Case No. 26/2014-4/2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

IN THE NAME OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF CERTAIN PROVISIONS OF THE RULES ON THE AMOUNTS AND PAYMENT OF REMUNERATION TO ADVOCATES FOR THE PROVISION AND COORDINATION OF SECONDARY LEGAL AID (WORDINGS OF 2 MAY 2006 AND 18 JULY 2012) AS APPROVED BY THE 22 JANUARY 2001 RESOLUTION (NO. 69) OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

9 July 2015 No. KT20-N13/2015

Vilnius

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

The court reporter—Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Article 1 and 53^1 of the Law on the Constitutional Court of the Republic of Lithuania, at the Court's public hearing, on 7 July 2015, considered under written procedure constitutional justice case No. 26/2014-4/2015 subsequent to:

1) petition No. 1B-30/2014 of the Vilnius City Local Court, a petitioner, requesting an investigation into whether Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006) as approved by the Resolution of the Government of the Republic of Lithuania (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 monthly minimum salaries, was in conflict with Paragraph 1 of Article 48 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law;

2) petition No. 1B-1/2015 of the Klaipėda City Local Court, a petitioner, requesting an investigation into whether the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 18 July 2012) as approved by the Resolution of the Government of the Republic of Lithuania (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as they established that, for the provision of secondary legal aid, advocates were paid fixed amounts of remuneration not related to the government-approved minimum monthly salary, were in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

By the Constitutional Court's decision of 23 June 2015, the aforesaid petitions were joined into one case and it was given reference No. 26/2014-4/2015.

The Constitutional Court

has established:

I

1. The Vilnius City Local Court, a petitioner, was investigating a civil case subsequent to the claim filed by the claimant, an advocate rendering secondary legal aid where necessary, requesting that the court should award her the unpaid part of her remuneration, i.e. that she should be duly paid the additional remuneration for "all the representation" in a certain criminal case.

The claimant had concluded an agreement with the Vilnius State-Guaranteed Legal Aid Service regarding the provision of secondary legal aid where necessary, where it was provided that an advocate was obliged, upon the decisions of the Service, to render secondary legal aid where necessary and had the right to receive remuneration in the amount established by the Government. Even though, under this agreement, secondary legal aid had been rendered in a certain criminal case (according to the calculation of the claimant, the legal aid had been rendered for more than 300 hours), the Vilnius State-Guaranteed Legal Aid Service, referring to Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006) (hereinafter also referred to as the

Rules) as approved by government resolution No. 69 of 22 January 2001, paid the highest possible additional remuneration, however, the said Service did not remunerate for all the time of the rendering of secondary legal aid in that case.

2. The essence of the doubt raised by the Vilnius City Local Court, a petitioner, regarding the compliance of Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) with the Constitution is the lost remuneration for rendered secondary legal aid, i.e. it is raised in the context of proper payment of remuneration for all the time of providing such aid.

Under Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006), additional remuneration at a certain stage of proceedings may not exceed four minimum monthly salaries (hereinafter also referred to as the MMS). After such a legal regulation has restricted the right to receive the remuneration for all the time of providing secondary legal aid, the constitutional right of a person to receive fair pay for work and the constitutional principle of a state under the rule of law are violated.

3. The Klaipėda City Local Court, a petitioner, was considering a civil case subsequent to the claim of the claimants (advocates rendering secondary legal aid on a regular basis) regarding the judicial award of unpaid remuneration.

The claimants had concluded the agreements with the Klaipėda State-Guaranteed Legal Aid Service regarding the provision of secondary legal aid on a regular basis, where it was provided that an advocate was obliged, upon the decisions of the Service, to render secondary legal aid on a regular basis and had the right to receive regular remuneration in the amount established by the Government. According to the claimants, the remuneration arrears accumulated after the MMS was increased as from 1 August 2012 and the amended Rules established the fixed-amount remuneration that was no longer related to the MMS.

4. The doubt of the Klaipėda City Local Court, a petitioner, regarding the compliance of the Rules (wording of 18 July 2012) with the Constitution is raised essentially both in the context of the reduction (saving) of the state budget funds from which secondary legal aid is financed and in the aspect of defending the rights of ownership (to the formerly paid remuneration calculated using the size of the MMS) of persons.

4.1. After the Rules had been set forth in their new wording of 18 July 2012, the legal regulation, under which the amounts of remuneration paid to advocates for the provision of secondary legal aid used to be calculated by applying the MMS-based coefficients, was rescinded and fixed amounts of this remuneration were established. Once such legal regulation was consolidated, this remuneration is no longer changing on the grounds of the economic indicators of the state.

Secondary legal aid is financed from the state budget, thus, in the aspect of pay for work, the advocates rendering secondary legal aid may be equated to judges, prosecutors, state politicians, and state officials. Under the laws, the amounts of remuneration of judges and the amounts of remuneration of prosecutors are related to the law-established basic sizes that are changing due to both the average annual inflation and other factors affecting

the amount of and changes in the average work remuneration in public sector. The MMS used to be an equivalent of a basic size while calculating the remuneration for the advocates for the provision of secondary legal aid. According to the impugned legal regulation, the advocates rendering secondary legal aid found themselves in a worse situation than judges and prosecutors working in the same system, thus, such legal regulation is in conflict with Article 29 of the Constitution.

4.2. The fair pay for work which is consolidated in Paragraph 1 of Article 48 of the Constitution, taking into account the sphere of activity, is regulated by means of legal acts in a different manner: in the private sector, minimum requirements are established by means of legal acts in order to defend the interests of the parties of the relation, society and the state, whereas in the sector of public governance the state controls fair pay for work in all the aspects.

Since, as from 1 August 2012, the MMS was increased, the expenses for ensuring the provision of secondary legal aid would have increased as well. An increase in the MMS may not be assessed as an extreme situation, when the funds necessary for the payments may be reduced. Therefore, by rescinding the legal regulation under which the remuneration for the provision of secondary legal aid is related to the MMS, the principles of the protection of legitimate expectations, legal certainty, and legal security have been violated.

4.3. The remuneration for advocates for the provision of secondary legal aid, which used to be calculated on the basis of the MMS, is an object of the right of ownership of a person and it is defended by the Constitution.

II

1. In the course of the preparation of the case for the Constitutional Court's hearing, written explanations (concerning petition No. 1B-30/2014 of the Vilnius City Local Court) were received from the representatives of the Government, the party concerned, who were Aurelija Giedraitytė, Head of the Division of Legal Assistance of the Legal Institutions' Department of the Ministry of Justice of the Republic of Lithuania, and Virginijus Varnaitis, chief specialist of the Division of Legal Representation of the said ministry, in which it is maintained that Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006), insofar as it provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 MMSs, was not in conflict with the Constitution. The position of the representatives of the party concerned is substantiated by the following arguments.

1.1. The remuneration for advocates for the provision of secondary legal aid is paid under the contracts concerning the provision of reimbursable services (civil law contracts) concluded between advocates and state-guaranteed legal aid services. Thus, there are civil legal relations, rather than employment legal relations, between advocates rendering secondary legal aid and the state. Differently from the parties of employment legal relations, where one of them, the employer, is considered the stronger party of the relations, whereas the second party, the employee, is considered to be the weaker one, the parties of civil legal relations are equal and one of the most important principles of these relations is the principle of freedom of contract. This principle grants the right for the subjects of civil legal relations to freely decide whether they should or should not conclude a certain agreement.

When concluding such an agreement, the advocates assess the conditions proposed to them by the state for the provision of services and, by signing this agreement, they agree with these conditions, as well as with the remuneration for the provided services as established by the Government.

