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## **THE CHALLENGES FACED BY THE CONSTITUTIONAL COURT OF LITHUANIA DURING THE GLOBAL ECONOMIC CRISIS\*\***

**Abstract:** *The Constitutional Court of the Republic of Lithuania is forming a broad and distinctive doctrine on the possibility of limitation of social rights during an economic crisis. This doctrine is inter alia grounded upon the imperatives of a state under the rule of law, equality of rights, justice, proportionality, protection of legitimate expectations, social solidarity, the constitutional concept of the state budget and other constitutional imperatives. The Constitutional Court has also formulated certain general principles which must be followed when in a situation of an economic crisis the legislator may adopt decisions on reduction of social rights guarantees. This doctrine is also influenced by international law, inter alia the law of the European Convention on Human Rights. While considering the cases related to implementation of social rights, the Constitutional Court also takes account of the case-law of the constitutional courts of other states.*

**Key words:** *Constitutional court, constitutional doctrine on limitation, social rights, economic crisis.*

### **1. Introduction**

The global economic crisis has undoubtedly influenced not only the economic life, but also has affected all other areas, *inter alia* institutions of constitutional jurisdiction and the functions they discharge. Their financing, as well as that of other state institutions, may undergo reduction, therefore, a question may arise also regarding restriction of their competence: can constitutional courts

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decide on distribution of economic resources, after all? The recent increase in petitions requesting to decide on various constitutional issues which have been determined by *inter alia* the consequences of the economic crisis can also prompt discussions about the issues of narrowing the competence of institutions of constitutional jurisdiction. When economic issues become an object of the constitutional jurisprudence, the constitutional courts become inevitably an object of additional criticism made by politicians.

The impact of political processes on constitutional jurisprudence could be likened to a complex and manifold process. There are areas in which constitutional law has to form and develop certain universally recognised requirements of a democratic state, as, for instance: separation of powers, democratic principles of formation of state institutions, independence of courts, imperatives of free democratic elections, constitutional recognition of the fundamental rights, etc. However, some global political processes, in case world economic crises are attributed to such processes, are acting reversely, i.e., they induce governments to take special measures and to adopt political decisions determining formation of the state budget and reduction of funding for certain areas. Such measures are indirectly aimed *inter alia* at reduction of state expenditures related to development of social guarantees, whereas in certain cases also to implement some guarantees of social rights in a somewhat more restricted manner.

The functions of state institutions in the area of economy, which are discharged in adopting legal acts, become sooner or later an object of assessment by constitutional courts. In such a case a big responsibility falls upon the constitutional courts: they have to assess the decisions adopted by state institutions whether the establishment of the legal measures limiting the financing of certain areas or guarantees of social rights was actually determined by objective factors and whether such decisions of these institutions during the economic crisis are a proportional and adequate measure that is in conformity with the Constitution. Successful activities of constitutional court in dealing with the aforementioned problems depend not only on the legal constitutional framework but also on the manner of activity of such institution in the social, political and legal environment.

The economic crisis has raised for the constitutional courts complex questions, first of all, whether the constitutional courts, in the face of global economic crisis, are capable of dealing with economy-related issues, *inter alia* to decide on the constitutionality of the "crisis" budgets of the states, whether they may create a new constitutional doctrine, or whether they can reinterpret it.

Under conditions of the global economic austerity measures, the most sensible areas, especially the guarantees of social rights, have been affected, *inter alia*

the questions of pensions, salaries, childcare leave, etc., have become an urgent issue. At present, the question of the decreasing of the social rights guarantees of judges—the reduction of their salaries—has also become important. The constitutional courts have to decide whether it is allowed to reduce judges' salaries during an economic crisis and whether such reduction does not violate the constitutional principle of the independence of a judge who is administering justice and the principle of the independence of courts.

The purpose of this presentation is to disclose some aspects of the problems that arise in the process of the development of constitutional jurisprudence of the Constitutional Court of Lithuania, which were determined by global changes in the economy.

## **2. Social rights – an important area of constitutional rights**

The institutions of constitutional jurisdiction, which are constitutional courts, continually interpret the rights and freedoms of the person entrenched in the Constitution, thus, the final limits of these rights are drawn in the constitutional jurisprudence. The recognition of the jurisprudential Constitution widens not only the concept of the constitutional rights, but also the possibilities to recognise human rights as constitutional ones.

The fact that in most new constitutions social rights have been inscribed *expressis verbis* is also influential on the development of such rights<sup>1</sup>. In the constitutions the social rights are assessed in a varied manner, both from the point of view of their development and the possibility to put limitations upon them.<sup>2</sup> It took much more time to recognise social rights as constitutional ones in com-

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1 W. Sadurski divides them into four groups. The constitutions of Belarus, the Czech Republic, Moldova, Poland, Romania, Russia, Slovakia and Ukraine are to be attributed to the first group, the social rights are most broadly regulated therein (social security, education, health care, rights of protection of work, etc.); the constitutions of Bulgaria, Hungary (effective till 2012), Macedonia, Montenegro, Serbia and Slovenia in which the catalogue of social rights is limited (the right to education, health care, guarantees of protection of work, etc.) are to be attributed to the second group; the constitutions of Estonia, Latvia and Lithuania consolidating the right to social security, education, health care, though the catalogue of other social rights is very limited (in the opinion of the author, the Lithuanian Constitution stands in between the first and third groups) are to be attributed to the third group; the constitutions of Bosnia-Herzegovina and Georgia which include only a few social and economic rights are to be attributed to the fourth group (Sadurski, 2008: 177).

2 For example, Article 22 of the Constitution of Ukraine (1996) establishes that human and citizens' rights and freedoms affirmed by this Constitution are not exhaustive; constitutional rights and freedoms are guaranteed and shall not be abolished; the content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force.

parison to political and civil rights not only because the former are related to self-obligations of the state to secure implementation thereof, but also due to the fact that there is an issue of direct application of the Constitution—a possibility to defend such rights directly in court was recognised only after some time.

Since social rights can be interpreted in a varied manner, i.e. both as certain state self-obligations to society, and as a subjective right of the person, not all authors consider them as the rights that can be defended directly when a person applies to a court (Sajo, 2005: 38-43).

The 1992 Constitution of the Republic of Lithuania provides for a rather broad catalogue of these rights. In the doctrine of the Constitutional Court the social rights are interpreted not only as certain state self-obligations (which are *inter alia* determined by the social purpose of the state) to society, but also as a person's individual rights to which the judicial defence is guaranteed. Such concept was also influence by international law, *inter alia* the jurisprudence of the European Court of Human Rights (hereinafter referred to as the ECtHR).

The social rights, the procedures of their implementation must be interpreted in ordinary law. In the constitutional jurisprudence, while deciding cases related to a person's constitutional rights, one often confronts the inactive legislator and legal gaps that impede the implementation of these rights.

The Constitutional Court has held that, under the Constitution, the State of Lithuania is socially oriented; the social orientation of the state is reflected in various provisions of the Constitution<sup>3</sup>, *inter alia* those entrenching the economic, social and cultural rights, as well as civil and political rights of a human being, the relations of society and the state, the grounds of social assistance and social security, etc. The Constitutional Court has noted that the socially oriented state is under constitutional obligation and it must undertake the burden of fulfilment of certain commitments.

The expansion of the law of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter—the European Convention on Human Rights), which is the ECtHR jurisprudence, also exerts influence on the development of the constitutional doctrine of these rights.

