’s Office of the Vilnius District Prosecutor’s Office, the CCC, vol. IV, pp. 59–62) and at the hearing of the Constitutional Court, stated, among other things, that:

– already during a telephone conversation with the secretary assistant (witness No 4) of Seimas member Kęstutis Pūkas regarding the position of a secretary assistant of a member of the Seimas, she was asked about her existing commitments after work;

– the first job interview with Seimas member Kęstutis Pūkas took place on 16 January 2017, during which witness No 4 was initially present and later it continued without her; the interview was business-like;

– the second job interview took place in the office of Seimas member Kęstutis Pūkas on 18 January 2017; they talked about future wages, it was stated that witness No 3 did not hold a higher education diploma, so, in the absence of the possibility of her official recruitment, she could be paid remuneration “in other ways”; after witness No 3 had decided that she was not interested in such a job offer and after saying so to Seimas member Kęstutis Pūkas, attempts were made to continue the interview;

– continuing the job interview, some records of the voice of witness No 3 were made for the Pūkas Radio station; Seimas member Kęstutis Pūkas later took witness No 3 to his living quarters at the hotel of the Seimas, asking her to help him transfer certain files from his mobile phone to a computer, although witness No 3 had assured him that she was not able to use the corresponding equipment;

– during the job interview that took place in the living quarters of Seimas member Kęstutis Pūkas at the hotel of the Seimas, the secretary assistant (witness No 4) of Seimas member Kęstutis Pūkas did not participate; witness No 3 was offered to use the massage bathtub in the bathroom, as well as exercise equipment on these premises, after a working day at the Seimas; at the hotel of the Seimas, no attempts were made to avoid the discussions of an intimate nature that were disturbing and offensive to witness No 3 (for example, *she was asked how a dissolute woman was different from a wanton woman, she was asked to attribute herself to one of these categories, she was told that he himself needed a dissolute woman and explained that the difference was related to the sexual activity of a woman*), to avoid statements degrading and humiliating women, stories in no way related to the nature of the work (for example, *about sex with drunk women, about girls' work in strip clubs*), comments were made on the physical characteristics and appearance of witness No 3 (“*wearing decent clothes, [...] natural*”, *it was noted that the witness had long legs, pouty lips*); due to this conduct of Seimas member Kęstutis Pūkas, witness No 3 felt humiliated, hurt, offended, confused, and frightened; Seimas member Kęstutis Pūkas emphasised that the female applicants with personal commitments were not suitable for taking the position; visiting the living quarters of Seimas member Kęstutis Pūkas at the hotel of the Seimas lasted about an hour and a half;

– after Seimas member Kęstutis Pūkas had driven witness No 3 to her destination, he hinted that she did not need to look for a residence in Vilnius, because she would be able to sleep at the hotel of the Seimas; following the statement of witness No 3 that she was no longer interested in the said position, Seimas member Kęstutis Pūkas continued making telephone calls to her several times, suggesting that she work as his assistant.

57.3. Witness No 5, when giving testimony at the pretrial investigation conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office (the material of the Special Investigation

Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the record of the interrogation of the same witness of 21 March 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the CCC, vol. IV, pp. 102–105) and at the hearing of the Constitutional Court, stated, among other things, that:

– during a telephone job interview, when talking to Seimas member Kęstutis Pūkas regarding the position of a secretary assistant of the member of the Seimas, he suggested that she could sleep at the hotel of the Seimas if she had no place to stay in Vilnius;

– during the job interview on 9 February 2017, Seimas member Kęstutis Pūkas commented on her appearance (for example, “*so petite*”), stressed their social and financial inequalities, wondered whether she would take care of him;

– Seimas member Kęstutis Pūkas did not speak about the nature of the work or the working hours, but, rather, developed ambiguous and intimate topics that were not related to the duties of a secretary assistant of the member of the Seimas (*according to the witness, for example, he asked what love was and how a dissolute woman was different from a wanton woman, analysed the relationship between men and women in a public place and in a private environment*), was interested in the applicant's personal relationships with her relatives, commented on her relationship with her boyfriend (for example, “*he stated that I was used and that my boyfriend [...] treated me as if I were meat*”, “*a male always wants to keep a female for himself*”), dropped other hints of a sexual nature that were degrading the honour and dignity of witness No 5 (for example, “*if you need physical pleasure, you can tickle yourself*”);

– these conversations caused witness No 5 tension and stress, made her feel afraid of physical contact and feel uncomfortable; finishing the interview, Seimas member Kęstutis Pūkas described the witness as a weak personality and asked her not to reveal the content of the interview.

