

IS IT POSSIBLE TO SPEAK ABOUT THE PARTICULAR STRATEGY OF THE INTERPRETATION OF THE CONSTITUTION?

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I. Constitutional control is impossible without interpretation of the constitution. That's way it's important to analyze constitutional court point of view to the constitution. This article analyzes activity of the Constitutional Court of the Republic of Lithuania interpreting the Constitution of the Republic of Lithuania. Lithuania is one of Middle East European countries that by the end of XX century freed from communism and in 2004 became the member of the European Union. In my opinion, foreign readers should be interested even in small countries constitutional experience.

The Constitutional Court must interpret both the disputed act and the Constitution, which for the laws is the standard to be followed. The aim of our research here is to analyse problems of interpretations of the Constitution and laws.

Often the researchers in the field of law interpretation try to answer the same questions. How to elucidate the content of an act? Which method to apply? What is peculiar about interpretations of these laws? Is it possible to speak about the strategy of the interpretation of the Constitution? As a rule one sticks to this type of order when it comes to issues of interpretation: firstly, the special features of the Constitution as an object of interpretation are discussed, then one takes up the methods of interpretation of the constitution and ultimately the issues of limits for the interpretation are tackled.

However, we will not follow this pattern. In a nutshell, we are interested in only one issue: Does one type of rules apply in the interpretation of both

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the Constitution and laws? In other words, we are interested not only in theoretical paradigms, but also in the way chosen by the Constitutional Court of the Republic of Lithuania in carrying out his duties in the sphere of constitutional justice.

What place does the Constitution and law occupy in the legal system? Is this place significant in the interpretation of regulation of legal acts? May be all legal provisions have to be interpreted according to identical rules despite different importance and place in the legal hierarchy of these provisions? It seems appropriate to state that views to this problem are divergent. Some authors claim there are no whatsoever differences in the methods for interpretation of the Constitution and laws. Others believe that a special interpretation of the Constitution hinges upon an exceptional place of this act.

We have to start with the Constitution. In the 21st century nobody dares to doubt the normativity of the Constitution. Often the constitution is defined as a law having the highest power, which sets provisions for the most important relations in the society and which is adopted and amended by special procedure. Sometimes scholars add to that definition of the Constitution that it is the most vital source of national law, the foundation of the legal system, a directly applicable coherent act or an act having the most generally stated legal regulation.

It is possible to discern two distinct concepts of the Constitution in spite of many similarities of various degrees between similar definitions of the constitution. The differences of these concepts stem from the understanding of the importance of the Constitution and its place in the legal system.

The emergence of the first concept is related with the Constitutions of the “first” generation. These Constitutions focused on the establishment of state powers and the competencies of state institutions. In essence such a Constitution was a “scheme” or “plan for administration”.¹ This type of a Constitution sets up the main procedures for the life of the state and leaves an issue of individual rights and duties in part unattended. At the time of emergence of this concept the statutory acts as main sources of law have been widely regarded as the fundamental instrument of legal regulation. Naturally, the approach was moulded that the Constitution was the law of the highest power. This law regulates fundamental questions (and also has all

¹ Sartori, G., *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, New York, New York University Press, 1997.

the other aforementioned features) and though it is the most important or the first, this law is only one of the laws of the country. This law belongs to the highest layer in the hierarchy of legal acts. This layer of the laws is like a family which is made up of regular, organic or constitutional laws. The Constitution as the main law is special because of the highest legal power, content (foundation of legal status of an individual and of state powers), procedure of adoption and amendment, etcetera.

This is the concept of the Constitution as the first statute and the Constitution as the main statute. In other words, the Constitution is like any other statute, only having higher power and bigger legal importance.

Within this legal tradition of understanding the Constitution the statute is often described as a legal act passed according to the procedure set by the lawmaker. The statute expresses the will of the nation, possesses the highest power in the legal system and regulates the most important aspects of society. The essential characteristic of this definition of the Constitution and the statutes is that the acts of the family of statutes are held to be original and all the rest of the acts must be created according to the laws and they may not contradict them. It means that these acts must be secondary in the hierarchy. Thus all legal life focuses on the statutes according to this concept.

One characteristic of the concept of a statute is that a statute cannot be inconsistent with the Constitution. However, this feature is not too much outstanding amongst the other features.