While analysing the development of the doctrine of social rights, which is formed by the Constitutional Court of the Republic of Lithuania, it is possible to single out certain periods of this development. At the beginning of the activity of the Constitutional Court the content and peculiarities of these rights, the scale of

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3 *Inter alia* the Constitutional Court's rulings of 5 March 2004 and 6 February 2012 (all the Constitutional Court's rulings, decisions and conclusions may be found on this website [http://www.lrkt.lt/Documents1\\_e.html](http://www.lrkt.lt/Documents1_e.html)).

state duties in guaranteeing these rights were consolidated and interpreted and the conception of indivisibility and interrelatedness of all human rights and freedoms was gradually introduced. The Constitutional Court has also decided more than once as regards the compliance of the legal acts by which the guarantees of certain constitutional social rights were reduced,<sup>4</sup> which, however, had not been determined by any consequences of an economic crisis.

Still, since 2002 the Constitutional Court jurisprudence has been developing the doctrine on limitation of social guarantees during an economic crisis.

### **3. The constitutional doctrine on limitation of social rights guarantees during an economic crisis**

The Constitutional Court jurisprudence has been forming the doctrine on limitation of social guarantees during an economic crisis and the period of formation of this doctrine could be divided into two stages: from 2002 till 2006, when the Constitutional Court was deciding on the constitutionality of legal acts narrowing the social guarantees, when this had been determined by the impact of the effects of the so-called Russian economic crisis on the development of the economy of the State of Lithuania (during this period the Constitutional Court adopted several decisions which began the formation of doctrine on reduction of guarantees of social rights at the time of an economic crisis; and since 2009 until now where the Constitutional Court has been forming the constitutional doctrine on limitation of social rights guarantees, which has been determined by the effects of the global economic crisis on the economy of the State of Lithuania.

#### ***3.1 The development of the constitutional doctrine of social rights in the period of 2002–2006***

The Constitutional Court began to form the economic crisis doctrine in the course of deciding on various issues of payment of pensions, *inter alia* reduction thereof. Such issues had emerged due to the consequences of the *regional* crisis, called the Russian crisis (1999–2002)<sup>5</sup>, and had determined the reduction of funding

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4 *Inter alia* the Constitutional Court's ruling of 2 September 2009, in which it decided the issues of the disability pensions' reform that was implemented in 2005, *inter alia* the issue of limitation of social rights of some disabled persons.

5 In its ruling of 18 June 2008 adopted in civil case No. 2A-3/2008, the Court of Appeal of Lithuania, while deciding the questions relating to the adjudging of damage incurred by judges as a result of unlawful reduction of remuneration, assigned an expertise in order to assess the economic situation in Lithuania. The experts established that a difficult economic situation in the state had started in 1999 and lasted till 2003. The Court of Appeal of Lithuania *inter alia* held that the economic situation of the state had improved from 2003, however,

of some areas, *inter alia* narrowing of some social guarantees. In its 23 August 2005 ruling the Constitutional Court noted that it is universally known that in 1998 and later there was a particularly difficult economic-financial situation in Lithuania, which had been predominantly determined by the economic-financial crisis in Russia, and other external factors, which had a very negative impact on the economic-financial systems of various states, including Lithuania, *inter alia* the fact that an exceedingly large amount of funds had not been collected to the state budget of 1999, which was required for the financing of education, healthcare, social maintenance, other needs of society and the state, and for the execution of other state functions. The Constitutional Court has held that the negative impact of the particularly difficult economic-financial situation emerging at the end of 1999 that some time affected the drawing up and execution of the state budget, is to be assessed as such a factual situation, which could not be neglected by the legislator.<sup>6</sup>

In its ruling of 23 April 2002, the Constitutional Court, while investigating the criteria of calculation of one of the awarded state pensions,<sup>7</sup> formulated a doctrinal statement that after the types of pensions, the persons entitled to the pension, the bases of granting and payment of pensions, the conditions, and the sizes of pensions have been established by laws, a duty arises for the state to follow the constitutional principles of the protection of legitimate expectations and legal certainty in the area of the relations of pensionary maintenance. In this ruling the Constitutional Court held for the first time that amendments of the established legal regulation, which deteriorate the pensionary maintenance, are possible only when there emerges a special situation in the state and only when it is necessary to protect other constitutional values; such amendments can be made only by law, without violating the Constitution.

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the non-revocation, since then, of the economic measures (in this case—those of reduction of remuneration) by the state constituted a violation of the principle of temporality of such measures.

6 In its decision of 13. November 2007. the Constitutional Court noted that this provision formulated by the Constitutional Court was applicable not only to the year 1999 but also to the year 1998, as well as to 2000-2001; for a fairly long time the difficult economic-financial crisis had a negative impact on the drawing up and execution of the state budget, and on the execution of various financial obligations by the state.

7 The Constitutional Court has more than once held, *inter alia* in its ruling of 6 February 2012, that the state pensions which are not directly named in the Constitution differ in their nature and character from the state social insurance pensions: they are awarded to persons for their service or merits to the State of Lithuania, and they are paid from the State Budget; the receipt of these pensions is linked not with the social insurance pension contributions of an established size, but with a corresponding status of the person (service, merits or other circumstances upon which awarding of the state pension depends); the discretion of the legislator, while establishing awarding of the state pensions, is broader than while regulating other pensions, that are directly named in the Constitution.

In its ruling of 25 November 2002, while deciding on the provisions of the law whereby it had been permitted to discontinue the payment of a part of old-age pensions to working pensioners, the Constitutional Court formulated the essential doctrinal provisions on pensions as of social guarantees, *inter alia* it stated that a person who meets the conditions established by law in order to receive the old-age pension, and who has been awarded and paid this pension, has the right to a monetary payment of a respective amount, i.e. the right to possession. This right must be protected and defended under Article 23 of the Constitution as the right of ownership. Later these provisions were developed in other acts of the Constitutional Court.<sup>8</sup> The Constitutional Court also formulated the doctrine, that under the Constitution, no such legal regulation may be established when a person implementing one of his constitutional rights would lose an opportunity to realize another constitutional right, the Constitutional Court held that, under the Constitution, it is not permitted to establish the legal regulation under which an opportunity for the person who has been awarded and paid an old age pension, would be restricted, due to this, to freely choose a job and business, although he meets the conditions provided for by law so that he would have a certain job or conduct certain business; the legal regulation under which the person cannot freely choose a job and business due to the fact that upon the implementation of this right he would not be paid the awarded old-age pension or part thereof which was paid until then, also must be considered as a restriction of an opportunity to freely choose a job or business. This position of the Constitutional Court was also reflected in other corresponding constitutional justice cases.

In the aforesaid ruling the Constitutional Court expanded the concept of an extreme situation, so that it would include an economic crisis (and a natural disaster as well). Thus, in this ruling for the first time in the jurisprudence of the Constitutional Court an economic crisis was *expressis verbis* pointed out as a circumstance, in the presence of which, in extraordinary cases the legal regulation of pensionary relations may be amended also by reducing old-age pensions to the extent that it is necessary to ensure vitally important interests of society and protect other constitutional values; the reduced old-age pensions may be paid only temporarily, i.e. only as long as there is a difficult economic situation in the state; it needs to be noted that even in such exceptional cases old-age pensions may not be reduced in violation of the balance, entrenched in the Constitution, between the interests of a person and those of society; such reduction of old-age pensions must be in line with the constitutional principle of proportionality.

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<sup>8</sup> In this context it needs to be noted that this doctrinal provision was developed in the Constitutional Court's ruling of 6 February 2012.