57.4. Witness No 1, when giving testimony at the pretrial investigation conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the record of the interrogation of the same witness of 21 March 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor's Office of the Vilnius District Prosecutor's Office, the CCC, vol. IV, pp. 28–32) and at the hearing of the Constitutional Court, stated, among other things, that:

– already during a telephone conversation regarding the job interview, it was stressed that a person without family commitments (husband, children) was needed;

– during the job interview that took place in the office of the member of the Seimas on 23 February 2017, Seimas member Kęstutis Pūkas emphasised his exceptional social status and achievements (for example, *he bragged about his contact with influential people*), thus making witness No 1 feel inferior; he commented on her physical characteristics, appearance, body constitution (for example, “*your breasts are small*”, “*small breasts are*

not bad, because they are always beautiful, and because big breasts get saggy over time”), thus disturbing her; during the first job interview, Seimas member Kęstutis Pūkas was not interested in her competence necessary for the performance of the duties of a secretary assistant of a member of the Seimas, nor did he mention work as such, the working hours, or remuneration;

– after offering witness No 1 to drive her home, Seimas member Kęstutis Pūkas stopped at the hotel of the Seimas on the way to their destination, inviting her to go with him; in the living quarters of Seimas member Kęstutis Pūkas at the hotel of the Seimas, witness No 1 heard suggestive comments (such as *“is the bed nice? could be fun to lie around for a while one day”*) and was offered to sleep in his living quarters when he was not in Vilnius and to use the exercise equipment that was in his living quarters; the visit to the hotel of the Seimas lasted about 15 minutes; in the car, Seimas member Kęstutis Pūkas also made no attempts to avoid intimate and sexually explicit topics (such as *regarding differences between women and men, regarding homosexuals, etc.*), thus making witness No 1 feel awkward and uncomfortable;

– after this meeting, witness No 1 felt offended, humiliated, paralysed, and confused;

– having again come to the office of Seimas member Kęstutis Pūkas on 24 February 2017, witness No 1 photographed the sheets found on the desk with the contact details of the girls.

57.5. The photographs taken by witness No 1 show the lists of potential candidates to become a secretary assistant of Seimas member Kęstutis Pūkas, their names, contact information, and various written comments that essentially reflect their marital status (for example, *“living with her husband”*, *“has a husband”*, *“with a family”*, *“lives at her boyfriend’s place”*, *“lives with a boyfriend”*, *“has returned from England with a boyfriend”*) or appearance (for example *“a model”*, *“beautiful”*, *“good”*) (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the statement of the inspection taken place on 21 March 2017 and entered into pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor’s Office of the Vilnius District Prosecutor’s Office, the CCc, vol. IV, pp. 39–48).

57.6. In the constitutional justice case at issue, an application of witness No 2 (the CCc, vol. IV, p. 169) was also received, requesting the Constitutional Court to rely on her testimony given at the meeting of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the shorthand record of the meeting of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas held on 4 April 2017, the CCc, vol. II, pp. 42–51) and at the pretrial investigation conducted by the Vilnius Local Prosecutor’s Office of the Vilnius District Prosecutor’s Office (the record of the interrogation of the same witness of 19 May 2017 in pretrial investigation No 02-2-00154-17 conducted by the Vilnius Local Prosecutor’s Office of the Vilnius District Prosecutor’s Office, the CCc, vol. IV, pp. 63–65) where witness No 2 stated, among other things, that:

– during the working hours, Seimas member Kęstutis Pūkas, in assigning tasks, talked to her disrespectfully, used humiliating, abusive, insulting epithets (for example, *“foolish, stupid, not all there, dimwit”*),

injured her self-esteem (for example, “*you are an idiot, you are incapable of doing anything*”), did not create suitable working conditions (prevented her from being in the workplace during the working hours, did not give her compulsory breaks), gave her tasks that were not related to her direct duties (for example, interviewing the member of the Seimas for a show broadcast by Pūkas TV, analysing the correspondence with the company UAB Pūkas), and constantly emphasised his own superior status;

– while looking for his another secretary assistant, Seimas member Kęstutis Pūkas invited for job interviews only very young, very beautiful girls, but did not talk to them in his office;

– due to this conduct of Seimas member Kęstutis Pūkas, she felt extremely uncomfortable and unpleasant, the work became unbearable because of the constant psychological violence and the created stress; therefore, she decided to give up her job; having left the job, she had to visit a psychotherapist;

– when an applicant to the position of a secretary assistant of the member of the Seimas turned up who could not be employed at the Seimas because she did not meet the requirements for this position, the employment contract of witness No 2 was changed – it was stipulated therein that she would become a full-and-a-half-time employee, but she was warned that part of her salary would have to be paid to the new assistant.

57.7. It is clear from the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas that witness No 2 used the permit issued for her for accessing the Seimas on 6–7 and 14 December 2016, witness No 4 used her permit on 16, 21–23, and 28–30 December 2016, as well as on 2–6 and 9–10 January 2017, witness No 3 used her permit on 16 and 18 January 2017, witness No 5 used her permit on 9 February 2017, witness No 1 used her permit on 23–24 February 2017 (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, a letter from the VIP Protection Department under the Ministry of the Interior, the CCc, vol. III, pp. 31–37).