1.2. The Government must establish a system of remuneration for secondary legal aid so that such a system could ensure the rational use of the funds of the state budget, since the financial resources of the state are limited. In the market of legal services there are different models of payment for provided services: the parties may agree on remuneration for the actual time spent, or on fixed remuneration for a certain case, or a mixed way of payment for the services could be applied, etc. The Government consolidated a mixed system of payment for the provided secondary legal aid for the advocates rendering secondary legal aid where necessary: taking account of the number of hours which is provided for the case, the amount to be paid for the concrete case is provided for together with the maximum additional payment for secondary legal aid, i.e. in voluminous legal cases the state pays fixed-amount remuneration for the services of an advocate. It needs to be emphasised that no constitutional provision implies the duty for the state to establish a concrete model of payment for the state-guaranteed legal aid services. The system of remuneration for secondary legal aid as consolidated in Lithuania has the features of the so-called *lump sum* system of payment, as it establishes a maximum (fixed) payable remuneration for the state-guaranteed legal aid. The systems of payment for the state-guaranteed legal aid based on the *lump sum* model are also applied in foreign states, for example, in the Republic of Malta, the Republic of Estonia, the Slovak Republic, the Kingdom of the Netherlands, etc.

1.3. Upon concluding an agreement with the state regarding the provision of secondary legal aid, the advocate acquires a legitimate expectation that the remuneration established by the Government will be paid to him/her for his/her services. This legitimate expectation is guaranteed and implementable. The expectation to receive a higher remuneration than the established one does not stem either from the Constitution or from laws or other legal acts, thus, it may not be legitimate. Nor does a state duty stem from the Constitution to establish and pay the remuneration of an unlimited maximum amount to the advocates who render secondary legal aid. The state has the right and the duty at the same time to establish such a model of payment for the provided services which would be the most effective in an effort to achieve the objectives of the state-guaranteed legal aid. As the state is a participant of civil relations on the same grounds as other participants of these relations—private subjects, it would be unreasonable to state that the same legal relations are legitimate (compliant with the provisions of the Constitution) in one case (between two private subjects) and illegitimate (in conflict with the Constitution) in another case. Thus, neither the principle of the protection of legitimate expectations nor the constitutional principle of a state under the rule of law have been violated.

2. In the course of the preparation of the case for the Constitutional Court’s hearing, written explanations (regarding petition No. 1B-1/2015 of the Klaipėda City Local Court) were received from V. Varnaitis, the representative of the Government, the party concerned, in which it was stated that the Rules (wording of 18 July 2012), insofar as they established that, for the provision of secondary legal aid, advocates were paid fixed amounts of remuneration not related to the government-approved MMS, were not in conflict with the

Constitution. The position of the representative of the party concerned is substantiated by the following arguments.

2.1. The activity of the advocates is a certain individual professional activity linked to the provision of the respective legal services even in the case when the advocates are paid for the provided services from state budget funds. When concluding an agreement regarding the provision of secondary legal aid, the advocates, as persons engaged in individual professional activity and as legal professionals, assess both the conditions of provision of services proposed to them by the state and a possible risk, and, by signing it, they confirm that they agree with these conditions, including the remuneration established by the Government for the provided services.

The advocates rendering secondary legal aid may not be equated to judges, prosecutors, state politicians, or state officials, as they are related to the state by the civil contractual relations; the advocates are not related to the state by the legal employment or state service relations. Even though Paragraph 1 of Article 33 of the Republic of Lithuania's Law on State-Guaranteed Legal Aid provides that secondary legal aid is funded from the state budget, however, in comparison with judges, prosecutors, state politicians, state officials or state servants, the legal ground for paying remuneration to advocates is different. The agreements concluded between advocates and the state-guaranteed legal aid services are not employment agreements, but agreements of civil nature regarding payable services, whereby one agrees not on the systematic payment of work remuneration, but on the remuneration for a concretely provided service—the state-guaranteed secondary legal aid. Thus, the arguments of the petitioner regarding the violation of the provision of Paragraph 1 of Article 48 of the Constitution are not substantiated.

2.2. Neither laws nor substatutory legal acts provide that the remuneration for advocates for the provided secondary legal aid must be calculated on the basis of the MMS.

The law grants the Government the powers to establish a model of payment and amounts of remuneration. Article 17 of the Law on State-Guaranteed Legal Aid emphasises that the amount of remuneration for advocates must be established in such a way so as to promote an amicable settlement of disputes and to ensure the efficient and economic use of the state budget funds allocated for the state-guaranteed legal aid. By signing an agreement regarding the provision of secondary legal aid, the advocates rendering secondary legal aid agree that they will be paid the remuneration in the government-fixed amount under the rules established by the Government.

2.3. The formerly valid legal regulation under which the remuneration for the advocates rendering secondary legal aid was related to the MMS was faulty, as the MMS is established in an attempt to regulate the labour force price and to increase the income of the employees receiving the lowest remuneration in order to stimulate the growth of domestic consumption. Upon the adoption of the Republic of Lithuania's Law on Amending the Law on State Service and the Law on the Work Pay of State Politicians, Judges, and State Officials on 19 July 2006, it was decided to apply the basic size for the calculation of the positional salary (remuneration) of state politicians, judges, state officials, and state servants; under the said law, the basic size of the positional

salary, which replaced the formerly valid MMS, became a coefficient unit of the positional salary of state officials and state servants. The explanatory note to this law points out that, due to the dependency of the size of the positional salary of state servants, state politicians, judges and state officials on the size of the MMS, there are problems in negotiations on the increase of the MMS for the employees who work under the employment agreements in the companies, establishments, and organisations and receive the minimum work remuneration. According to the representative of the Government, the party concerned, while taking account of the arguments substantiating the position that the MMS is not a suitable unit for establishing the remuneration of state servants or prosecutor's working in the legal system, or judges, this unit appears not to be suitable for regulating the remuneration for advocates rendering secondary legal aid.

There are obvious differences between advocates rendering secondary legal aid and other persons working in the legal system which are determined by a different status of these persons and their functions. The establishment of different conditions of payment is related to the peculiarities of the legally regulated public relations, therefore, it is constitutionally justified.

2.4. Upon the adoption of the impugned legal regulation consolidating the relevant government resolution, the remuneration for the advocates rendering secondary legal aid was not reduced; it remained of the same amount as it had been before the adoption of the said resolution. The impugned legal regulation consolidated a concrete fixed amount of remuneration paid to advocates for the provided secondary legal aid and rescinded the calculation of the said amount where the MMS-based coefficients established in the Rules used to be applied. Under the constitutional doctrine, only when a newly established amount of remuneration becomes lower than the former one, this is deemed to be reduction of such remuneration. In the case at issue, the newly established amount equals to the former one, thus, this situation may not to be regarded as reduction of remuneration for advocates.

The constitutional protection of the acquired rights and legitimate expectations does not mean that the state does not have the right to reorganise the system of remuneration paid to advocates for rendered secondary legal aid. In this case, the legitimate expectations of advocates are not violated as they continue to receive the same remuneration as they did before the reorganisation of the system. Thus, the impugned legal regulation is not in conflict with the constitutional principles of a state under the rule of law, legitimate expectations, legal certainty, and legal stability.