There should be no serious problems in the interpretation of the Constitution if one sticks to this definition of the constitution and statutes. Traditional standards of statutory interpretation are virtually sufficient. The same rules apply in the explanation of the Constitution and statutes likewise. In a nutshell: we need not to discuss the peculiarities of interpretation of the Constitution or statutes. Rather than that, we have to keep an eye on the issues of legal interpretation. First of all our matter of interest is an application of various methods of interpretation: grammatical, logical, systematic or teleological. If any interpretation difficulties are ever found, most probably their cause would be due to a very broad character of constitutional norms.

II. However, we may look at the Constitution from another perspective. This transformation of the perspective is stipulated by two sets of circumstances. The first one is the substantial model of the Constitution, which at-

tempts to establish not only the fundamentals of the scheme of state powers and their functions, but also the principles of a just society² and the legal status of the individual. The substantial Constitution is a legal act of very different sort even though this Constitution is still being called the main statute. In other words, this concept is one of the constitution lifted above the numerous family of statutes. This Constitution is different from the bulk of ordinary or special statutes according to a number of criteria. Following this concept, the statute and the Constitution belong to very different layers of law. The separation line between the Constitution and statutes is similar to the difference between statutes and substatutory acts. The latter are adopted in order to ensure practical application of the statutes which are being detailed and refined in substatutory acts. If we stick to this concept of the Constitution, we then should abandon several commonly used and seemingly unchangeable statements. These statements are the highest legal power of the statute, the original character of the statute, the statute as undisputed expression of the nation's will.

Now we proceed to analyse an approach to the Constitution as the act of a very different nature than the statutes. What is the rationale behind this view?

First of all the Constitution is an act of the founding power. The creator of the Constitution is not the legislative power which is limited by constitutional constraints, but the founding power. The founding power is the only power of sovereign nature. This act stems from the consensus of the nation expressed in a varied manner. The rest of the acts, including statutes, are of essentially different origin because they are made by the power established by the Constitution.

The second aspect of the issue concerns the original status of an act. Such an act is made only by the founding power. There may not be a Constitution and a statute, both of which would be primary. Otherwise the highest place of the constitution would become meaningless. Or it would mean that the Constitution regulates one set of relations and the statutes regulate quite a different set of relationship. If so, how can we compare the conformity of the norms regulating different relations with each other? If

² See: Bragyova A., "Justice constitutionnelle et démocratie: le problème «contre-majoritaire»", *Revue de Justice Constitutionnelle Est-Européenne*, num. 2, Presses Universitaires de la Faculté de Droit de Clermont-Ferrand, Université d'Auvergne, Clermont-Ferrand, 2001, p. 154.

the Constitutional Court followed such a concept of the statute where the statute is held to be an original legal act, there would be no escape in each judicial case than the following: The statute does not contradict the Constitution since the statute regulates different aspects of life than the provisions of the constitution. The concept of the statute where it is held to be an original legal act is inconsistent with the doctrine of constitutional justice. The activity of the Constitutional Court which is the protector of the Constitution absolutely denies any deliberations about the statute as an original act of law.

The third aspect of the issue is that the Constitution, being an original act within the legal system, sets the foundational limits for a possible legal regulation. There are no legal relations which could not be defined by constitutional norms entrenching the fundamentals as regards associations of individuals, relations between the society and the state. The centre of legal life is the Constitution. Not until the launching of the constitutional justice the statutes lost their pivotal importance within the system of sources of law. The activity of the Constitutional Court when the court assesses the constitutionality of the statutes is crucial in pointing out that the statute is far from being an original act of law. The lawmaker may act only within the competence limits drawn by the constitution and according to the established constitutional imperatives.

Thus, the constitution is an original law and enjoys supremacy both in power and in content. This legal act establishes not only the structure of the state powers, their competence, mutual relationship, the legal foundations of the individual, but also the direction and content of the lawmaking process. The latter circumstance is underlined in many of the rulings of the Constitutional Court of the Republic of Lithuania.