In its ruling of 23 August 2005, the Constitutional Court noted that, upon emergence of the economic and financial crisis the state budget (and municipal budgets) could be revised, the expenditures (appropriations) could be reduced, however, state and municipal institutions had to fulfil their obligations; in such an actual situation the terms during which the state had to fulfil the said obligations could be prolonged, however, state and municipal institutions may not decide, in an arbitrary manner, not to fulfil such obligations.

The Constitutional Court also had to decide on the consequences of an economic crisis for funding of courts. In its ruling of 28 March 2006, while construing the compliance of some provisions of the Law on Courts with the Constitution, the Constitutional Court held that in case of a difficult economic and financial situation, usually the financing from the budget to all the institutions which implement state powers, as well as the financing of various spheres which are financed from the resources of the budgets of the state and municipalities, should be revised and reduced; in such a situation the funding of courts and salaries of judges may be temporarily reduced, however, such reduction of salaries should not create preconditions for other state institutions and their officials to violate the independence of courts; funding of courts and salaries of judges may not be reduced to the extent where the courts would not be able to administer justice or the possibility of courts to administer justice would become restricted. The Constitutional Court emphasised that, while establishing the legal regulation of salaries, which is less favourable to persons, if it is necessary in order to secure the vitally important interests of society and the state and to protect other constitutional values, the legislator must maintain a balance between the rights and legitimate interests of the persons in whose favour a less favourable legal regulation is established, and the interests of society and the state, i.e. the requirements of the principle of proportionality must be followed.

The Constitutional Court confronted the inaction of the Seimas (Parliament), when the legal regulation regulating salaries of judges, which had been amended (made less favourable) due to a difficult economic situation, which had emerged in Lithuania because of the so-called Russian crisis, was not amended also when the crisis was over. While deciding the issues *inter alia* related to reduction of salaries of judges, in its decision of 8 August 2006<sup>9</sup> the Constitutional Court for-

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9 In its decision of 8 August 2006, the Constitutional Court noted that in case of legislative omission which is prohibited by the Constitution, the courts must fill the gaps in a corresponding individual case and this must be done by, first of all, applying the Constitution and the general principles of law, however, such a court decision does not revoke the obligation of the legislator to fill in the legal gap. This Constitutional Court decision is significant for the ordinary courts while deciding cases regarding the defense of the rights of a person, when the legislator avoids regulating the corresponding relations by legal means properly.



ulated also a doctrinal provision whereby ordinary courts, while considering concrete cases, have powers to assess changes in the economic situation and, in cases there is inaction of the legislator, to adopt decisions on the defence of a concrete social right of the person.<sup>10</sup>

### ***3.2 The development of the constitutional doctrine on limitation of social rights guarantees formed at the time of the global economic crisis (2009–2013)***

The doctrinal provisions on reduction (related to the so-called Russian crisis) of social guarantees, which were formulated in the jurisprudence of the Constitutional Court, were subsequently developed when, upon emergence of the 2009 global economic crisis, the expenditures of the budget of the State of Lithuania were drastically reduced, *inter alia* the expenditures for social payments. The state budget funding of the institutions implementing state power was also reduced, thus the salaries of employees of this sector were diminished as well<sup>11</sup>.

In 2009 and 2010, in its jurisprudence the Constitutional Court formulated the essential provisions on reduction of guarantees of social rights. The provisions were affected by the consequences of the global economic and financial crisis. The said provisions were later developed in the Constitutional Court's ruling of 6 February 2012, in which it investigated the provisions providing for reduction of pensions for the period of the economic and financial crisis

The economic crisis also brought up the question of reduction of salaries of Members of Parliament and payments for parliamentary activities. In its decision of 15 January 2009, the Constitutional Court, while construing the provisions formulated in its jurisprudence previously, approved the possibility to reduce salaries of members of the Seimas (parliament) (as well as salaries of judges) and the payments designed for parliamentary activities.

The Constitutional Court decision of 20 April 2010 summarised and further developed the doctrine of reduction of social rights guarantees, *inter alia* awarded and paid pensions and salaries, under conditions of an economic and financial crisis. In its decision of 20 April 2010, the Constitutional Court formulated certain general principles which must be followed when, provided there is an

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<sup>10</sup> The previously mentioned ruling of the Court of Appeal of Lithuania of 18 June 2008 which was adopted in civil case No. 2A-3/2008 is also to be attributed to such decisions of ordinary courts.

<sup>11</sup> In its ruling of 15 February 2013, the Constitutional Court decided the compliance of the legal provisions related to the 2009 state budget (and its adoption) with the Constitution and only some of them recognised as unconstitutional. The 2009 state budget itself was not recognised as conflicting with the Constitution.

economic crisis in the state, the legislator can adopt decisions on reduction of social guarantees:

– the constitutional concept of the State Budget implies that when there is an economic crisis in the state, the reduction of the remunerations of officials and state servants of the institutions that are funded from state and municipal budgets (other employees who are remunerated for work from funds of the said budgets) and that of pensions is allowed for no longer than one budget year; in the course of approving the State Budget for the next year, the legislator has a duty to reassess the economic situation in the state and to decide anew as regards the reduction of the said social guarantees;

– when there occurs an economic crisis in the state, the legislator, while adopting corresponding decisions related to limitation of social guarantees, must heed the constitutional imperatives of a state under the rule of law, equality of rights, justice, proportionality, protection of legitimate expectations, legal certainty, legal security, social solidarity and other imperatives; it is allowed to reduce the social guarantees only when all possibilities have been used and it is impossible to accumulate the funds necessary for fulfilment of all the commitments undertaken by the state in this area;

– the reduction of pensions and remunerations of state servants (and officials) must be grounded upon the circumstances of the extremely difficult economic situation in the state; only when there is an official statement that there is such a particularly grave economic and financial situation in the state, which is not short-termed, due to which the state is unable to perform the obligations undertaken by it, the legislator may temporarily reduce the pensions and remunerations; the reduction must be temporary and not violating the proportions of pensions and remunerations<sup>12</sup> that used to be before the crisis; the principles of equality of rights, proportionality and justice would not be violated, if the legislator established a limit below which pensions (salaries) would not be reduced even during an economic crisis; state pensions may be reduced to a greater extent, however, the principle of proportionality must be followed;

– when there is an especially grave economic and financial situation in the state and when, due to this, there is a necessity temporarily to reduce the awarded and paid pensions, it is not allowed to reduce the old-age pension awarded and

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12 In its ruling of 6 February 2012, the Constitutional Court *inter alia* investigated the proportions of reduction of pensions and recognized the legal regulation on reducing the state pensions, to a certain extent, as being in conflict with the Constitution. The proportions of reduction of the old-age pensions were not recognized as being in conflict with the Constitution, however, such a legal regulation that the pensions of the pensioners who work (or conduct a certain business) were reduced to a greater extent was recognized as being in conflict with the Constitution.

paid to the persons who have a certain job or conduct a certain business to a greater extent if compared with the persons who receive such a pension, but do not have any job and do not conduct any business;<sup>13</sup>

– the old-age pensions reduced because of an economic and financial crisis must be compensated (this requirement is also linked with the relation of the pension, as a certain payment, with the right of ownership protected under Article 23 of the Constitution;<sup>14</sup> the legislator, while reducing pensions, must establish a mechanism of compensation of losses incurred by persons, whereby the state would undertake an obligation to justly compensate, after the extreme situation is over, the losses to such persons within a reasonable time; state pensions, in case they were reduced to a great extent, may be compensated, but only to a smaller extent than old-age pensions.