2.5. The amendment of the system of remuneration for the provision of secondary legal aid was determined by the entirety of circumstances, including a difficult economic and financial situation of the state. In the event that due to the economic situation of the state it was not possible to allocate additional funding to the system of the state-guaranteed legal aid, the amount of remuneration owned to advocates for the provided secondary legal aid in 2011 amounted to 3,576 thousand litas, and in 2012—3,374 thousand litas. Increasing the remuneration for advocates rendering secondary legal aid upon the increase of the MMS (upon the increase of the MMS by 50 litas, the increase in expenses was forecasted to be 6 percent) would have led to additional increase of the credit debts in the respective year. Taking account of all these circumstances and in the absence of other

efficient means for stabilising the budget of the system of the state-guaranteed legal aid and taking account of the financial capacities of the state (any additional narrowing of the circle of the persons who have the right to receive secondary legal aid and an increase in the remuneration for advocates for the provision of secondary legal aid would raise doubts regarding the social justice of such a measure), it was necessary to revise the regulation on the remuneration for the provision of secondary legal aid.

The Constitutional Court

holds that:

I

1. It has been mentioned that the Vilnius City Local Court, a petitioner, requests an investigation into whether Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006), insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 MMSs, was in conflict with Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

2. It was also mentioned that the Klaipėda City Local Court, a petitioner, requests an investigation into whether the Rules (wording of 18 July 2012), insofar as they established that, for the provision of secondary legal aid, advocates were paid fixed amounts of remuneration not related to the government-approved MMS, were in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

As mentioned before, the Klaipėda City Local Court, a petitioner, was considering a civil case subsequent to the claim of the claimants (advocates who rendered secondary legal aid on a regular basis) regarding the judicial award of unpaid remuneration.

It should be noted that the amount of the remuneration for the advocates who render secondary legal aid on a regular basis was established in Item 4 (“The advocates rendering secondary legal aid on a regular basis shall be paid 6,544 litas monthly for the provision of secondary legal aid …”) of the Rules (wording of 18 July 2012).

Thus, even though the petitioner requests an investigation into whether the entire legal act—the Rules (wording of 18 July 2012), to the specified extent, was in conflict with the Constitution, its petition should be treated as requesting an investigation into whether Item 4 of the Rules (wording of 18 July 2012), insofar as it established such an amount of remuneration paid to advocates for the provision of secondary legal aid on a regular basis, which was not related to the government-approved MMS, was in conflict with the Constitution.

3. Thus, taking account of the petitions of the petitioners, in the constitutional justice case at issue the Constitutional Court will investigate whether:

– Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006), insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 MMSs, was in conflict with Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

– Item 4 of the Rules (wording of 18 July 2012), insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

II

1. In the context of the constitutional justice case at issue, the legal regulation regarding the provision of the state-guaranteed secondary legal aid which is established in the Law on State-Guaranteed Legal Aid and which is significant for this case should be disclosed first.

2. On 28 March 2000, the Seimas adopted the Republic of Lithuania's Law on State-Guaranteed Legal Aid which was amended and set forth in its new wording by the Republic of Lithuania's Law Amending the Law on State-Guaranteed Legal Aid adopted by the Seimas on 20 January 2005.

Subsequently, this law (wording of 20 January 2005) has been amended and supplemented more than once, *inter alia*, by the Republic of Lithuania's Law Amending and Supplementing Articles 1, 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 23, 24, 26, and 33 of the Law on State-Guaranteed Legal Aid and Recognising Article 22 Thereof as No Longer Valid which was adopted by the Seimas on 15 April 2008.

3. The Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements) regulated the provision of the state-guaranteed legal aid to persons to enable them to adequately assert their violated or disputed rights, as well as the interests protected under the laws (Paragraph 1 (wording of 15 April 2008) of Article 1).

4. In the context of the constitutional justice case at issue, the following provisions (which were effective during the period of validity of the legal regulation established by the Government) of the Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements) should be noted:

– "State-guaranteed legal aid shall be provided according to the following principles: … 2) the quality, efficiency, and economy of the state-guaranteed legal aid; …" (Article 3);

– "Secondary legal aid shall mean the drafting of documents, the defence and representation in court, including the process of implementation, representation in the event of preliminary extrajudicial consideration of a dispute, where such a procedure has been laid down by means of laws or by a court decision.…"(Paragraph 3 of Article 2);

– “With a view to ensuring the continuity of the provision of secondary legal aid, separate agreements shall be concluded:

1) with the advocates who provide secondary legal aid on a regular basis only to the persons entitled to it;

2) with the advocates who provide secondary legal aid in case of necessity” (Paragraph 2 of Article 17 (wording of 15 April 2008));

– “The services shall: … 4) conclude agreements with the advocates providing secondary legal aid. An agreement must establish the duty of the advocates to provide secondary legal aid, the conditions of and procedure for fulfilling this duty, the right of the service to terminate the agreement in the event of nonfeasance or misfeasance of an advocate with respect to the provision of secondary legal aid as well as other conditions. A sample agreement on the provision of secondary legal aid shall be approved by the Minister of Justice upon agreement with the Lithuanian Bar Association; …” (Paragraph 3 (wording of 15 April 2008) of Article 9);

– “Advocates shall be paid remuneration for the provision of secondary legal aid …. Its amount and the rules of payment thereof shall be established by the Government. The amount of remuneration for advocates must be established in such a way so as to promote an amicable settlement of disputes and to ensure the efficient and economic use of the state budget funds allocated for the state-guaranteed legal aid. The remuneration paid to the advocates specified in Item 1 of Paragraph 2 of this Article for the provision of secondary legal aid shall be fixed regardless of the amount of secondary legal aid provided. The advocates specified in Item 2 of Paragraph 2 of this Article shall be paid fixed-amount remuneration for the provision of secondary legal aid in each case by taking account of the complexity of a case (the category of the case, stage of the proceedings, etc.)” (Paragraph 5 of Article 17 (wording of 5 April 2008)).

To sum up the legal regulation consolidated in the quoted provisions of the Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements), in the context of the constitutional justice case at issue, it should be noted that:

– the advocates rendered secondary legal aid under agreements with a state-guaranteed legal aid service; one of the elements of the content of this agreement had to be the obligation of an advocate to provide, in a proper manner, secondary legal aid under the conditions and procedure provided for under the contract;

– the Government was commissioned to establish the amounts of the remuneration paid to advocates for the provision of secondary legal aid;

– the law consolidated the requirements to be followed while establishing the amounts of this remuneration, *inter alia*, the requirement to ensure the efficient and economic use of the state budget funds allocated for the state-guaranteed legal aid;

– the law also consolidated the requirements that the amount of remuneration paid to the advocates who render secondary legal aid on a regular basis must be fixed and must not depend on the amount of secondary legal aid provided, whereas for those advocates who render secondary legal aid where necessary the amount of the remuneration paid for each case must be established by taking account of the complexity of a case (the category of the case, stage of the proceedings, etc.).

5. It should be mentioned that although the Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements) was amended and set forth in its new wording by the Republic of Lithuania's Law Amending the Law on State-Guaranteed Legal Aid adopted by the Seimas on 9 May 2013, the discussed aspects of the legal regulation did not change in essence.

6. As mentioned before, in the constitutional justice case at issue, the Constitutional Court is investigating, *inter alia*, the constitutionality of Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid as approved by government resolution No. 69 of 22 January 2001.

7. On 22 January 2001, the Government adopted the Resolution (No. 69) "On the Approval of the Amounts of Remuneration and Procedure for Payment to Advocates and Assistant Advocates for the Provision of State Legal Aid and on the Consent to Conduct Public Procurement from a Single Source", by means of which it approved the Amounts of Remuneration and Procedure for Payment to Advocates and Assistant Advocates for the Provision of State Legal Aid.