57.8. At the hearing of the Constitutional Court, testimony was given by the journalists from the media outlet Info TV – Rūta Juknevičiūtė, who was also questioned before the Special Investigation Commission (the material of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, the shorthand record of the meeting of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas held on 5 April 2017, the CCc, vol. II, pp. 68–76) and Dovilė Javinskaitė, who prepared the reports on whose basis, among other things, the Seimas Commission for Ethics and Procedures began an investigation into the actions of Seimas member Kęstutis Pūkas.

57.8.1. Rūta Juknevičiūtė testified that the female applicants for the position of a secretary assistant of the member of the Seimas had provided her with information about the unusual and disturbing nature, place, and time of the job interviews that did not comply with public morals; having talked to more than seven female applicants, it was decided to verify the received information by making a journalistic experiment.

Rūta Juknevičiūtė also explained that the duration of the video recording of the conversation with Seimas member Kęstutis Pūkas was up to one hour, while the report, which lasted about 6 minutes, showed only the key moments of the conversation.

57.8.2. Speaking at the hearing of the Constitutional Court, Dovilė Javinskaitė, who participated in the journalistic experiment on whose basis one of the reports of Info TV was prepared, indicated, among other things, that, during the job interview with Seimas member Kęstutis Pūkas for the position of a secretary assistant of the member of the Seimas, one of the essential issues was the fact whether she had a boyfriend; she was also told that the working hours of a secretary assistant of a member of the Seimas are not fixed and that she would have to perform various tasks (such as accompanying the member of the Seimas to events, helping him with things at the hotel of the Seimas). During the job interview, Dovilė Javinskaitė felt uncomfortable, the interview environment was very unpleasant.

57.9. In the course of preparing the constitutional justice case for consideration, the company UAB Laisvas ir nepriklausomas kanalas submitted to the Constitutional Court its material on whose basis the TV reports were prepared and shown on Info TV on 8 March 2017, 9 March 2017, and 14 March 2017, which, among other things, prompted the Seimas Commission for Ethics and Procedures to launch an investigation into the actions of Seimas member Kęstutis Pūkas (the CCc, DVD No 2).

57.9.1. As mentioned above, when submitting his written explanations to the Constitutional Court and during the oral pleadings at the hearing of the Constitutional Court, Seimas member Kęstutis Pūkas repeatedly emphasised that the experiment carried out by the journalists Rūta Juknevičiūtė and Dovilė Javinskaitė had been illegal; therefore, it should not be allowed to decide on the compliance of his actions with the Constitution based on this experiment.

57.9.2. In this context, it should be noted that, under Item 5 of Paragraph 2 of Article 41 of the Republic of Lithuania's Law on the Provision of Information to the Public, journalists must gather and publish information only by ethical and legal means. According to Paragraph 3 of Article 14 of this law, information about the private life of a public figure may be published without his/her consent where such information discloses, *inter alia*, his/her personal characteristics that are of public importance.

57.9.3. Assessing the material of the reports shown by Info TV and the way of obtaining the information provided in these reports (*inter alia*, the fact that some of the information was obtained through the use of secret video and audio recording equipment in the office of Seimas member Kęstutis Pūkas), it needs to be noted that, as the Constitutional Court has held, the Constitution guarantees and protects the interest of the public to be informed, *inter alia*, it guarantees and defends freedom of the mass media (*inter alia*, the Constitutional Court's rulings of 23 October 2002 and 26 January 2004); freedom of information, which is entrenched in the Constitution, is one of the foundations of an open, just, harmonious civil society and a democratic state, as well as an important precondition for the implementation of various rights and freedoms of a person that are enshrined in the Constitution (the Constitutional Court's ruling of 8 July 2005). The Constitutional Court has also noted that

the activities of state officials related to the implementation of the functions of state power and administration are always of a public nature (the Constitutional Court's ruling of 8 May 2000); the personal characteristics and conduct of persons participating in social and political activities may be important to public affairs; the interest of the public to know more about these persons than about others is constitutionally grounded; the media may inform the public about such a person without the consent of the latter inasmuch as the personal characteristics, conduct, and certain circumstances of the private life of the said person may be important to public affairs and, due to this, the published information is of public importance (the Constitutional Court's ruling of 23 October 2002).