In its 6 February 2012 ruling, while investigating the legal provisions designed for reduction of pensions, including state pensions, during an economic crisis, the Constitutional Court also had a possibility to assess how the legislator was following the requirements, which arise from the Constitution at the time of an economic crisis and which are formulated by the Constitutional Court, regarding reduction of pensions and recognised some provisions of these laws as being in conflict with the Constitution.<sup>15</sup>

In its ruling of 27 February 2012, the Constitutional Court interpreted also some requirements, which arise from the Constitution, regarding social support for the families raising underage children, i.e. issues of awarding and limitation upon payment of maternity, paternity, maternity (paternity) benefits, which had directly been determined by the circumstances of the economic crisis.

In the doctrine on social rights formed by the Constitutional Court the changing of the amount of pensions at the time of an economic crisis may not be treated as

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13 The Constitutional Court held that while developing the doctrinal provision formulated earlier that the legislator may not establish such a legal regulation under which an opportunity for the person who has been awarded and paid old-age pension (including state pension), would be restricted, due to this, to freely choose an occupation and business, i.e. only a certain part of the pension would be paid (Constitutional Court's rulings of 25 October 2002 and 3 December 2002).

14 While developing this doctrinal provision (which was formulated in the Constitutional Court's ruling of 25 November 2002 for the first time) in its ruling of 6 February 2012, the Constitutional Court noted that the concept of the constitutional right to pension, as a periodic payment of a certain amount, may not be identified with the concept of the right of ownership in the ordinary, *inter alia* civil law.

15 The legislator has not followed the requirement not to reduce the pensions of the working pensioners more than of those who do not work; the constitutional principle of proportionality was not followed also when reducing the state pensions received by certain persons.

a reform of such social guarantees. The doctrine on social rights reform formed by the Constitutional Court is different in essence. In case the legislator decides to reorganise the system of pensions at the time of an economic crisis, a certain transitional period and a mechanism for compensation of the incurred losses to the persons who had been granted and paid such pensions must be established.<sup>16</sup>

### ***3.3 The peculiarities of the doctrine on limitation of social rights guarantees during an economic crisis***

While elucidating the doctrine, which is being formulated by the Constitutional Court, on limitation of social rights during an economic crisis, a question arises whether this doctrine may be assessed as in a sense an independent doctrine on limitation of the rights of a person or whether it is one of the elements of the general doctrine on human rights (a separate case of limitation of rights).

The Constitutional Court has formulated the general criteria of limitation of the rights of a person, which are grounded upon the ECtHR jurisprudence, and has noted more than once that, under the Constitution, it is allowed to limit the human rights and freedoms in case the following conditions are observed: this is done by law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values entrenched in the Constitution, as well as the constitutionally important objectives; the limitations may not deny the nature and essence of the rights and freedoms; the constitutional principle of proportionality must be followed. These principles established by the Constitutional Court are similar to the doctrine on limitation of social rights, which was formulated by the ECtHR, and to the principles entrenched in the EU Charter of Fundamental Rights. The Constitutional Court formulated the general doctrine on limitation of human rights in a very broad manner in its ruling of 29 December 2004.<sup>17</sup>

It is possible to assess the doctrine on limitation of social rights guarantees during an economic crisis, which was formulated by the Constitutional Court in 2009–2013 and which is continuation of its previous doctrine, as in a sense special doctrine on limitation of human rights at the core of which, it goes without saying, there are the general principles of limitation of human rights that are

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16 The Constitutional Court construed the requirements which stem when the legislator is implementing the social rights reform *inter alia* in its ruling of 2 September 2009, as well as rulings of 4 July 2003 and 3 December 2003.

17 The Constitutional Court formed the general doctrine on limitation of human rights when it was deciding the issue of the constitutionality of limitation (entrenched by the law-making subject) of a concrete constitutional right. While doing so, it formulated also the requirements applied to limitations of a concrete right, for example, freedom of information.

recognised in human rights law. The acts of the Constitutional Court establish also independent grounds of the reduction of the guarantees of only the social rights (pensions and salaries) during an economic crisis, which, even though grounded upon general principles of the doctrine of human rights, are supplemented with additional criteria, as, for instance: the requirement to ground the reduction of the guarantees of the social rights (pensions and salaries) upon the circumstances testifying the presence of a very difficult economic situation of the state and the requirement for the existence of an official statement that there is a very difficult economic and financial situation in the state, which is not short-termed; salaries and pensions must be reduced for the period not exceeding one budget year, whereas in the course of approving the state budget for the next year, the legislator has a duty to reassess the economic situation in the state and to decide anew as regards the reduction of the said social guarantees; the reduction must be temporary and not violating the proportions of the pensions and remunerations that used to be before the crisis; the legislator could establish a limit below which pensions (salaries) would not be reduced even during an economic crisis; it is not allowed to reduce the old-age pension awarded and paid to the persons who have a certain job or conduct a certain business to a greater extent (this important criterion was also established in the previous doctrine); the old-age pensions reduced because of an economic and financial crisis must be compensated, whereas the reduced state pensions—only if they are reduced to a large extent and they may be compensated to a smaller extent. The constitutional principle of social solidarity, construed in the context of the constitutional principle of equal rights of persons, implies a duty of the legislator to establish a non-discriminatory extent of reduction of remunerations of persons who are paid for work from the funds of the state or municipal budget. As regards the salaries reduced due to an economic crisis, differently from the case of the reduction of pensions, the legislator is under no obligation to compensate them, unless such reduction is recognised by the Constitutional Court as conflicting with the Constitution, however, even in this case they can be compensated within reasonable time and not to their full extent.<sup>18</sup>

In its ruling of 1 July 2013, while deciding the questions of the constitutionality of the reduction of remunerations of state servants and judges, the Constitutional Court construed the essence of the principle of constitutional solidarity and emphasised that the constitutional principle of social solidarity, when it is construed in the context of other constitutional principles (*inter alia* of proportionality and justice), does not imply any social egalitarianism, *inter alia* it does not deny the requirement to differentiate the amounts of remuneration that are paid from the state budget or the municipal budgets, where one takes into

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18 The Constitutional Court's ruling of 1 July 2013.

consideration the nature of functions performed by the persons that receive them, their difficulty and extent, the responsibility that falls on them for the implementation of those functions, the peculiarities of the position held, as well as the professional level and qualification of the persons holding those positions; one must heed this requirement also while establishing the measures of reduction of the pay for work when there occurs an extremely difficult economic and financial situation.

While deciding regarding the compliance of certain provisions of the state budget of 2009 with the Constitution, in its ruling of 15 February 2013 the Constitutional Court emphasised that possible deviations from the requirements, which are put forward for the adoption and entry into force of the laws that affect the state budget and its revenue and expenditure and which arise from the Constitution, *inter alia* the constitutional principles of a state under the rule of law and responsible governance, may be constitutionally justifiable by the aspiration to ensure an important public interest—to guarantee the stability of public finances, not to allow the rise of an excessive budget deficit in the state due to an exceptionally difficult economic and financial situation because of the economic crisis—determining the necessity of urgent and effective decisions. The Constitutional Court also noted that in case an exceptionally difficult economic and financial situation in the state is long-termed and continues for more than one year, under the Constitution, there is no tolerance for the fact that in the course of adopting the laws that affect the state budget revenue and expenditure the aforementioned requirements, which arise from the Constitution, for the adoption and entry into force of these laws, would be disregarded by justifying it by a necessity to adopt urgent decisions in order to handle the consequences of the economic crisis.

Thus, it is possible to assert that the Constitutional Court doctrine on limitation of social rights during an economic crisis has established the specific criteria which one must follow.