This government resolution has been amended on more than one occasion, *inter alia*, by the Government Resolution (No. 469) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) 'On the Approval of the Amounts of Remuneration and Procedure for Payment to Advocates and Assistant Advocates for the Provision of State Legal Aid and on the Consent to Conduct Public Procurement from a Single Source' of 22 January 2001" of 27 April 2005, by means of which, after government resolution No. 69 of 22 January 2011 was set forth in its new wording, the said procedure was named as the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid, and also by the Government Resolution (No. 396) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) 'On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid' of 22 January 2001" of 2 May 2006, by means of which the Rules were set forth in their new wording.

The Rules (wording of 2 May 2006) were later amended by the Government Resolution (No. 1370) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) 'On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid' of 22 January 2001" of 30 December 2008, as well as by the Government Resolution (No. 437) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) 'On the Approval of the Rules

on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid' of 22 January 2001" of 13 April 2011.

8. The Rules (wording of 2 May 2006 with subsequent amendments and supplements) established, *inter alia*, the amounts of the remuneration paid to advocates who render secondary legal aid where necessary (Item 1 of the Rules).

9. It needs to be noted that the amounts of the remuneration paid to advocates who render secondary legal aid where necessary were established in Chapter III of the Rules (wording of 2 May 2006 with subsequent amendments and supplements); this chapter also included the impugned Item 7 (wording of 30 December 2008).

This Item prescribed: "Where the actual time spent for the secondary legal aid rendered by an advocate exceeds one and a half times the time established in these Rules for the stage of proceedings (procedural action), the advocate has the right to apply to the service with a request to adopt a decision concerning additional payment. The request to allocate additional payment must be reasoned. Upon the consideration of a request of an advocate, the service may adopt a decision concerning the allocation of an additional payment. An additional remuneration in the amount of 0.05 MMS for each additional hour of the provided secondary legal aid is allocated to the advocate. The additional remuneration at a stage of proceedings may not exceed 4 MMSs."

The impugned Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) must be interpreted in the context of the other provisions of this chapter of the Rules:

– "The remuneration for advocates who render secondary legal aid where necessary is paid in the amounts established in these Rules for the provision of secondary legal aid at one stage of proceedings or for the provision of secondary legal aid in individual procedural actions, provided that these procedural actions are specified in these Rules …" (Item 5 (wording of 30 December 2008));

– "In these Rules, the amount of remuneration for one hour of professional activity of an advocate is equivalent to 0.05 MMS" (Item 6).

Thus, under the legal regulation consolidated in the quoted provisions of the Rules (wording of 2 May 2006 with subsequent amendments and supplements), the remuneration for the advocates who render secondary legal aid where necessary was paid in the amounts as prescribed in the Rules; these amounts were established by providing for the amount of remuneration for one hour of professional activity of an advocate and the time necessary for a certain stage of proceedings or procedural action.

It needs to be emphasised that the impugned Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) provided for the right of an advocate rendering secondary legal aid where necessary to receive additional remuneration for the actual time spent providing secondary legal aid where it exceeded the time provided for in the Rules. At the same time, under the legal regulation prescribed in the said item, the right of an advocate to receive additional payment was limited in two aspects:

– additional payment was paid only in the case where the actual time spent providing secondary legal aid exceeded one and a half times the time established in these Rules for the respective stage of proceedings or procedural action;

– even in cases where additional remuneration was allocated to an advocate, at a stage of proceedings it could not exceed the size of 4 MMSs, i.e. taking account of the fact that the amount of remuneration for one hour of professional activity of an advocate was equivalent to 0.05 MMS, the advocate was paid for not more than 80 hours of the actual time spent rendering secondary legal aid where those hours exceeded the time prescribed in the Rules for the respective stage of proceedings or procedural action.

10. It also needs to be mentioned that in the Rules (wording of 2 May 2006 with subsequent amendments and supplements) the amount of remuneration paid to advocates rendering secondary legal aid where necessary was differentiated according to the respective criteria describing the case (proceedings) in which this legal aid is provided: the dangerousness of a criminal act and the form of guilt in criminal cases (Item 12), the category of cases and proceedings in civil cases (Item 23), and the stage of the proceedings in criminal, civil, and administrative cases (Items 12, 23, and 27).

11. As mentioned before, in the constitutional justice case at issue the Constitutional Court investigates, *inter alia*, whether Item 4 of the Rules (wording of 18 July 2012), insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

12. In this context, it needs also to be noted that the Rules (wording of 2 May 2006 with subsequent amendments and supplements) also established the amounts of the remuneration paid to advocates who render secondary legal aid on a regular basis (Item 1 of the Rules).

Item 4 (wording of 13 April 2011) of the Rules (wording of 2 May 2006) established that the advocates rendering secondary legal aid on a regular basis, shall be paid 8.18 MMSs monthly for the provision of secondary legal aid, except for the time periods established in the agreements regarding the provision of secondary legal aid when secondary legal aid was not provided.

13. On 18 July 2012, the Government adopted the Resolution (No. 884) “On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) ‘On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid’ of 22 January 2001”, by means of which the Rules (wording of 2 May 2006 with subsequent amendments and supplements) were amended and set forth in their new wording.

It should be noted that from the *travaux préparatoires* of government resolution No. 884 of 18 July 2012 it is obvious that the legal regulation was amended in an attempt to avoid the increase in the expenditure on the remuneration for the advocates for the provided secondary legal aid, since, in 2012 and 2013, the state budget

appropriations for ensuring secondary legal aid were not sufficient; they also provided for a subsequent additional assessment of the chosen means of the legal regulation.

14. Item 4 of the Rules (wording of 18 July 2012) prescribed, *inter alia*, that the advocates rendering secondary legal aid on a regular basis shall be paid 6,544 litas monthly for the provision of secondary legal aid, except for the time periods established in the agreements regarding the provision of secondary legal aid when secondary legal aid was not provided.

The comparison of the legal regulation established in Item 4 of the Rules (wording of 18 July 2012) with that established in Item 4 (wording of 13 April 2011, effective until 1 August 2012) of the Rules (wording of 2 May 2006) makes it clear that the legal regulation on calculating the remuneration paid to the advocates who render secondary legal aid on a regular basis changed in that Item 4 of the Rules (wording of 18 July 2012) established a fixed amount of this remuneration, i.e. as one expressed as a specific amount of money and not related to the government-approved MMS.

15. The aforementioned legal regulation established in Item 4 (wording of 13 April 2011) of the Rules (wording of 2 May 2006), as well as in Item 4 of the Rules (wording of 18 July 2012) should be interpreted together with the government resolutions that approved (increased) the MMS at the time period significant to this case.

By the Government Resolution (No. 1368) "On Increasing Minimum Work Remuneration" of 17 December 2007 it was decided, *inter alia*, to approve the MMS of 800 litas as from 1 January 2008, whereas by the Government Resolution (No. 718) "On Increasing Minimum Work Remuneration" of 20 June 2012—to approve the MMS of 850 litas as from 1 August 2012.

While interpreting the legal regulation established in Item 4 (wording of 13 April 2011) of the Rules (wording of 2 May 2006) as well as in Item 4 of the Rules (wording of 18 July 2012) in conjunction with the aforementioned government resolutions, in the context of the constitutional justice case at issue it should be noted that the amount of the remuneration (6,545 litas) for the advocates who render secondary legal aid on a regular basis provided for in the impugned Item 4 of the Rules (wording of 18 July 2012), which came into force on 1 August 2012), in monetary expression was identical to the amount of remuneration calculated by applying the then applicable MMS (800 litas) together with the coefficient (8.18) established in Item 4 (wording of 13 April 2011) of the Rules (wording of 2 May 2006) that were effective until 1 August 2012.