57.9.4. In this context, it also needs to be mentioned that the European Court of Human Rights, when emphasising in its case law the essential role played by the mass media in society and when taking into account the interest of a democratic society to guarantee and protect freedom of the press, has stated that unjustified restrictions would prevent the mass media from playing its role of "public watchdog" (the ECtHR, the judgment of 23 September 1994, *Jersild v Denmark* [GC], no 15890/89; the judgment of 7 February 2012, *Axel Springer v Germany* [GC], no 39954/08); freedom of expression of journalists means that they are allowed recourse to a degree of exaggeration, or even provocation (the ECtHR, among others, the judgment of 15 February 2005, *Steel and Morris v the United Kingdom*, no 68416/01; the judgment of 29 March 2016, *Bédat v Switzerland* [GC], no 56925/08). Freedom of the press provides the public with one of the best ways to form an opinion on the ideas and views of political leaders; the increased attention of journalists and the public towards politicians, as well as detailed assessment of their speeches and actions, is inevitable; therefore, the latter must have bigger tolerance and must be aware of the possible consequences of their conduct (the ECtHR, the judgment of 25 March 1985, *Barthold v Germany*, no 8734/79).

The ECtHR also notes in its case law that the way in which important information that the public needs to know was obtained and its veracity are also important factors; it must be assessed whether the journalist was acting in good faith and on an accurate factual basis and provided reliable and precise information in accordance with the ethics of journalism; the use of hidden cameras to obtain information of general interest is permitted if the journalists who collect such information act in a manner where they cannot be accused of having deliberately acted in breach of professional ethics (the ECtHR, the judgment of 24 February 2015, *Haldimann and Others v Switzerland*, no 21830/09).

57.9.5. In view of this fact, it should be held that the reports material of the media outlet Info TV, on whose basis the TV reports were prepared, was collected in a public place – the Seimas – and was used to inform the public about the circumstances of the activities of the public person – Seimas member Kęstutis Pūkas, as such circumstances are of public significance, and about his personal qualities that are of public importance. Thus, there are no grounds for stating that the material received during the journalistic experiment was gathered illegally and cannot be used as evidence confirming the circumstances relevant to the constitutional justice case at issue.

57.10. It needs to be noted that information, made public during the television programme "Info diena" of the media outlet Info TV, about the conduct of Seimas member Kęstutis Pūkas towards the persons applying for the position of a secretary assistant of the member of the Seimas, as well as the testimonies of the journalists Rūta

Juknevičiūtė and Dovilė Javinskaitė, coincides with the testimonies given by witnesses Nos 1, 2, 3, 4, and 5 regarding the conduct of Seimas member Kęstutis Pūkas both in the Seimas and in his living quarters at the hotel of the Seimas and confirms that: the private life of the witnesses had been interfered with; there had been disrespectful comments on their appearance and physical characteristics; during the job interviews, disturbing, ambiguous wishes and suggestions had been expressed, which were disturbing to the female interviewees; other hints of a sexual nature or those insulting or humiliating the above-mentioned persons had been dropped; during the job interviews, among other things, topics that were of an intimate character and not related to work, which were unacceptable to the candidates, had been discussed. The information in the photographs made by witness No 1, showing the lists of potential female candidates to the position of a secretary assistant of Seimas member Kęstutis Pūkas, confirms the circumstances of the selection of secretaries assistants carried out by Seimas member Kęstutis Pūkas, i.e. the fact that he essentially focused not on the qualification of the female candidates, but exclusively on their appearance and physical characteristics, as well as their marital status.

57.10.1. On the basis of what has been established in this case, contrary to what is maintained by Seimas member Kęstutis Pūkas, the party concerned, there is no reason to believe that witnesses Nos 1, 3, 4, and 5 are not telling the truth or are pointing out circumstances that do not correspond to reality.

57.10.2. In addition, it should be noted that, contrary to what is stated by Seimas member Kęstutis Pūkas, the party concerned, the evidence gathered, investigated, and evaluated in this case and the established facts do not confirm that witnesses Nos 1–5 could be connected in any way with one another, that they are acquaintances, or that they, in concert or alone, are consciously conspiring against Seimas member Kęstutis Pūkas, or that their actions could be coordinated by a third person.

57.11. The statements by Seimas member Kęstutis Pūkas that, since, in his living quarters at the hotel of the Seimas, there is his office, which contains computer equipment necessary for making public the activities of the Seimas Anticorruption Commission and the Seimas Committee on State Administration and Local Authorities, of which he is/was a member, the persons holding the positions of his secretaries assistants should also visit it and work there, should be assessed critically.

57.11.1. An extract of the minutes No 113-P-1 of the meeting (held on 11 January 2017) of the Seimas Committee on State Administration and Local Authorities submitted by Seimas member Kęstutis Pūkas to the Constitutional Court states that, after considering the proposal of Kęstutis Pūkas, a member of this committee, that live recordings or reports of the meetings of the said committee should be made, it was decided “to make reports on individual issues, which are subject to prior agreement, only with the permission of the chair of the Committee” (the CCc, vol. V, p. 21).

It needs to be noted that this extract of the minutes No 113-P-1 of the meeting (held on 11 January 2017) of the Seimas Committee on State Administration and Local Authorities does not indicate that Seimas member Kęstutis Pūkas was entrusted with the preparation of specific reports on the activities of the Seimas Committee on State Administration and Local Authorities or was authorised to broadcast such reports to the public.