### ***3.4 The limitation of social rights guarantees in the jurisprudence of some other constitutional courts***

Quite a number of constitutional courts of European states have confronted the issue of reduction of social guarantees. Sometimes they have to adopt decisions on the consequences of certain reforms or those of the economic crisis. The changes in economy have made some constitutional courts to revise the doctrinal provisions that used to be regarded well-founded. In some cases the social rights issues became an object of the different treatment in constitutional and EU law.<sup>19</sup>

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19 The decision of the Constitutional Court of the Czech Republic of 31 January 2012. PL. US/5/12 SLOVAK PENSIONS (<http://www.concourt.cz/view/pl-05-12>).

One is to pay attention to the 21 December 2009 judgment of the Constitutional Court of the Republic of Latvia<sup>20</sup> in which the compliance of some provisions of the Law “On State Pension and State Allowance Disbursement in the Period from 2009 to 2012” with the Constitution was investigated. This judgment decided on the issues of reduction of the social rights—pensions—during the global economic crisis in a different way than it was done by the Constitutional Court of Lithuania. The Constitutional Court of Latvia, while taking account of certain circumstances, recognised without reservations that the reduction of pensions provided for in the law was in conflict with the Constitution, that the impugned provisions were invalid from the moment of their adoption, and it established a manner of execution of this judgment.<sup>21</sup>

The Constitutional Court of Latvia also held that the reduction of pensions could have been implemented only if a legal provision concerning later reimbursement of the deducted money had been simultaneously adopted; in other words, planning such a temporary reduction, the legislator is obliged to ensure its fair reimbursement at a later time. More than that, the state, in proportion to the overall interests of society, had to define the groups of pensioners who would be exempt from this reduction, or to whom a different reduction amount would be applied (Item III.32). The main argument of the Constitutional Court why it recognised the provisions of the law as conflicting with the Constitution was that there has not been a differentiated approach on the reduction of pensions, there had been established neither a compensation for the reduction of pensions, nor a corresponding transitional period, therefore the impugned norms were not in conformity with Article 1 of the Constitution.

One can assess the 26 December 2011 decision of the Constitutional Court of Ukraine<sup>22</sup> as a case where during an economic crisis a constitutional court has

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20 The Constitutional Court of the Republic of Latvia ruling of 21 December 2009, <http://www.satv.tiesa.gov.lv>.

21 The Constitutional Court of Latvia *inter alia* noted that the amount of securing of social rights guaranteed by the state may be subject to change depending on the amount of funds at the possession of the state; still, no matter what economic situation in the state is, the legislator must heed the fundamental rights of a person established in the Constitution (Item III.24). In certain cases, an economic crisis can develop to the point when the freedom of action must be granted to the legislator to enable the implementation of remedial measures—even if the latter would infringe the fundamental rights established by the Constitution; in the situation of extremely limited financial resources of the state, the latter has freedom of action to change the conditions for pension disbursement—with the aim of sustaining a just social insurance system (Item III.29.2).

22 Decision of the Constitutional Court of Ukraine No. 20-rp/2011 dated December 26, 2011 in the case upon the constitutional petitions of 49 People’s Deputies of Ukraine, 53 People’s Deputies of Ukraine and 56 People’s Deputies of Ukraine concerning conformity with the

to revise certain doctrinal provisions that used to be regarded as well-founded. The Constitutional Court had to interpret the provisions of Article 22 of the 1996 Ukrainian Constitution that human and citizens' rights and freedoms affirmed by this Constitution are not exhaustive; constitutional rights and freedoms are guaranteed and shall not be abolished; the content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force.

On 26 December 2011, the Constitutional Court of Ukraine adopted the decision on the compliance of some provisions of the Law "On the State Budget of Ukraine for 2011" with the Constitution. In its decision, while taking account of the economic difficulties of the state and referring to the ECtHR doctrine (judgments in cases *Airey v. Ireland* (No. 6289/73) and *Kjartan Ásmundsson v. Iceland* (No. 60669/00)), the Constitutional Court formulated a new doctrinal statement that the social rights envisaged by laws are not absolute. The mechanism of realisation of these rights may be changed by the state, in particular, through impossibility of their financing by proportional redistribution of funds to maintain the balance of interests of the whole society. In addition, such measures may be stipulated by the necessity to prevent or eliminate real threats to economic security of Ukraine, which under Paragraph 1 of Article 17 of the Constitution of Ukraine is the most important function of the state. However, establishing such legal regulation under which the amount of pensions and other social payments and assistance will be lower than the level set in Paragraph 3 of Article 46 of the Constitution of Ukraine is inadmissible, and will not provide adequate living conditions for individuals to live in society and maintain their human dignity, that would run contrary to Article 21 of the Constitution of Ukraine. Thus, changing the mechanism of calculation of certain types of social benefits and assistance is constitutionally permissible to the extent which puts into question the very nature of the content of the right for social protection.

The Portuguese Constitutional Court has also faced questions of the constitutionality of the reduction of social guarantees under conditions of the global economic crisis. In its decision of 5 April 2013, this Court, though not excluding the possibility that in exceptional economic circumstances and in order to quickly reduce the public deficit the legislator could lower the income of Public Administration staff, *inter alia* declared the suspension of the additional holiday month of salary or equivalent for Public Administration staff (which also applied to the same types of amount payable under teaching and research contracts) to be unconstitutional with generally binding force, because it was in violation of the principle of equality that requires the just distribution of public costs,

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Constitution of Ukraine (constitutionality) of item 4 of Chapter VII "Transitional Provisions" of the Law of Ukraine "On the State Budget of Ukraine for 2011" (<http://www.ccu.gov.ua>)



as it lead to unequal treatment compared to persons who earn income in the private sector.<sup>23</sup>

The economic and financial problems of states, that could be viewed as a result of the on-going global economic crisis, has influenced the constitutional doctrine on social guarantees formulated by constitutional courts. The latter have confronted a complex task to assess whether the decisions adopted by state institutions are an adequate and proportional measure conforming to the imperatives stemming from the Constitution.

#### **4. The constitutional protection of social (material) guarantees of the judge. The possibility of reduction of social rights guarantees for judges under conditions of an economic crisis**

The constitutional social (material) guarantees of the judge, *inter alia* the solidity of the salary and pensionary maintenance of the judge and their appropriate regulation by law are seen by the Constitutional Court as an important guarantee of the independence of the judge and courts.<sup>24</sup> The Constitutional Court has noted on more than one occasion that the independence of the judge and courts is not a privilege, but one of the most important obligations of judges and courts, which stems from the right of the person, who believes that his rights or freedoms guaranteed in the Constitution are violated, to an impartial arbiter of

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23 The Ruling 187\13 of the Constitutional Court of Portugal of 5 of April 2013 (<http://www.tribunalconstitucional.pt/tc/en/acordaos/20130187s.html>)

The Constitutional Court also stressed that when not matched by equivalent sacrifices on the part of virtually all the other citizens earning income from other sources, the cumulative, on-going effects of the sacrifices imposed on people who earn income in public sector represent a difference of treatment for which the goal of reducing the public deficit does not provide adequate grounds.