The Constitution is significant because:

1. The duty of the lawmaker to adopt a certain statute (*e. g.* on implementation of the constitutional rights of individual, on securing the independence of courts) often emanates from the constitution;
2. When the lawmaker adopts the aforementioned type of statutes, the constitution is a binding force in this respect. It means that the lawmaker has to act according to the constitutional principles and norms and to ensure that the implementation of human rights be practical;

3. The importance and place of various sources of law hinges upon the Constitution

Fourthly, it is noteworthy that the Constitution features the highest level of legal density within itself. It means constitutional provisions carry the biggest burden of normative nature. The constitutional principles are under utmost pressure in this respect because it is from these cornerstones that the whole network of legal structures is made up.

The constitutional principles are stipulated by each other, one principles allows to mould on the second one because the Constitution is an integral act (paragraph 1 of article 6). The system of constitutional principles is a unique “web” in which a variety of elements are intertwined with complex ties of determinative and coordinative character.³

Thus in some cases there are several principles derived from one principle. Then from these principles other new principles are being formed and so on. Sometimes a principle is coined from a few or even many constitutional provisions. However the content of the principle has to be investigated thoroughly. The investigation rests with all the interpreters of the Constitution but priority here is delegated to the Constitutional Court. It is in the rulings of the Constitutional Court that moral, political categories or philosophical, legal doctrines are being transformed into a principle possessing a certain legal capacity. During the interpretation of the Constitution the Constitutional Court in essence creates an applicable norm and establishes its boundaries. Therefore, the interpretation of constitutional principles presents us with abundant difficulties. Sometimes one hears the criticism concerning the activity of the Constitutional Court in the formulation of the constitutional principles (legal novelties). It is said that constitutional control is like pure art because one cannot find in the legal text a presumably existing principle which is to be formulated. But these arguments might be acceptable only in case if the notion “law” is shrunk to some primitive legal text. However, we should not forget that the constitution is understood not so narrow-mindedly in modern times. The content of the Constitution is not only some provisions embodied in the text, but also principles. The principles both in clearly expressed form and derived from

³ Kūris, E., “Lietuvos Respublikos Konstitucijos principai”, *Lietuvos Konstitucinė Teisė*, Vilnius, Lietuvos Teisės Universitetas, 2001, p. 225.

the whole bulk of constitutional regulation and the meaning of the Constitution which, in turn, is an act linking and directing a law. In the system of constitutional regulation the principle bears the main, but never a secondary role.

Fifth. The Constitution is a place to search for the ideal of both content and form of law. "Often three-parted structure of legal norm ('hypothesis', 'disposition', 'sanction') is taken as an ideal" in most of the textbooks on theory of law.⁴ In addition it is stated that in the legal texts one could hardly find such a rule which would be absolutely adequate to the three-part structure. That is why some authors either lessen the number of the legal norm's elements or try to look for these elements in the other fields of law.

According to the "classical" doctrine most of the constitutional provisions are not legal norms. Therefore this doctrine judges the constitutional law severely. In other words, the Constitution does not live up to the plentitude and as a field of law does not match the pre-set scheme. Or, to put it more precisely, the Constitution "is not really true law" if we keep in mind its importance as solely a program or an act of social solidarity.

However, the Constitution is the right place to look for the measure of legality. It is a sole measure of legality. With all of my respect for the Civil Code, Criminal Code or any other code, the labour, finance or other statutes I must admit that they belong to a mere derivative law. The derivative law is verified by its constitutionality. If this statement is correct, the classical outlook of the structure of legal norm becomes clear only in the Constitution. In addition, the structure of a norm has to be characteristic of all fields of law and to the norms of all levels of law. Even in respect to the norm's structure, there should not exist any legal norms lacking all-sufficiency. The constitutional provisions allow to draw a conclusion about two necessary elements within the constitutional norm. These elements correspond respectively to what is called a "founding" element, *i. e.* the part establishing, setting, fixing something, and what is called a protective element, *i. e.* a possibility of legal defence. The essence of each and every regulation is to set something and to protect that setting (sanction as a legal result is a mere derivative matter). This report is not intended to define comprehensively the parts of a legal norm's structure. However, one can make a tentative statement that there are no constitutional provisions which

⁴ Redelbach, A. *et al.*, *Zarys teorii państwa i prawa*, Warszawa, Wydawnictwo naukowe PWN, 1992, p. 188.

would be unimportant from the legal point of view, not regulating or/and unprotected by legal defence. Of course, this ought to be a case in all fields of law.