57.11.2. In view of this fact, there is no reason to believe that, in January–February 2017, during the job interviews regarding the position of a secretary assistant of the member of the Seimas, it was necessary for persons applying for the said position to visit the living quarters of Seimas member Kęstutis Pūkas at the hotel of the Seimas for the purpose of making public the activities of the Seimas Anticorruption Commission and the Seimas Committee on State Administration and Local Authorities.

58. It should be held that, in the constitutional justice case at issue, there is no doubt about the legality and reliability of the gathered and investigated evidence, and all the evidence analysed in this conclusion of the Constitutional Court must be considered appropriate in deciding whether Seimas member Kęstutis Pūkas has violated the Constitution by his actions.

59. Having assessed the evidence gathered and examined in this constitutional justice case, it should be held that Seimas member Kęstutis Pūkas:

– interacted in an uncivil and disrespectful manner with his female secretaries assistants at work and with the persons applying for these positions during the job interviews (on 16 January 2017, 18 January 2017, 9 February 2017, and 23 February 2017); when talking to them, he did not refrain himself from picking intimate, disturbing, sex-related, and other exclusively personal topics, which were not related with the responsibilities of a secretary assistant of a member of the Seimas, but were connected, *inter alia*, with the private life of these persons; he commented on their appearance and physical characteristics, he emphasised that his own social status was higher compared to the other employees or the women applying for the positions of his secretaries assistants, he made comments humiliating and degrading the women;

– he gave his secretaries assistants tasks of a personal nature, which were not related to parliamentary activities and direct responsibilities of a secretary assistant of a member of the Seimas;

– he invited only young women (girls) from his list of more than a hundred persons for job interviews for the position of a secretary assistant of the member of the Seimas; he gave preference to unmarried female candidates who did not maintain personal relations with anyone at the time; he made no attempt to find out whether the female candidates met the requirements set out in the job description for the position of a secretary assistant of a member of the Seimas, but only gave them disturbing and ambiguous proposals that were incompatible with job interview ethics;

– he met with the female candidates applying for the position of his secretary assistant not only at his workplace, but also in his living quarters at the hotel of the Seimas.

The testimony of the witnesses given in the case shows that the conduct of Seimas member Kęstutis Pūkas was seen by his secretaries assistants and the female candidates applying for this position as unwanted, unpleasant, humiliating, and offensive, this conduct made them feel uncomfortable, and caused their tension, stress, and fear; such conduct was systematic and continuous; as a result of the said conduct, some witnesses continue suffering from its negative consequences even now. Moreover, such conduct of Seimas member Kęstutis

Pūkas negatively affected the witnesses' opinion about the member of the Seimas as a representative of the Nation and about the Seimas as the representation of the Nation.

60. As mentioned above, under the Constitution, by taking the oath, a member of the Seimas assumes an unconditional obligation to observe all the values referred to in the oath, to act in the way that the oath taken obliges, and to breach the oath under no circumstances; the requirements, arising from the oath of a member of the Seimas and from the constitutional status of a member of the Seimas, to respect and uphold the Constitution and laws, to perform honestly the duties of a representative of the Nation, to act in the interests of the Nation and the State of Lithuania, and to refrain from conduct degrading the reputation and authority of the Seimas also determine the duty to respect the human rights entrenched in, and protected by, the Constitution and not to use the constitutional status of a member of the Seimas as a representative of the Nation to violate the constitutional rights and freedoms of other persons; the actions of a member of the Seimas that violate the constitutional rights or freedoms of other persons, especially if they are carried out using the constitutional status of a member of the Seimas, regardless of whether such conduct of a member of the Seimas is related to his/her parliamentary activities, can grossly violate the Constitution and breach the oath of a member of the Seimas, as well as degrade the reputation and authority of the Seimas – the representation of the Nation.

61. It has been mentioned that one of the forms of discrimination (including the degrading of human dignity), prohibited under Article 29 of the Constitution, is harassment, *inter alia*, harassment based on gender and sexual harassment; harassment based on gender is understood as unacceptable or unwanted conduct related to another person's gender, which is expressed by physical, verbal, or non-verbal actions (*inter alia*, by means of touch or gestures, verbally, in writing, or by means of pictures) and, among other things, has the purpose or effect of violating a person's dignity, or of creating an intimidating, hostile, humiliating, or offensive environment for him/her; the characteristic feature of sexual harassment, which is one of the forms of harassment based on gender, is conduct of a sexual nature seen as unwanted by a harassed person.

It has also been mentioned that harassment (*inter alia*, harassment based on gender or sexual harassment) inevitably encroaches on a person's physical or psychological inviolability, *inter alia*, disturbs his/her physical, mental, or spiritual state, restricts the expression of his/her freedom of physical activity, of his/her intellectual and creative freedoms, thus, also the expression of his/her free personality, and can make his/her relations with other persons more complicated; harassment can lead to long-term or even permanent consequences that adversely affect a person's private and social life.