24 In the Constitutional Court's doctrine, *inter alia* in its ruling of 27 November 2006, the independence of judges and courts is understood as their impartiality which is ensured by consolidating, in the Constitution and laws, the independence of the system of courts from the legislative and executive powers (institutional independence), the procedural independence of judges, the organisational independence and self-government of courts, the status of judges, the inviolability of the person of a judge, immunities, the inviolability of the term of office of judges and social (material) guarantees of judges, as well as by establishing the prohibition for the institutions of state power and governance, Members of the Seimas and other officials, political parties and public organisations and citizens to interfere into the activity of judges or courts. In this ruling the Constitutional Court did not formulate any exhaustive list of the guarantees for judges and courts, but noted that the independence and impartiality of judges and courts are also ensured by other guarantees established in the Constitution and laws.

the dispute who would solve the emerged legal dispute under the Constitution and laws in essence.<sup>25</sup>

The Constitutional Court has emphasised on more than one occasion that the state has a duty to ensure such social (material) maintenance for judges which would be in conformity with the status of judges when they are in office, as well as after expiry of the term of their office.<sup>26</sup> The social and material guarantees established to judges under the Constitution must be such so that they would be in line with the constitutional status of the judge and his dignity.<sup>27</sup>

While formulating the doctrine of social rights guarantees of the judge, the Constitutional Court derives the imperative of judges' salaries and their other social guarantees from the principle of independence of judges and courts established in Article 109 of the Constitution. On the grounds of this principle one attempts to protect the judges administering justice from any influence of the legislative power and the executive, as well as from that of other state establishments and officials, political and public organisations, commercial-economic structures, and legal and natural persons.

The Constitutional Court emphasised in several cases the requirement arising from Article 109 of the Constitution to ensure the independence of judges. As far back as *inter alia* in its rulings of 6 December 1995 and 21 December 1999, while interpreting the constitutional principle of independence of judges and courts, it held that the protection of the remuneration and other social guarantees of judges is one of the guarantees helping to secure this principle, therefore, according to the Constitution, in order to ensure the independence of judges, as long as the judge is in office, any reduction of his remuneration, as well as any reduction of the social guarantees established for him, is prohibited. However, a situation where a certain component part of a judge's remuneration is decreased, but, at the same time, another component part of his remuneration is increased, is not regarded as reduction of salaries of judges.<sup>28</sup>

The independence of judges is ensured also in the aspect that Paragraph 1 of Article 113 of the Constitution commandingly entrenched the prohibition that judges not receive, during the entire time of their professional career, any remuneration other than the remuneration established for the judge and payment for educational or creative activities. Thus, the Constitution establishes strict

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25 *Inter alia* the Constitutional Court's rulings of 22 October 2007, 29 June 2010, 14 February 2011 and 1 July 2013.

26 The Constitutional Court's rulings of 21 December 1999, 22 October 2007, and 29 June 2010.

27 The Constitutional Court's decision of 8 August 2006, the rulings of 22 October 2007, 29 June 2010, and 14 February 2011.

28 The Constitutional Court's ruling of 14 February 2011.

limitations on the receiving of any other remuneration by judges. From the point of view of the prohibitions established in Article 113 of the Constitution, all judges are equal.

The official constitutional doctrine of the remuneration of the judge as an important element of his constitutional status was developed *inter alia* in the Constitutional Court's rulings of 28 March 2006, 22 October 2007, and 14 February 2011, also in the decisions of 8 August 2006 and 20 April 2010. The Constitutional Court noted on more than one occasion (in its ruling of 14 February 2011 and the decisions of 12 January 2000 and 8 August 2006) that the notion "remuneration of the judge" includes all the payments paid to a judge from the state budget.

The character of the social guarantees of judges is determined by the constitutional status of the judge which is the essential condition for his independence guarantees. The Constitutional Court has emphasised on more than one occasion, *inter alia* in its ruling of 14 February 2011, the requirement for equal status of the judges in the administration of justice, which determines the fact that the material and social guarantees of judges must be differentiated according to clear criteria that are known *ex ante* and are not related to administration of justice in the course of the consideration of cases. The same Constitutional Court's ruling emphasised that the judges of the same system of courts and the judges of the courts of the same level must be paid for the corresponding work correspondingly, without discriminating any of them and without granting privileges to any of them.

The Constitutional Court has also provided interpretation of the component parts of remuneration. It noted that the legislator, while regulating the relations connected with the establishment of the remuneration of judges, may establish that remuneration—a social (material) guarantee of the judge—is comprised of not one, but several constituent parts, *inter alia* the positional salary, additional pay and extra pay.<sup>29</sup>

The Constitutional Court also assesses the social guarantees of the judge upon the expiry of the term of his powers as an important guarantee of the independence of judges. While interpreting the provisions of Article 109 of the Constitution, the Constitutional Court has formulated the requirement that the legislator must establish such legal regulation which would ensure the independence of the judge and courts, *inter alia* the social (material) guarantees of the judge, not only when he is in office, but also when his powers are discontinued.<sup>30</sup> The legislator, while heeding the Constitution, may also establish cases where a judge's pension (which is related to the constitutional status of the judge) is not

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29 The Constitutional Court's ruling of 14 February 2011.

30 *Inter alia* the Constitutional Court's ruling of 22 October 2007.

awarded to a former judge and/or an awarded state pension is no longer paid to a former judge. When the cases are established, where a judge's pension is not awarded to a former judge, one must take into consideration the grounds of the discontinuation of the powers of the judge.

Thus, the Constitutional Court's doctrine has formulated a large system of social guarantees of judges, which should be assessed as an important guarantee of the independence of the judge and includes not only his remuneration, but also his social guarantees upon the expiry of his powers. The Constitutional Court has noted the importance that such guarantees must be established in reality.

The Constitutional Court has formulated a strict prohibition of reduction of judges' remuneration and their other social (material) guarantees; any attempts to reduce the remuneration of the judge or his other social (material) guarantees, or limitation upon financing of courts are treated as encroachment upon the independence of judges and courts.<sup>31</sup> This doctrine was further developed under the conditions of the economic crisis.

In its decision of 15 January 2009, the Constitutional Court noted that the Constitution prohibits the reduction of judges' salaries save the situations when there is an extremely difficult economic and financial situation of the state, however, it is allowed to do so only temporarily and only by law, by heeding the constitutional principle of proportionality, which implies that the salaries of judges must not be reduced to the extent where courts would become unable to perform their constitutional function and obligation—administration of justice; such constitutional guarantees of salaries of judges are determined by the constitutional status of judges who implement judicial power; the said constitutional status of judges is implied by the constitutional function of administration of justice.

The doctrine on correction (limitation) of social rights during an economic crisis formulated in the Constitutional Court's jurisprudence is also applicable to the social guarantees of judges. In its decision of 20 April 2010, the Constitutional Court *inter alia* formulated certain general principles which must be followed when, provided there is an economic crisis in the state, the legislator can adopt decisions on reduction of social guarantees.

The Constitutional Court does not single out the reduction of judges' social guarantees (remuneration and pensions (state pensions<sup>32</sup>)) under conditions of an economic crisis from the same guarantees of other persons (*inter alia* those im-

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31 The Constitutional Court's rulings of 6 December 1995, 21 December 1999, 12 July 2001, 28 March 2006, and 14 February 2011, the decisions of 12 January 2000 and 8 August 2006.

32 A judge's pension is treated as a state pension and, as well as other state pensions, it is paid from the state budget.

plementing the functions of state authority<sup>33</sup>), who are paid their remuneration, and the pension is awarded and paid from the state budget (and the state social insurance budget).