I can draw another conclusion that is grounded on the characteristics of modern substantive Constitution. The constitutional jurisprudence in Lithuania reflects a gradually emerging notion of “Constitution-centric” legal system. This notion employs admittance that the Constitution occupies a cornerstone place of all legal life, that law-making and law practice stay on the roads of constitutional principles and norms and all fields of law do not contradict the Constitution both in content and form. Such a system is strictly hierarchical. On the top we find the Constitution as original and the highest positive law. I should point out one more thing. If we admit that all system of the national law is founded on the Constitution, it becomes unavoidable to get rid of the use of the notion “general principles of law”. The notion of “Constitution-centric” legal system stipulates that a general principle may survive further on only if it turns into a constitutional one. In other words the constitutional system is able to absorb the general principles of law and make them relevant to the top-high regulatory mechanism.

As you may judge from what is said above, the legal system and all spheres of legal regulation experience the constitutional influence. Whereas the statute has merely limited importance in the legal system (often the statute is vital in a certain field or subfield of law). I want to stress that sometimes in the context of general legal regulation the statute is granted another meaning than one initially thought of by the lawmakers.

Of course, the statute is an important source of law. The statute plays a special role of the most important legal act which implements the foundations laid down in the constitution. This role is significant. The reason for its significance is that the statute helps to guarantee the constitutional order. We should not be afraid of the constitutional influence on the lawmaking process when issues of economic, social or administrative background are being constitutionalised. Regardless of who is the acting agent, whether the parliament or the government, lawmaking is not a “free hands” policy, but rather the implementation of a policy according to the conditions set by the Constitution. The matters of general concern are being dealt with strictly by the limits of empowering of the state power institutions. This is the sense of the constitutionalism as the doctrine of power boundaries.

III. Is the latter notion of the Constitution enshrined in the jurisprudence of the Constitutional Court of the Republic of Lithuania? My answer is positive. New traits of the Constitution are revealed in the rulings of the Constitutional Court. In connection with this I want to point out one paradox. In its rulings the Constitutional Court has fortified the notion of “Constitution-centric” legal system and stressed priority of the Constitution in the legal system however even until the end of the year 2000 the Court also used to name the statute as an original act of law. In several rulings of the Constitutional Court we find such statements:

A law is an original legal act adopted in the procedure prescribed by the Constitution of the Republic of Lithuania and the Statute of the Seimas which expresses the legislator’s will and which has the supreme legal power. Therefore, a law can be amended or its validity can be nullified only upon the adoption of another law or recognition of it as contradictory to the Constitution by the Constitutional Court. All other legal acts must be adopted conforming to laws and may not contradict them, *i. e.* must be executive.⁵

In the system of the sources of law of a country, law is a primary legal act having the supreme legal force. This force is based on that in the law, adopted by the legislator authorised by the people—the Seimas, the will of the people on main problems of social life is expressed. Rules of general character are established in norms of laws, and they can be particularised, as well as the procedure of their execution can be regulated in executive legal acts.⁶

It seems we encounter a strange situation. The very institution which functions and carries out its activity by demolishing the notion of a statute as an original act stresses in its rulings the status of a statute as the highest power source of law. Such a position may be explained in a rational simple fashion. The position has been moulded in the course of the comparison between the statutes and substatutory acts. It is in the background of this comparison that the emphasis on the originality aspect of the statute is derived from. Of course, the Constitutional Court does not forget to note that the statute may not contradict the Constitution.

⁵ The 19 January 1994 ruling of Constitutional Court of the Republic of Lithuania *in* Official Gazette Valstybės žinios, 1994, núm. 94-116.

⁶ The 26 October 1995 ruling of Constitutional Court of the Republic of Lithuania *in* Official Gazette Valstybės žinios, 1995, núm. 89-2007.