61.1. In the context of the constitutional justice case at issue, it should be noted that harassment based on gender, *inter alia*, sexual harassment, which, among other things, are mentioned in the conclusion of the Special Investigation Commission, in which Seimas member Kęstutis Pūkas is accused of a gross violation of the Constitution, is characterised by the fact that such conduct may be expressed by means of a physical action or gesture, verbally or in writing (as, for instance, by means of touch, embracing, letters, stories, remarks, demonstrating certain images, etc.); usually, this conduct takes place over a period of time, it can be repetitive or systematic; such conduct is undesirable, i.e. unacceptable to the person affected by the said conduct; the content of

the conduct is related to the sex of a harassed person (in the case of sexual harassment, the content of the conduct is also sexual in nature, i.e. it can be vulgar, related to touching certain areas of the body, or to conversations on sex, pornography, sexual characteristics, etc.); this conduct has the purpose or effect of violating a person's dignity; in addition, this conduct has the purpose or effect of creating an intimidating, hostile, humiliating, or offensive environment for a person affected by it.

In the light of the said concept of harassment based on gender, *inter alia*, sexual harassment, it should also be noted that, in order to identify such harassment, it is not necessary that a harassed person should clearly and categorically oppose such conduct where it is clear that this person found it unwelcome and objectively offensive; assessing whether certain conduct is to be considered harassment, as well as harassment based on gender (*inter alia*, sexual harassment), consideration must be given to the fact how the harassed person perceived such conduct (*inter alia*, it is not necessary to establish that an individual who allegedly committed harassment did so with the purpose of violating a person's dignity or of creating an intimidating, hostile, humiliating, or offensive environment for him/her).

61.2. It should also be noted that, in the light of the said nature and consequences of harassment, *inter alia*, harassment based on gender and sexual harassment, and in view of the fact that, under Paragraph 4 of Article 22 of the Constitution, *inter alia*, courts protect everyone from arbitrary or unlawful interference with his/her private and family life, as well as from encroachment on his/her honour and dignity, committed harassment may not be denied simply because it is denied by a person who allegedly committed it, but it is necessary to take into account all relevant circumstances in order to identify committed harassment.

61.3. As mentioned above, harassment, *inter alia*, harassment based on gender and sexual harassment, violates the human rights to the protection of dignity and to the inviolability of the human person and of private life, as well as the right of non-discrimination, which are protected under Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 of the Constitution.

62. In this conclusion, when assessing the actions of Seimas member Kęstutis Pūkas that he performed in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions, the Constitutional Court took into consideration, *inter alia*, the facts that he invited only young women (girls) for the job interviews for the position of the secretary assistant of the member of the Seimas; he gave preference to unmarried female candidates who did not maintain personal relations with anyone at the time; without a valid reason or need, he interacted with the female candidates applying for the position of his secretary assistant not only at his workplace, but also in his living quarters at the hotel of the Seimas; he did not talk to the female candidates about subjects related to direct responsibilities, but, rather, about intimate, disturbing, unpleasant, sex-related, and similar sexual and other exclusively personal topics, commented on their appearance and physical characteristics, gave disturbing and ambiguous proposals; therefore, it should be held that the said actions of Seimas member Kęstutis Pūkas in principle correspond to the aforementioned characteristics of harassment based on gender and sexual harassment; thus, the said actions may be regarded as harassment based on gender, *inter alia*, sexual harassment. It has been established in this case that

the said actions of Seimas member Kęstutis Pūkas were seen by the persons holding the positions of his secretaries assistants and the persons applying for these positions as unpleasant, unwanted, and unacceptable; he treated in such a manner exclusively women (girls); thus, his conduct was directed against persons of the female sex; when speaking to the persons holding the positions of his secretaries assistants and the persons applying for these positions, Seimas member Kęstutis Pūkas emphasised his exceptional social status, *inter alia*, his property status and the position held by him, thus emphasising the stereotypical difference of the situation of persons of the different sexes; part of the actions of Seimas member Kęstutis Pūkas was of a sexual nature (conversations and remarks on the topics of sexual intercourse, of certain parts of the body of a person, etc.); such conduct was systematic (more than one person experienced harassment, which occurred on more than one occasion); the above-mentioned persons felt humiliated and offended, they felt uncomfortable, had to endure tension, stress, and fear, as well as suffered long-lasting unpleasant consequences. It needs to be noted that such actions of Seimas member Kęstutis Pūkas should also be objectively regarded as manifestly offensive and unacceptable; the said actions created an intimidating, humiliating, and offensive environment for the above-mentioned persons.