The Constitutional Court has emphasised that, as every person, a judge has the right to defend his rights, legitimate interests, and legitimate expectations.<sup>34</sup> The Constitutional Court confronted the inaction of the Seimas (parliament) when the legal regulation regulating the salaries of judges, which had been amended (made less favourable) due to a difficult economic situation, which had emerged in Lithuania as a result of the so-called Russian crisis, was not amended also when the crisis was over. In its decision of 8 August 2006,<sup>35</sup> while deciding the issues *inter alia* related to the reduction of the salaries of judges, the Constitutional Court formulated a doctrinal provision whereby ordinary courts have in considering concrete cases the powers to assess the changes in the economic situation and in cases of the legislator's inaction—also the powers to adopt decisions on the defence of a concrete social right of the person. At the time of this crisis, the issue of the reduction and compensation of judges' salaries was a matter of consideration by the ECtHR.<sup>36</sup>

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33 In its decision of 15 January 2009, the Constitutional Court noted that if one established such legal regulation, whereby in case of an extremely difficult economic and financial situation of the country it would not be permitted to reduce the financing of courts only, nor to reduce the remuneration of judges only, it would mean that courts are groundlessly singled out from among other institutions which implement state power, and judges—from among other persons that participate in implementing powers of the corresponding institutions of state power; the consolidation of such exceptional situation of courts (judges) would not be in line with the requirements of an open, fair and harmonious civil society and the imperatives of justice.

34 *Inter alia* the Constitutional Court's rulings of 12 July 2001 and 22 October 2007.

35 In its decision of 8 August 2006, the Constitutional Court noted that in the event of a legislative omission, which is prohibited by the Constitution, courts must fill the gaps *ad hoc*, and this must be done by applying, first of all, the Constitution and the general principles of law; however, such a decision of the court does not eliminate the legislator's obligation to fill the legal gap. The said Constitutional Court's decision is significant for ordinary courts in deciding cases regarding the protection of the person's social rights, where the legislator avoids duly regulating the respective relations by means of law.

36 The ECtHR, while adopting its 15 October 2013 decision in the case of *Rimantas Savickas v. Lithuania* (application No. 66365/09) and considering the admissibility of the application, referred *inter alia* to the Constitutional Court's doctrine designated for the reduction of the social guarantees for judges during an economic crisis. The ECtHR considered that the Lithuanian State did not overstep the margin of appreciation in adopting and upholding the temporary reduction of judges' salaries during the economic crisis (1999–2003) and emphasised that the losses of salary had been compensated, for the period of three years, either under a special law providing for such compensation or by a court decision according to

In its ruling of 1 July 2013, the Constitutional Court emphasised that, under the conditions of an economic crisis, the reduction of the salaries of judges may not be disproportionate or discriminatory; *inter alia* salaries may not be reduced only for judges, or only for the judges of certain courts, or only for the judges performing certain duties; the proportions of the amounts of salaries established at the time prior to the occurrence of a particularly difficult economic and financial situation in the state for the judges performing different duties (for the judges of different systems of courts and/or of different levels of courts), as well as the proportions of the amounts of salaries established for the different categories of judges and other persons who are paid for their work from the funds of the state budget or municipal budgets (*inter alia* state servants, politicians, officials), may not be violated. Any failure to observe the said requirements should be regarded as an encroachment upon the independence of a judge and courts, thus, also *inter alia* as a violation of Paragraph 2 of Article 109 of the Constitution and the constitutional principle of a state under the rule of law.

In the ruling of 1 July 2013, the Constitutional Court had to hold that, under the conditions of the economic crisis starting from 2009, the salaries of judges and salaries of certain state servants had been reduced without conforming to the constitutional requirements applicable under the conditions of an economic crisis to that type of reduction, *inter alia* by violating the constitutional principle of proportionality.<sup>37</sup> The impugned legal regulation, by means of which the coefficients of the positional salary of judges had been reduced by establishing a disproportionate (particularly large) extent of the reduction of the salaries of judges, *inter alia* by violating the proportions of the amounts of salaries established at the time prior to the occurrence of a particularly difficult economic and financial situation in the state for the judges performing different duties, was recognised by the Constitutional Court as being in conflict with the Constitution. The Constitutional Court held that such legal regulation was not in line with the principle of the independence of the judge and courts, *inter alia* the requirements consolidated in Paragraph 2 of Article 109 of the Constitution and the constitutional principle of a state under the rule of law.

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that law. The applications of the applicants had been recognised as inadmissible concerning the other points of the dispute as well.

37 The Constitutional Court's doctrine has formulated a duty for the legislator, even during an economic crisis, not to reduce those salaries that, upon the reduction thereof, would not ensure adequate living conditions for a person. The fact that the salaries of such amounts as established by the legislator would not be reduced does not violate the principle of proportionality and other constitutional principles.

It should be noted that the questions related to the reduction of the social rights guarantees of judges under the conditions of an economic crisis have been dealt with in different manner by other constitutional courts as well.

On 18 January 2010, the Constitutional Court of Latvia adopted a judgment in the case in which it assessed the freezing of judicial remuneration in conjunction with the rise in the wages of higher public officials. The Constitutional Court of Latvia recognised the contested legal provisions and the impugned reduction of the salaries of judges under the conditions of the economic crisis without conforming to the imperatives stemming from the Constitution as being in conflict with the Constitution and noted the following: difficult economic conditions lead the state to review and reduce financing for all workers in the public sector irrespectively of the branch of the public sector in which they work, the budget of a government institution, or the area in which it operates; it would be impermissible to reduce the financing of a single sector—the courts—or the salaries of judges, just as it would be impermissible to leave the financing of one branch of the government institution unchanged; even under the conditions of economic decline, financing can be reduced only if the constitutional principles and procedures are observed, and if the fundamental rights and freedoms are respected, particularly, in terms of the principle of constitutional equality.<sup>38</sup>

On 12 December 2012, the Constitutional Tribunal of Poland adopted a ruling,<sup>39</sup> in which it recognised the legal regulation establishing the “freezing” of the salaries of judges—non-indexation for the period of one year as being not in a conflict with the Constitution. Under the challenged legal regulation, the salaries of judges had been established not according to the average work remuneration of 2011, but that of 2010, whereas the salaries in the public sector had not been increased, i.e. they had not been indexed (had been frozen), as long as since 2008. The Constitutional Tribunal founded its decision on the deteriorating economic situation in the state, which required that urgent measures would be taken, and emphasised that taking care of public finances was a duty of the

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38 The judgment of the Constitutional Court of Latvia of 18 January 2010 (case No. 2009-11-01), in which the Constitutional Court of Latvia emphasised that judges are also citizens, and that their special status and role in society do not grant them immunity against any such a situation in which the state solves a complicated situation and takes decisions with respect to its residents; in an economic crisis a social solidarity means that every citizen undertakes proportional responsibility for the overcoming of the difficult consequences of the crisis, and government officials, including judges, must stand in solidarity with the country's residents. The Court also underlined that the contested norms thus provide for such salaries of judges in 2009 that are equal with the salaries in 2007 rather than those in 2008, consequently, the remuneration was, in fact, reduced.

39 The ruling of the Constitutional Tribunal of Poland of 12 December 2012. ([http://www.trybunal.gov.pl/OTK/teksty/OTKZU/2012/2012A\\_11.pdf](http://www.trybunal.gov.pl/OTK/teksty/OTKZU/2012/2012A_11.pdf))

public authorities, and that the legislator's actions had been well-grounded on the public interest—the balancing of the state budget.