However, now the notion of the Constitution as an original law is also coined gradually and intentionally in the constitutional jurisprudence. While in the rulings of the Constitutional Court the power and significance of a statute is further upheld we observe slow depletion of cases where the statute is mentioned as an original act. In the 25 mai 2004 ruling the Constitutional Court formulated the constitutional concept of the Constitution:

The Constitution as a legal act is expressed in a certain textual form, and has certain verbal expression. However, since it is impossible to treat law solely as a text in which *expressis verbis* certain legal provisions and rules of behaviour are set forth, thus, also, it is impossible to treat the Constitution as a legal reality solely in its textual form. The Constitution may not be understood only as an aggregate of explicit provisions. The Constitution shall be an integral and directly applicable act (paragraph 1 of article 6 of the Constitution). The nature of the Constitution as the act of the supreme legal power itself, and the idea of the constitutionality imply that the Constitution may not have and has no gaps, so there may not be and there is no such legal regulation established in legal acts of lower power which may not be assessed in respect of its compliance with the Constitution. The Constitution as a legal reality is comprised of various provisions, the constitutional norms and the constitutional principles, which are directly consolidated in various formulations of the Constitution or derived from them. Some constitutional principles are entrenched in constitutional norms formulated *expressis verbis*, others, although not entrenched therein *expressis verbis*, are reflected in them and are derived from the constitutional norms, as well as from other constitutional principles reflected in these norms, from the entirety of the constitutional legal regulation, from the meaning of the Constitution as the act which consolidates and protects the system of major values of the state community, the civil Nation, and which provides the guidelines for the entire legal system. There may not exist and there is no contradiction between the constitutional principles and the constitutional norms —all the constitutional norms and constitutional principles form a harmonious system—. It is the constitutional principles that organise all the provisions of the Constitution into a harmonious entirety, and thus do not permit the existence in the Constitution of internal contradictions or such an interpretation thereof which distorts and denies the essence of any provision of the Constitution, or any value entrenched in and protected by the Constitution. The constitutional principles reveal not only the letter, but also the spirit of the Constitution —the values and objectives entrenched in the Constitution by the Nation which chose certain textual form and verbal expression of its provisions, which defined

certain norms of the Constitution, and which explicitly or implicitly established certain constitutional legal regulation—. Thus, there may not exist and there is no contradiction not only between the constitutional principles and the constitutional norms, but also between the spirit of the Constitution and the letter of the Constitution: the letter of the Constitution may not be interpreted or applied in a manner which denies the spirit of the Constitution, which may be understood only when perceiving the constitutional legal regulation as an entirety and only upon the evaluation of the purpose of the Constitution as a social agreement and an act of the supreme legal power. The spirit of the Constitution is expressed by the entirety of the constitutional legal regulation, all its provisions —both the norms of the Constitution directly set forth in the text of the Constitution, and the principles of the Constitution, including those that originate from the entirety of the constitutional legal regulation and the meaning of the Constitution as an act which consolidates and protects the system of major values of the Nation, and which provides the guidelines for the whole legal system...⁷

IV. Thus, do the view to the place, significance and role of the Constitution in the legal system and the traits of the constitution as an original act determine a special, constitutional interpretation? I have already mentioned two different positions on the interpretation of the Constitution and a statute.

The problems of the interpretation may be analysed from various aspects. That is a matter of choice of the interpretative theory as well. “In the current legal writings three theories of the interpretation are counter-positioned: cognitive (or ‘formalist’) theory, sceptical (or ‘realistic’) theory and the compound theory (intermediate between two first theories)”.⁸ In this case we ought to make clear what is more important. Whether the intentions of the creators of the text of the Constitution or comprehension of the interpreter of the Constitution, whether original reasoning of the Constitution or the influence of changes in the background of the Constitution.

Another aspect is the boundaries of freedom of the constitutional interpretation.⁹ Is the constitutional interpretation only a mechanical sequence

⁷ The 25 May 2004 ruling of the Constitutional Court of the Republic of Lithuania in Official Gazette *Valstybės žinios*, 2004, núm. 85-3094.

⁸ Guastini, R., “Interprétation et description de normes”, *Interprétation et droit (Volume publié sous la direction de Paul Amselek)*, Bruxelles, Bruylant, Aix-en-Provence, Presses Universitaires d’Aix-Marseille, 1995, p. 89.