16. It also needs to be noted that, on 17 July 2013, the Government adopted the Resolution (No. 645) "On Amending the Resolution of the Government of the Republic of Lithuania (No. 69) 'On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid' of 22 January 2001" (with certain exceptions, it came into force on 1 September 2013), by means of which the Rules (wording of 18 July 2012) were amended again and set forth in their new wording, *inter alia*, their title was amended.

Item 4 of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 17 July 2013) established that the advocates rendering secondary legal aid on a permanent basis shall be monthly paid the remuneration in 163.6 basic amounts of the remuneration for secondary legal aid (hereinafter "basic amounts of remuneration for secondary legal aid" will be referred to as the BARs) for the provision of secondary legal aid, except for the time periods established in the agreements regarding the provision of secondary legal aid when secondary legal aid was not provided.

It should be noted that government resolution No. 645 of 17 July 2013, *inter alia,* prescribed: "To establish a 40-litas basic amount of remuneration for secondary legal aid of which is applicable in calculating the remuneration for the provided secondary legal aid under procedure established by the rules specified in Item 1 of this Resolution"(Item 2); "To establish that: … after assessing the opinion of the Lithuanian Bar Association, the average annual inflation of the previous year (based on the calculation of the national consumer price index) and the influence of other factors affecting the amount of, and changes in, average work remuneration in the public sector, the Ministry of Justice shall review, every year before 1 September, the basic size of remuneration for secondary legal aid and submit to the Government of the Republic of Lithuania proposals concerning the change in the basic size of remuneration for the provision of secondary legal aid. The new basic size of remuneration for secondary legal aid may not be lower than the existing basic size, with the exception of the cases where the economic and financial situation in the state deteriorates substantially" (Item 3.1).

As it was noted in the Constitutional Court's decision of 19 November 2014, the legal regulation that is established in the Rules (wording of 18 July 2012) was amended in essence after the said rules were set forth in their new wording of 17 July 2013: the amounts of remuneration for the provision of secondary legal aid that are established under the said regulation are no longer fixed, but are linked to the government-established basic size of remuneration for secondary legal aid, by creating preconditions for changing the said basic size in view of, *inter alia*, economic indicators.

III

1. In the constitutional justice case at issue, the Constitutional Court investigates the compliance of the government-established legal regulation consolidating the amounts of remuneration for advocates for the provision of state-guaranteed secondary legal aid with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

2. The right to receive fair pay for work as consolidated in Paragraph 1 of Article 48 of the Constitution is a pre-condition for implementing most of the other constitutional rights, *inter alia,* this right is one of the most important pre-conditions for implementing the right to ownership as consolidated in Article 23 of the Constitution *(inter alia,* the Constitutional Court's decision of 20 April 2010 and its ruling of 1 July 2013).

Under the Constitution, a right appears in regard to the person who has completed a commissioned task to demand that s/he should be paid the whole work remuneration (remuneration) which is due according to the legal acts; this right of persons (referring also to Article 23 of the Constitution) is guaranteed, protected, and defended

as the right of ownership *(inter alia,* the Constitutional Court's rulings of 13 December 2004, 11 December 2009, and 1 July 2013).

3. The right to fair pay for work guaranteed in the Constitution is directly related to the principle of equality of all persons before the law, the court, and other state institutions *(inter alia,* the Constitutional Court's rulings of 18 December 2001, 13 December 2004, 11 December 2009, and 14 February 2011).

3.1. The Constitutional Court, while interpreting the provisions of Article 29 of the Constitution, has held on more than one occasion that the constitutional principle of the equality of all persons before the law, as consolidated in the said article, requires that fundamental rights and duties be established in law equally to all; this principle means the right of a person to be treated equally with others; it imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner, however, it does not deny a differentiated legal regulation, established by law, with respect to certain categories of persons who are in different situations. The constitutional principle of the equality of persons before the law would be violated if certain persons or groups of such persons were treated in a different manner even though there are not any differences of such a character and to such an extent between the said groups of persons so that their uneven treatment could be objectively justified *(inter alia,* the Constitutional Court's rulings of 29 July 2012, 15 February 2013, 6 February 2015, and 11 June 2015); in assessing whether a certain established differentiated legal regulation is well-grounded, it is necessary to take into account concrete legal circumstances; first of all, consideration must be given to differences in the legal situation of the subjects and objects to which a certain differentiated legal regulation is applied *(inter alia,* the Constitutional Court's rulings of 29 June 2010, 6 February 2012, 22 February 2013, 6 February 2015, and 11 June 2015).

3.2. It should be noted that, as it was held in the Constitutional Court's ruling of 14 February 2011, the activities of advocates constitute certain independent professional activities of a person that are related to the rendering of respective legal services and which may not be equated to holding the office of a state servant or an official in state or municipal institutions.

4. The right to receive fair pay for work, which is entrenched, *inter alia,* in Paragraph 1 of Article 48 of the Constitution, is inseparable from the constitutional principle of a state under the rule of law which also includes the principle of protection of legitimate expectations (the Constitutional Court's decision of 20 April 2010).

4.1. The constitutional principle of protection of legitimate expectations means that where a certain remuneration for work is established for a person under the legal acts, it must be paid for the established period of time (the Constitutional Court's rulings of 18 December 2001, and 13 December 2004); the legal regulation may be changed only by following the procedure established in advance and by not violating the principles and norms of the Constitution; it is necessary, *inter alia,* to follow the principle *lex retro non agit;* it is not permitted to deny the legitimate interests and legitimate expectations of the person by the changes in the legal regulation (the

Constitutional Court's rulings of 18 December 2001, 13 December 2004, 11 December 2009, its decision of 20 April 2010, and its ruling of 14 February 2011).

4.2. The Constitutional Court has held on more than one occasion that the constitutional principle of a state under the rule of law, as well as the right of a person to apply to a court (Paragraph 1 of Article 30 of the Constitution) imply the right of a person to the due process of law, *inter alia*, to proper court proceedings. The proper court proceedings is a necessary condition for a just decision in a case *(inter alia*, the Constitutional Court's rulings of 16 January 2006, 8 June 2009, and 25 January 2013).

Certain requirements for the court proceedings stem from Paragraph 2 of Article 31 of the Constitution which prescribes that a person charged with committing a crime shall have the right to a public and fair hearing of his/her case by an independent and impartial court. The criminal procedure must ensure that the constitutional rights of a person suspected of the commission of a criminal act would not be violated: the right to defence, the right to an advocate, the right to be informed about the accusation, etc., must be secured *(inter alia*, the Constitutional Court's rulings of 16 January 2006 and 8 June 2009). The right of an individual suspected of the commission of a crime and that of the accused to defence is also consolidated in Paragraph 6 of Article 31 of the Constitution (the Constitutional Court's rulings of 12 April 2001 and 8 June 2009).

4.3. The Constitutional Court has also noted that an advocate, while performing an independent professional activity and rendering legal assistance to a person, whose rights and legitimate interests have been violated, helps to implement the constitutional right of the person to judicial defence. The right of the person to have an advocate is one of the conditions for effective implementation of the right of the person to judicial defence (the Constitutional Court's ruling of 9 June 2011).