Although Seimas member Kęstutis Pūkas claims that he did not humiliate the above-mentioned persons, that he did not treat them in a disrespectful manner or harassed them, however, based on the examination and assessment of the evidence gathered in this case, it should be held that this evidence does not confirm the said statements of Seimas member Kęstutis Pūkas; quite to the contrary, as it has been mentioned, the information disclosed in the reports presented in the mass media about the conduct of Seimas member Kęstutis Pūkas, as well as the testimonies of the journalists who prepared the reports and have been questioned at the hearing at the Constitutional Court, coincide with the testimonies given by the other witnesses, and there are no grounds to believe that the witnesses – former secretaries assistants of Seimas member Kęstutis Pūkas or female candidates applying for this position – have testified falsely or pointed out circumstances that did not correspond to reality, that they are connected in any way with one another, that they are acquaintances, or that they, in concert or alone, are consciously conspiring against Seimas member Kęstutis Pūkas.

Thus, by such actions, which, as mentioned above, can be considered harassment based on gender and sexual harassment, Seimas member Kęstutis Pūkas degraded the dignity of his secretaries assistants and of the persons applying for this position, violated the right to the inviolability of their person and of their private life, as well as the right not to be discriminated against, which are protected under Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 of the Constitution.

63. In the context of the constitutional justice case at issue, it should also be noted that, as mentioned above, according to the Constitution, the oath of a member of the Seimas gives rise to the duty to respect and uphold not only the Constitution, but also the laws.

63.1. It has been mentioned that, under Paragraph 2 of Article 16 of the Statute of the Seimas, state servants of political (personal) confidence of a member of the Seimas – secretaries assistants of a member of the Seimas – help the member of the Seimas to carry out parliamentary activity; neither the Statute of the Seimas nor

other legal acts provide for any other duties of assistants of a member of the Seimas, with the exception of the duty of assisting the member of the Seimas to carry out parliamentary activity.

63.2. It has been mentioned that, under Article 4 of the Code of Conduct for State Politicians, a member of the Seimas, when performing his/her functions, must, in his/her activities not related to his/her private life, among other things, follow the Constitution and law, respect human rights and freedoms and ensure them, increase confidence in the state and its institutions, adhere to the highest standards of conduct, avoid situations when the conduct of the member of the Seimas could damage his/her reputation and standing or those of the Seimas, respect the universally accepted norms of morality, morals, and ethics.

63.3. It has also been mentioned that, under the legal regulation laid down in Items 1 and 4 of Article 6, Paragraphs 5 and 6 of Article 2 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016), Items 1, 6, and 7 of Article 7 and Paragraph 5 of Article 2 of the Law on Equal Treatment (wording of 8 November 2016), a member of the Seimas, when acting as an entity performing the functions and powers of an employer and an employer's representative that are assigned to him/her by law, *inter alia*, when participating in the recruitment of his/her secretaries assistants, must apply uniform selection criteria and conditions and ensure that his/her secretaries assistants are not subject to harassment or sexual harassment; according to the legal regulation established in these legal acts, harassment is considered to be unwanted conduct related to the sex of a person that has the purpose or effect, *inter alia*, of violating the dignity of a person, and of creating an intimidating, hostile, humiliating, or offensive environment, whereas sexual harassment is understood as unwanted conduct of a sexual nature with the above-mentioned characteristics of harassment based on gender.

63.4. Taking into account the circumstances established in this case, the Court finds that: Seimas member Kęstutis Pūkas, when inviting the young women (girls) for the job interviews for the position of a secretary assistant of the member of the Seimas and when giving preference to unmarried female candidates who did not maintain personal relations with anyone at the time, violated Item 1 of Article 7 of the Law on Equal Treatment (wording of 8 November 2016) and Item 1 of Article 6 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016); Seimas member Kęstutis Pūkas, when he interacted with the female candidates applying for the position of his secretary assistant not only at his workplace, but also, without a valid reason or need, in his living quarters at the hotel of the Seimas, when, instead of talking to the female candidates about subjects related to direct responsibilities, he chose intimate, disturbing, unpleasant, sex-related, and similar sexual and other exclusively personal topics, commented on their appearance and physical characteristics, gave disturbing and ambiguous proposals, and when he otherwise interacted in an uncivil, disrespectful, and offensive manner with those persons and created an uncomfortable, humiliating, or offensive environment for them, did not comply with the provisions of Article 4 of the Code of Conduct for State Politicians; Seimas member Kęstutis Pūkas, when giving his secretaries assistants tasks of a personal nature, which were not related to parliamentary activities, violated Paragraph 2 of Article 16 of the Statute of the Seimas; by his actions in respect of his secretaries assistants, Seimas member Kęstutis Pūkas also violated Items 6 and 7 of Article 7 of the Law on Equal Treatment (wording of 8 November 2016) and Item 4 of Article 6 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016). The actions of Seimas member Kęstutis Pūkas in interacting with his

secretaries assistants may be considered to be harassment under Paragraph 5 of Article 2 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016) and Paragraph 5 of Article 2 of the Law on Equal Treatment (wording of 8 November 2016), *inter alia*, sexual harassment under Paragraph 6 of Article 2 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016).