It should be mentioned that the Constitutions of some states contain the provisions *expressis verbis* prohibiting the reduction of the social guarantees of judges. Thus, the constitutional courts of the said states are obliged when deciding regarding the reduction of the said social guarantees under the conditions of an economic crisis not to interpret or reinterpret the doctrine formulated by the Constitutional Court, but to construe the imperative provisions of the Constitution as at the same time limiting the powers of a court. The situation in question was faced by the Supreme Court of Cyprus when in its decision of 14 June 2013<sup>40</sup> it had to answer the question whether it was permissible to apply the statutory provisions providing for the reduction of the salaries of judges. Article 158.3 of the Constitution of the Republic of Cyprus stipulates that “[a] law shall provide for the remuneration and other conditions of service of the judges of the courts to be established under paragraph 1 of this Article. The remuneration and other conditions of service of any such judge shall not be altered to his disadvantage after his appointment.” The Supreme Court of Cyprus *inter alia* observed that Article 158.3 of the Constitution was so clear that there can be no doubt as to its interpretation, the *sub judice* laws that implicated the impermissible adverse alterations of the judges’ remuneration were contravening the provisions of Article 158.3 of the Constitution. Having examined various arguments, the Supreme Court ultimately reached the conclusion that the recourses succeeded and the *sub judice* administrative decisions were declared null and void and of no effect whatsoever. The court also noted the pronounced intention of most of the applicants to voluntarily contribute to the effort of saving the Cyprus economy and hoped that their example would be followed by the remaining applicants.

Thus, during an economic crisis, *inter alia* not only such reduction in judges’ salaries is allowed, where they are reduced according to a certain percentage, but also when the amount of the received salary is not indexed, i.e. when it is frozen. When the institutions exercising constitutional jurisdiction decide on the constitutionality of the reduction in judges’ salaries during an economic crisis, in each separate case they must decide on whether the limitation of the said social right was allowed and whether it was constitutionally grounded. The decisions of Latvian and Polish constitutional courts show how the non-indexing of judges’ salaries during an economic crisis, although, in itself, may be recognised constitutional, however, under different circumstances, may lead to different decisions taken by the institutions of constitutional jurisdiction.

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40 The Supreme Court of Cyprus. Revisional Jurisdiction. *Consolidated Recourses 397/2012 and 480/2012*. Judgment of 14 June 2013.



## 5. Conclusion

The Constitutional Court of the Republic of Lithuania is forming a broad and distinctive doctrine on the possibility of limitation of social rights during an economic crisis. This doctrine is *inter alia* grounded upon the imperatives of a state under the rule of law, equality of rights, justice, proportionality, protection of legitimate expectations, social solidarity, the constitutional concept of the state budget and other constitutional imperatives. The Constitutional Court has also formulated certain general principles which must be followed when in a situation of an economic crisis the legislator may adopt decisions on reduction of social rights guarantees. This doctrine is also influenced by international law, *inter alia* the law of the European Convention on Human Rights. While considering the cases related to implementation of social rights, the Constitutional Court also takes account of the case-law of the constitutional courts of other states.

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### **ИЗАЗОВИ ПРЕД УСТАВНИМ СУДОМ ЛИТВАНИЈЕ ЗА ВРЕМЕ ГЛОБАЛНЕ ЕКОНОМСКЕ КРИЗЕ**

#### *Резиме*

*Економски и финансијски проблеми држава, на које се може гледати као на економску кризу у континуитету, извршили су утицај на уставну доктрину о зајемченим правима из области социјалне заштите коју формулишу уставни судови. Они су се суочили са сложеним задатком оцењивања да ли су одлуке које су донеле државне установе примерене и сразмерне захтевима који проистичу из устава.*

*Економска криза је покренула бројна сложена питања за уставне судове. Као прво, да ли су уставни судови, суочени са глобалном економском кризом, у стању да се баве питањима повезаним са економијом, односно да одлучују о уставности хитних мера штедње које држава доноси. У условима глобалних економских мера штедње, погођена су најосетљивија подручја, као што су зајемчена права из области социјалне заштите, а питања пензија, зарада или породилског одсуства постала су горућа питања.*

*Јуриспруденција Уставног суда Литваније формулисала је доктрину којом се ограничавају зајемчена права из области социјалне заштите за време економске кризе, а период у коме је ова доктрина настајала може се поделити у две фазе: од 2002. до 2006, када је Уставни суд одлучивао о уставности правних аката којима се сужавају социјалне гаранције, у ситуацији насталој због утицаја тзв. „руске кризе“ на привреду Литваније (у том периоду је Уставни суд усвојио неколико одлука које су почеле да формирају доктрину о смањењу зајемчених права из области социјалне заштите у време економске кризе); и од 2009. до данас, када је Уставни суд формирао уставну доктрину о ограничењу права из области социјалне заштите у ситуацији насталој због последица глобалне економске кризе по привреду државе Литваније.*

*Доктрина о ограничењу зајемчених социјалних права за време економске кризе, коју је Уставни суд формулисао у периоду између 2009. и 2013, а која је наставак претходне доктрине, може се оценити као специјална доктрина о ограничењу људских права, чију суштину чине општеприхваћени принципи ограничења људских права. Актима Уставног суда успостављене су и независне основе за смањење гаранција само социјалних права (пензија и зарада) за време*

економске кризе. Оне су, иако су утемељене на општим начелима доктрине о људским правима, допуњене и додатним критеријумима, као на пример: захтевом да се смањење зајемчених права из области социјалне заштите (пензија и зарада) заснива на околностима које сведоче о присуству веома тешке економске ситуације у држави; захтевом за постојањем званичног саопштења да у држави постоји веома тешка економска и финасијска ситуација која није краткорочна; захтевом да се зараде и пензије морају смањити на период који не прелази једну буџетску годину, док је приликом одобравања државног буџета за следећу годину нормотворац дужан да поново процени економску ситуацију у држави и да поново одлучи у погледу смањења поменутих социјалних гаранција; да смањење мора бити привремено и не сме нарушавати пропорционални однос плата и накнада који је постојао пре кризе; да законодавац може да успостави границу испод које пензије (и плате) неће бити смањиване чак ни за време економске кризе; да није дозвољено у већој мери смањити старосне пензије додељене особама које имају посао или воде приватан посао (овај важан критеријум је успостављен у претходној доктрини); да се старосне пензије које су смањене због економске и финансијске кризе морају надокнадити, док се смањене државне пензије – само уколико су смањене у великој мери, могу надокнадити, али само у мањој мери. Уставно начело друштвене солидарности, тумачено у контексту уставног принципа једнаких права, подразумева дужност законодавца да успостави недискриминаторни степен смањења зарада лицима која су за свој посао плаћена из фондова државног или општинског буџета.

Тренутно је предмет пажње и питање смањења зајемчених права из области социјалне заштите судија, односно смањење њихових зарада. Формулишући доктрину зајемчених права из области социјалне заштите за судије, Уставни суд је истакао као императиве судијске зараде и њихова зајемчена социјална права из начела независности судија и судова успостављеног у члану 109. Устава. Систем зајемчених социјалних права судија, формулисан у доктрини Уставног суда, треба оценити као важну гаранцију независности судија, што постаје питање од нарочитог значаја у условима економске кризе, када законодавац поставља ограничења на могућу висину зарада и пензија. Уставни суд је у својој одлуци од 1. јула 2013. даље разрадио доктринарне одредбе засноване на општој доктрини смањења права из области социјалне заштите (плата и пензија) у условима економске кризе, формулисаној у одлуци Уставног суда од 26. марта 2006, у којој је саопштен значај поштовања принципа пропорционалности приликом успостављања конкретних ограничења на зајемчена социјална права.

**Кључне речи:** Уставни суд, уставна доктрина ограничења, социјална права, економска криза.