4.4. In the acts of the Constitutional Court it was also held that from the constitutional right to defence which is consolidated in the Constitution, as well as from the right to have an advocate, the obligation of the legislator arises to particularise by means of laws the implementation of this constitutional right of persons. When it establishes this legal regulation, the legislature is bound by the Constitution. The constitutional right to defence and the right to have an advocate give rise to the obligation of state institutions to ensure real opportunities for the implementation of these rights (the Constitutional Court's rulings of 12 February 2001 and 9 June 2011).

5. In the context of the constitutional justice case at issue, it should be noted that the Constitution, *inter alia*, the right of a person to apply to a court as consolidated in Paragraph 1 of Article 30 thereof, the imperative of a public and fair hearing of a case by an independent and impartial court as guaranteed in Paragraph 2 of Article 31 thereof, and the constitutional principle of a state under the rule of law imply the obligation of the state, under procedure and conditions established in a law and taking account of the financial capacities of the state, to ensure the provision of efficient legal aid to those socially sensitive (vulnerable) persons, to whom, in the general market of legal services, such legal aid would otherwise either be a sham or its access would be extremely difficult due to financial reasons, as well as in those cases when it is necessary for the interests of justice. While regulating the legal aid (a public legal service) which is financed from state budget funds or other public funds and ensured by a

special institutional and organisational means, the legislature has broad discretion to choose a model of its organising, providing, and funding, *inter alia,* to establish the subjects administrating this legal aid (service) and directly rendering it, the forms of their activity and the grounds for remunerating them.

It also needs to be noted that, having established in laws that the legal aid (a public service) ensured by the state is provided, *inter alia,* by the persons engaged in individual professional activity, *inter alia,* by the advocates, the legislature has broad discretion to establish a system of payment for legal services rendered by these subjects, whereas an institution authorised by the legislature, paying heed to the objectives of the functioning of this system determined in laws, may responsibly concretise certain (explicitly or implicitly involved) elements of this system, including additional funding if the rendering of the service becomes protracted due to objective reasons.

In this context, it should also be noted that the Constitutional Court has held that the state may choose various systems of remuneration for work; it is allowed to establish a system with a fixed-size salary, or a system with both minimum and maximum salaries for the respective positions, or a system where the remuneration for work is regulated by applying a coefficient with a certain established value based on a certain established unit (such remuneration may also consist of several elements) (the Constitutional Court's rulings of 20 May 2007 and 30 April 2013). This provision of the official constitutional doctrine is applicable *mutatis mutandis* to funding the activity of advocates rendering public legal services by the state budget funds or other public funds.

IV

1. In the context of the constitutional justice case at issue, the international obligations of the State of Lithuania assumed under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), as well as under the 1966 International Covenant on Civil and Political Rights, are also relevant.

2. Article 6 of the Convention prescribes: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. … (Paragraph 1);" "Everyone charged with a criminal offence has the following minimum rights: … (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; …"(Paragraph 3).

3. In its case-law, the European Court of Human Rights (hereinafter referred to as the ECtHR) has clearly emphasised that Paragraph 1 of Article 6 of the Convention secures access to a court for every person wishing to commence an action in order to have his/her civil rights and obligations determined; the right to institute civil proceedings before courts in civil matters constitutes one aspect only; it determines the implementation of this right to the full extent (the judgment of 21 February 1975 in the case of *Golder v. The United Kingdom*, application No. 4451/70, § 36; the Grand Chamber judgment of 19 October 2005 in the case of *Roche v. The United Kingdom*, application No. 32555/96, § 116; the Grand Chamber judgment of 17 January 2012 in the case

of *Stanev v. Bulgaria*, application No. 36760/06, §§ 229–235, 241–245). The right of everyone to access a court is also applicable in criminal cases and this rights means that the accused person must be judged for the accusations against him/her before a court where all the guarantees of a fair trial, including the guarantees provided for in Paragraphs 2 and 3 of Article 6 of the Convention, must be applied to him/her (the judgment of 27 February 1980 in the case of *Deweer v. Belgium*, application No. 6903/75, § 56).

In certain cases, the right to efficiently implement the right to access a court may also mean the duty of the state to guarantee legal assistance, including free legal assistance for certain categories of persons. The legal assistance may be necessary when it is obligatory under national law, when it is necessary due to the complexity of the proceedings or case, or when it is necessary due to the importance of the interests of the applicant; additionally, consideration may be taken of the applicant's capacity to represent him/herself effectively (the judgment of 9 October 1979 in the case of *Airey v. Ireland*, application No. 6289/73, § 26; the judgment of 15 February 2005 in the case of *Steel an Morris v. The United Kingdom*, application No. 68416/01, 59–61).

It also needs to be noted that, under the case-law of the ECtHR, the right to legal aid is not absolute; it may be not provided when the claimant has no "reasonable prospects of success" or when the applicant abuses the system of legal aid or law itself (the decision of 18 January 1996 on admissibility in the case of *Sujeeun v. The United Kingdom*, application No. 27788/95). It should also be noted that in the situations where legal aid is necessary to ensure the efficient implementation of the right to access a court, Article 6 of the Convention gives freedom for the states to choose individually the measures for guaranteeing this aid. One of such measures may be the establishment of a legal aid system.

The ECtHR has emphasised that the Convention is intended to guarantee the rights that are practical and effective (the Grand Chamber judgment of 12 July 2001 in the case of *Prince Hans-Adam II of Liechtenstein v. Germany*, application No. 42527/98, § 45); the state must take positive steps to ensure that the person enjoyed effectively the right to legal aid, to which he was entitled; being aware that the appointment of a lawyer does not ensure the effective legal aid, the state authorities must either replace him/her or cause him/her to fulfil his/her obligations (the judgment of 13 May 1980 in the case of *Artico v. Italy*, application No. 6694/74, §§ 33, 36). In the context of a fair trial of Article 6 of the Convention, the principle of appropriate representation of a lawyer appointed by the state was also emphasised in cases against Lithuania *(inter alia*, the judgment of 10 June 2012 in the case of *Slickienė v. Lithuania*, application No. 20496/02, §§ 49–50).

The ECtHR has held on more than one occasion that the opportunity to have a lawyer is one of the conditions for effective implementation of the right to apply to court (the judgment of 8 February 1996 in the case of *John Murray v. The United Kingdom*, application No. 18731/91; the judgment of 9 October 2003 in the case of *Ezeh and Connors v. The United Kingdom*, applications Nos. 39665/98 and 40086/98; the judgment of 12 May 2005 in the case of *Öcalan v. Turkey*, application No. 46221/99, etc.).

The ECtHR has also considered the peculiarities of the legal profession on more than one occasion. In the case of *Bigaeva v. Greece*, when considering the conditions of becoming a lawyer, the ECtHR noted that

representatives of the legal profession participate in the process of administration of justice, however, the state enjoys the right to establish the conditions for becoming a lawyer. In addition, the legal profession is a free profession, whose representatives alongside serve the public interest (the judgment of 28 May 2009 in the case of *Bigaeva v. Greece*, application No. 26713/05, §§ 31, 39). Although lawyers have been granted an exclusive right to defend a person in a court, their conduct must be discreet, honest and dignified (the judgment of 24 February 1994 in the case of *Casado Coca v. Spain*, application No. 15450/89, §§ 39, 46).

4. Paragraph 1 of Article 14 of the 1966 International Covenant on Civil and Political Rights also entitles everyone to a fair trial by an independent and impartial tribunal which would determine whether the criminal charge against him/her is reasoned, or would determine the civil rights and obligations impugned by him/her.

Under Paragraph 3 of Article 14 of the said Covenant, in the determination of any criminal charge against him/her, everyone shall be entitled, *inter alia*, to the following minimum guarantees: to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her own choosing; to be informed, if s/he does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if s/he does not have sufficient means to pay for it.