64. It has been mentioned that, due to the discriminatory nature of harassment, which brings about the degradation of human dignity, as well as because of the consequences of harassment, such conduct of a member of the Seimas that may be considered to be harassment inevitably undermines the reputation and authority of the Seimas – the representation of the Nation – and discredits state authority irrespective of whether the said conduct of a member of the Seimas is related to his/her parliamentary activity or the use of his/her constitutional status; such conduct of a member of the Seimas that can be regarded as harassment based on gender, *inter alia*, as sexual harassment, should be considered a gross violation of the Constitution, *inter alia*, of Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 thereof, as well as a breach of the oath of a member of the Seimas.

It has also been mentioned that, according to the Constitution, the oath of a member of the Seimas gives rise to the duty to respect and uphold not only the Constitution, but also the laws.

Thus, it should be held that the actions of Seimas member Kęstutis Pūkas, which are specified in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions were discriminatory and degrading to human dignity and they should be regarded as harassment based on gender, *inter alia*, sexual harassment; therefore, these actions grossly violated the Constitution, *inter alia*, the provisions of Paragraphs 1, 2, and 3 of Article 21, Paragraphs 1 and 4 of Article 22, and Article 29 thereof, as well as violated Paragraph 2 of Article 16 of the Statute of the Seimas, Article 4 of the Code of Conduct for State Politicians, as well as the corresponding provisions of Paragraph 5 of Article 2 and Items 1, 6, and 7 of Article 7 of the Law on Equal Treatment (wording of 8 November 2016), Paragraphs 5 and 6 of Article 2, as well as of Items 1 and 4 of Article 6 of the Law on Equal Opportunities for Women and Men (wording of 8 November 2016).

65. Consequently, it should also be held that, in doing so, Seimas member Kęstutis Pūkas disregarded the requirements, arising from the oath of a member of the Seimas and from the constitutional status of a member of the Seimas, to respect and uphold the Constitution and laws, to refrain from conduct degrading the reputation and authority of the Seimas – the representation of the Nation, and not to violate the constitutional human rights and freedoms; in addition, when holding the position of a member of the Seimas, Seimas member Kęstutis Pūkas did not follow the Constitution and the values protected by it, and violated the laws. Thus, Seimas member Kęstutis Pūkas has failed to act in the way that the oath taken by a member of the Seimas obliged and he has discredited the reputation and authority of the Seimas as the representation of the Nation.

66. In the light of the foregoing arguments, the conclusion should be drawn that the actions of Seimas member Kęstutis Pūkas, which are specified in the conclusion of the Special Investigation Commission for the Impeachment of Seimas Member Kęstutis Pūkas, in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions are in conflict with the Constitution. By these actions, Seimas member Kęstutis Pūkas has grossly violated the Constitution and breached the oath.

67. It has been mentioned that the objective of impeachment proceedings is to decide the question of constitutional liability; according to the Constitution, impeachment does not constitute the application of criminal liability, although sometimes the same unlawful actions may incur both constitutional and other legal liability, for example, criminal liability; the fact whether, in addition to constitutional liability, they also incur other legal liability, depends on whether the legal system recognises that the same unlawful actions can violate not only the legal values protected by the Constitution, but also those protected by other legal acts.

In view of the above, it should be noted that this conclusion of the Constitutional Court that, by his actions in respect of the persons holding the positions of the secretaries assistants of the member of the Seimas and in respect of the persons applying for these positions, Seimas member Kęstutis Pūkas has grossly violated the Constitution and breached his oath results in the application of constitutional liability to Seimas member Kęstutis Pūkas, however, does not imply, *ipso facto*, the application of other (*inter alia*, criminal) liability to him.

Conforming to Paragraph 3 of Article 105 of the Constitution of the Republic of Lithuania and Articles 73 and 83 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania adopts the following

conclusion:

The actions of Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, which are specified in the conclusion of the Special Investigation Commission of the Seimas of the Republic of Lithuania for the Investigation into the Reasonableness of the Submitted Proposals to Begin Impeachment Proceedings Against Kęstutis Pūkas, a Member of the Seimas of the Republic of Lithuania, and for Drawing up a Conclusion Regarding the Grounds for Beginning the Impeachment Proceedings, are in conflict with the Constitution of the Republic of Lithuania. By these actions, Kęstutis Pūkas, a member of the Seimas of the Republic of Lithuania, has grossly violated the Constitution of the Republic of Lithuania and breached the oath.

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

Justices of the Constitutional Court: Elvyra Baltutytė

Gintaras Goda

Vytautas Greičius

Danutė Jočienė

Gediminas Mesonis

Vytas Milius

Daiva Petrylaitė

Janina Stripeikienė

Dainius Žalimas