V

On the compliance of Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006) as approved by government resolution No. 69 of 22 January 2001 with the Constitution

1. As mentioned before, in the constitutional justice case at issue, the Constitutional Court investigates whether Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006) as approved by the Government Resolution (No. 69) “On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid” of 22 January 2001, insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 MMSs, was in conflict with Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

2. It has been mentioned that, under the legal regulation consolidated in the Rules (wording of 2 May 2006 with subsequent amendments and supplements), the remuneration for the advocates rendering secondary legal aid where necessary was paid in the amounts as prescribed in the Rules; these amounts were established by providing for the amount of remuneration for one hour of professional activity of an advocate and the time necessary for a certain stage of proceedings or procedural action. Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) provided for the right of advocates rendering secondary legal aid where necessary

to receive additional remuneration for the actual time spent providing secondary legal aid where it exceeded the time provided in the Rules.

It has also been mentioned that, under the impugned legal regulation established in Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006), the right of an advocate to receive an additional remuneration was limited, *inter alia*, in the aspect that, in cases where the additional remuneration was allocated to an advocate, at a stage of proceedings it was limited by the size of 4 MMSs, i.e. even though the amount of the remuneration for one hour of the professional activity of an advocate was equivalent to 0.05 MMS, the advocate was paid for not more than 80 hours of the actual time spent rendering secondary legal aid where those hours exceeded the time prescribed in the Rules for the respective stage of proceedings or procedural action.

3. The doubts of the petitioner regarding the compliance of Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) with the Constitution are substantiated by the fact after such a legal regulation has restricted the right to receive the remuneration for all the time of providing secondary legal aid, the constitutional right of a person to receive fair pay for work and the constitutional principle of a state under the rule of law are violated.

4. While deciding whether Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) was in conflict with Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned before, having established in laws that the legal aid (a public service) ensured by the state is provided, *inter alia*, by the persons engaged in individual professional activity, *inter alia*, advocates, the legislature has broad discretion to establish the system of payment for legal services rendered by these subjects, whereas an institution authorised by it, paying heed to the objectives of the functioning of this system determined in laws, may responsibly concretise certain (explicitly or implicitly involved) elements of this system, including additional funding if the rendering of the service becomes protracted due to objective reasons.

It has also been mentioned that, under the Constitution, a right appears in regard to the person who has completed a commissioned task to demand that s/he should be paid the whole work remuneration (remuneration) which is due according to the legal acts. This provision of the official constitutional doctrine is applicable *mutatis mutandis* to the legal regulation governing funding from state budget funds or other public funds the activity of advocates rendering public legal services according to the agreement and under procedure established by law.

Thus, the legislature, when regulating the funding of the activity of advocates rendering state-guaranteed legal aid, or an institution authorised by it, paying heed to the objectives of functioning of this system determined in laws, may stipulate, *inter alia*, that the base of the remuneration for the advocates who are commissioned by the state where necessary (on an irregular basis) and on voluntary grounds to provide public legal services, for consideration, is calculated according to the category of a concrete case or the stage of its consideration in courts, meanwhile, when the rendering of the service becomes protracted due to objective reasons, additional

remuneration may be paid the maximum amount whereof is subject to responsible and proportionate limitation by a certain number of hours of the service calculated respectively.

Consequently, an advocate rendering public legal services under procedure established by law, who carried out the activity where necessary assigned (entrusted under agreement) by the state, has the right to demand that s/he should be paid all the remuneration for the preparation for a certain case or procedural representation due by law, including all the additional remuneration provided by legal acts if the rendering of the service becomes protracted due to objective reasons.

5. It has also been mentioned that, under the legal regulation laid down in Article 17 of the Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements), the Government was commissioned to establish the amounts of remuneration paid to advocates for the provision of secondary legal aid; the law consolidated the requirements to be followed while establishing the amounts of this remuneration, *inter alia*, the requirement to ensure the efficient and economic use of the state budget funds allocated for the state-guaranteed legal aid; the law also consolidated the requirement to establish remuneration for advocates for the provision of secondary legal aid in each case by taking account of the complexity of a case (the category of the case, stage of the proceedings, etc.).

It should also be noted that, as mentioned before, in the Rules (wording of 2 May 2006 with subsequent amendments and supplements) the amount of remuneration paid to advocates rendering secondary legal aid where necessary was differentiated according to the respective criteria describing the case (proceedings) in which this legal aid is provided: the dangerousness of a criminal act and the form of guilt in criminal cases (Item 12), the category of cases and proceedings in civil cases (Item 23), and the stage of the proceedings in criminal, civil, and administrative cases (Items 12, 23, and 27).

Thus, while implementing the powers granted to it and establishing the system of remuneration for advocates rendering secondary legal aid where necessary, the Government took account of the fact that the payment for legal aid in cases of different complexity, thus, also for different workload of an advocate, would be different.

6. It should be emphasised that the constitutional duty of the state to ensure the provision of legal aid (public legal service) under procedure and conditions established by law also implies the obligation to responsibly provide for, accumulate, and use the funds needed for such legal aid, as well as the duty to regulate the remuneration for the provision of this service, *inter alia,* on the ground of the professional activity of advocates so that financial resources would be used rationally and distributed in an even manner, that such legal aid would be accessible to everyone to whom it is necessary, as well as so that one would be encouraged to seek speedy legal proceedings and to choose the most effective means and measures of the defence of rights.

It should also be emphasised that advocates, in assuming the obligation to render the legal aid funded from public funds, according to the essence of the activity of providing independent professional legal aid and the purpose of the law regulating the state-guaranteed legal aid, should be treated as bound by the obligation

stemming from the specific character of their profession not to dismiss the risk of additional costs and expenses originating due to objective reasons if the rendering of the service becomes protracted and to evaluate such a risk, to maintain high standards of their professional activity, *inter alia,* to choose such legitimate ways and measures of defence which would comply, as much as possible, with the requirements of, *inter alia,* speedy, economical, and fair legal proceedings. Thus, the providers of the legal aid guaranteed by the state, who agreed to render it under agreement concluded of their own free will, may not be considered as having gained the legitimate expectation that if the rendering of the service becomes protracted due to objective reasons, all the labour costs incurred in connection with the rendering of the public service will additionally be reimbursed from state budget funds.

In addition, it should be emphasised that, as mentioned before, Article 17 of the Law on State-Guaranteed Legal Aid (wording of 20 January 2005 with subsequent amendments and supplements) consolidates the requirement to ensure the efficient and economic use of the state budget funds allocated for the state-guaranteed legal aid.

It should be noted that the petitioner's doubt regarding the compliance of Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) (to the specified extent) with the Constitution is not substantiated by the position that the limitation on additional remuneration creates preconditions for receiving disproportionately low remuneration (which is related to a certain number of hours of the professional activity of an advocate calculated in a respective manner). It should also be noted that, in the constitutional justice case at issue, there are no grounds to believe that, under the overall legal regulation established in the Rules (wording of 2 May 2006), *inter alia,* Item 7 (wording of 30 December 2008) thereof, relating the maximum amount of additional remuneration paid to an advocate to 4 MMSs (where account is taken of the fact that the amount of remuneration for one hour of professional activity of an advocate was equivalent to 0.05 MMS, i.e. the advocate was paid for not more than 80 hours of the actual time spent rendering secondary legal aid) would have been clearly disproportionate.

7. It needs to be held that relating the additional remuneration for the actual time spent providing secondary legal aid, where it exceeded the time provided in the Rules, to the maximum amount of such remuneration established in Item 7 (wording of 30 December 2008) of the Rules (wording of 2 May 2006) should be assessed as objectively justified, and, *inter alia*, from the viewpoint of responsible governance, as not distorting the requirements of justice and proportionality arising from the constitutional principle of a state under the rule of law, as well as the imperative to observe legitimate expectations, and as not denying the right, which stems from Paragraph 1 of Article 48 of the Constitution, to require that the whole work remuneration (remuneration) which is due according to legal acts should be paid to persons.

8. In the light of the foregoing arguments, the conclusion should be drawn that Item 7 (wording of 30 December 2008) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006) as approved by the Government Resolution (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision

and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 MMSs, was not in conflict with Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

VI

On the compliance of Item 4 of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 18 July 2012) as approved by government resolution No. 69 of 22 January 2001 with the Constitution

1. As mentioned before, in the constitutional justice case at issue the Constitutional Court investigates whether Item 4 of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 18 July 2012) as approved by the Government Resolution (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution, and the constitutional principle of a state under the rule of law.

2. It has been mentioned that, under the legal regulation established in the impugned Item 4 of the Rules (wording of 18 July 2012), the legal regulation on calculating the remuneration paid for the advocates who render secondary legal aid on a regular basis changed in that a fixed amount of this remuneration, i.e. the one expressed as a specific amount of money and not related to the government-approved MMS, was established.

3. The doubts of the petitioner regarding the compliance of the impugned legal regulation with the Constitution are substantiated by the fact that upon the rescission of the legal regulation, under which the amounts of the remuneration paid to advocates for the provision of secondary legal aid used to be calculated by applying the MMS-based coefficients, this remuneration no longer changes on the grounds of the economic indicators of the state; under the impugned legal regulation, the advocates rendering secondary legal aid found themselves in a worse situation than judges and prosecutors working in the same system, the sizes of the salaries of whom are related to the basic sizes established in laws and are subject to change in view of the average annual inflation and other factors affecting the amount of and changes in the average work remuneration in the public sector; thus, according to the petitioner, the impugned legal regulation is in conflict with Article 29 of the Constitution; in addition, upon the rescission of the legal regulation, under which the remuneration for the provision of secondary legal aid is related to the MMS, the principles of protection of legitimate expectations, legal certainty, and legal security are violated and the rights of ownership are limited.

4. In deciding whether Item 4 of the Rules (wording of 18 July 2012), insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned before, under the Constitution, the state may choose various systems of remuneration for work; it is allowed to establish a system with a fixed-size salary, or a system with both minimum and maximum salaries for the respective positions, or a system where the remuneration for work is regulated by applying a coefficient with a

certain established value based on a certain established unit (such remuneration may also consist of several elements); this provision of the official constitutional doctrine is applicable *mutatis mutandis* to funding the activity of advocates rendering public legal services from state budget funds or other public funds.

It has also been mentioned that a law may establish a differentiated legal regulation with respect to certain categories of persons who are in different situations. Such a provision of the official constitutional doctrine is applicable *mutatis mutandis* to the legal regulation governing funding from state budget funds the activity of advocates who may provide public legal services independently under procedure established by law and on the grounds of an agreement, as well as the activity of prosecutors and judges implementing their professional legal activity (fulfilling the duties of their office) in state institutions.

5. Thus, there are no grounds for stating that a requirement stems from Article 29 of the Constitution to establish a uniform system of work pay of state officials or state servants and persons performing an independent professional activity—the system of payment for legal services rendered by advocates from state budget funds or other public funds.

6. Consequently, there are no grounds for stating that a requirement stems from Article 48 of the Constitution to establish a system of the work pay of advocates rendering state-guaranteed legal service from state budget funds or other public funds, where such a system, according to its elements and, *inter alia*, the MMS institute that is either assigned or not assigned to it, would not be different from the system of work remuneration (elements thereof) for judges, prosecutors or other state officials or servants working in the same legal system.

7. It should be noted that, under the former wording, i.e. the wording of 2 May 2006 of the Rules, the advocates who rendered secondary legal aid on a regular basis could not be treated as having acquired the legitimate expectation that the system of payment for services rendered by them would not be corrected, i.e. would remain unchanged, would always be related to the MMS, or that in all cases when the Government approves a higher MMS, the guarantee of the minimum remuneration of employees, namely this higher MMS, would become an element of the calculation of remuneration for advocates.

8. It should also be noted that, as mentioned before, the amount of the remuneration (6,545 litas) for the advocates who render secondary legal aid on a regular basis provided for in the impugned Item 4 of the Rules (wording of 18 July 2012), which came into force on 1 August 2012, in monetary expression was identical to the amount of remuneration calculated under the coefficient (8.18) as established in Item 4 (wording of 13 April 2011) of the Rules (wording of 2 May 2006) that were effective until 1 August 2012 and the then applicable MMS (800 litas).

Thus, the impugned regal regulation established in Item 4 of the Rules (wording of 18 July 2012) whereby, upon the assessment of the financial capacity of the state, the same actual amount of payment for advocates who provide secondary legal aid on a regular basis was left, should not be regarded as reducing this remuneration.

In this context, it should also be noted that, as mentioned before, it was noted in the Constitutional Court's decision of 19 November 2014 that the legal regulation that is established in the Rules (wording of 18 July 2012) was amended in essence after the said rules were set forth in their new wording of 17 July 2013: the amounts of remuneration for the provision of secondary legal aid that are established under the said regulation are no longer fixed, but are linked to the government-established basic size of remuneration for secondary legal aid, by creating preconditions for changing the said basic size in view of, *inter alia*, economic indicators.

9. It should be held that, by separating the system of payment for advocates for the provision of secondary legal aid from the institute of the MMS (not relating to this institute any longer) as established in Item 4 of the Rules, it was not deviated from the principle of the equality of rights of persons, no preconditions were created for violating the right of a person arising from Paragraph 1 of Article 48 and Article 23 of the Constitution to demand that s/he should be paid all the remuneration which is due according to legal acts, and the imperative of the protection of legitimate expectations was not distorted.

10. In the light of the foregoing arguments, the conclusion should be drawn that Item 4 of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 18 July 2012) as approved by the Government Resolution (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was not in conflict with Articles 23 and 29 and Paragraph 1 of Article 48 of the Constitution and the constitutional principle of a state under the rule of law.

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

ruling:

1. To recognise that Item 7 (wording of 30 December 2008; *Valstybės žinios*, 2008, 150-6103) of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 2 May 2006; *Valstybės žinios*, 2006, 50-1817) as approved by the Resolution of the Government of the Republic of Lithuania (No. 69) "On the Approval of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid" of 22 January 2001, insofar as the said item provided that additional remuneration at any stage of proceedings was limited to a maximum of 4 monthly minimum salaries, was not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that Item 4 of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid (wording of 18 July 2012; *Valstybės žinios*, 2012, 88-4577) as approved by the Resolution of the Government of the Republic of Lithuania (No. 69) "On the Approval

of the Rules on the Amounts and Payment of Remuneration to Advocates for the Provision and Coordination of Secondary Legal Aid” of 22 January 2001, insofar as it established such an amount of remuneration for advocates rendering secondary legal aid on a regular basis, which was not related to the government-approved MMS, was not in conflict with the Constitution of the Republic of Lithuania.

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

Justices of the Constitutional Court: Elvyra Baltutytė

Vytautas Greičius

Danutė Jočienė

Pranas Kuconis

Vytas Milius

Egidijus Šileikis

Algirdas Taminskas

Dainius Žalimas