⁹ See more on the freedom of the Constitutional Court to interpret the Constitution: Troper, M., “La liberté d’interprétation du juge constitutionnel”, *Interprétation et droit*

of logical operations characterised by a strictly established order or is it a creative process? Often one hears the arguments that on the whole it is impossible to draw a clear-cut line between the constitutional interpretation and a creative process since each and every interpretation is a legal creative process. Therefore the issue of creativity in the constitutional interpretation is of no less importance. Also I must note that creative work and arbitrariness are not synonyms. In the constitutional interpretation one should be guided by the definition of the Constitution as a harmonious system of legal provisions and principles. Also one should apply interpretative methods appropriately and form a coherent constitutional jurisprudence. In other words, it means that while giving the content and sense to constitutional provisions and principles, the constitutional court is bound by the Constitution which is an act fortifying the united and comprehensive system of the norms and principles. It is bound by the respective interpretation in its earlier jurisprudence as well.

One more way to explore the issue in question is to analyse the choice of methods of constitutional interpretation. Do the same methods apply in the interpretation of the statutes and the Constitution? The Constitutional Court itself has been forming the doctrine of the usage of methods to interpret both the act by which the disputed act is verified and the disputed act itself.

In one ruling the Court made a general statement concerning the interpretation of the content of legal provisions.

As a rule, when the content of legal norms is revealed, it is not enough to apply only the linguistic method of construction. Various methods of construction of law are known in the legal theory, *i. e.* linguistic, systematic, historical, comparative, etc. It is possible to reveal the meaning of individual notions used in the law by elucidating the purpose of the law, the nature and scope of the relations regulated by it, the peculiarities of the regulation, etc. It is possible to do so by applying various methods of construction of the law, and systematic among them, as every legal norm is a constituent part of an integral legal act (in this case that of the law) and is linked with the other norms of this legal act.¹⁰

Bruxelles, Bruylant, Aix-en-Provence, volume publié sous la direction de Paul Amselek, Presses Universitaires d'Aix-Marseille, 1995, pp. 234-245.

¹⁰ The 23 June 1999 ruling of the Constitutional Court of the Republic of Lithuania *in* Official Gazette *Valstybės žinios*, 1999, num. 56-1813.

In another case the Court made the statement concerning the interpretation of a statute. In the ruling of 25 september 1996 we find the following argument:

the provision “by the decision of the government” of paragraph 1 of article 6 of the Law on Land leaves a possibility to interpret its content in dubious manner, as well as to vaguely conceive the limits of legal regulation. However, the interpretation of legal notions must be not only literal but also logical and systemic. Such interpretation methods of the notion “by the decision of the government” leaves no grounds to assert that paragraph 1 of article 6 of the Law on Land permits the government to interfere with the competence of local governments’ activities that are established by laws in the sphere of the possession of the transferred State land.¹¹

Yet in the third case the Constitutional Court laid its position on the methods of interpretation for the provisions of the Constitution:

Constitutional norms regulating different aspects of government formation as well as interrelations of the Seimas, the president of the Republic and the government have been established in more than one chapter or part of the Constitution. The Constitution is an integral act, therefore in this particular case the priority should be given to systematic interpretation. While interpreting the content of the norm of paragraph 4 of article 92 of the Constitution, the purpose of adoption of the said norm should be taken into consideration... However, interpreting the norms of articles 80 and 82 and paragraph 4 of article 92 of the Constitution, the Constitutional Court draws a conclusion that the powers of the government should be returned to the president of the Republic on the same day when he begins to exercise his duties. This interpretation is based on the fact that the Constitution does not provide for any other time period.¹²

I want to stress that in many rulings of the Constitutional Court we can find arguments of a similar sort. They prove to us that the Constitutional Court is basically consistent in the application of the same doctrine of the usage of interpretation methods in its efforts to interpret both the Constitution and statutory norms.

¹¹ The 25 september 1996 ruling of the Constitutional Court of the Republic of Lithuania, in *Official Gazette Valstybės žinios*, 1999, num. 92-2173.

¹² The 10 january 1998 ruling of the Constitutional Court of the Republic of Lithuania, in *Official Gazette Valstybės žinios*, 1999, num. 5-99.

V. It seems that we might hold that the Constitution is interpreted using the same methods as are used when interpreting other legal acts. Or that the Constitution's interpretation is only a little different. According to Yann Aguila, the differences in the interpretation of the Constitution and ordinary legal acts is determined by the place of the Constitution in the hierarchy of legal norms and "structural obscurity" of the Constitution.¹³ We tend to think that it would be more appropriate to stress the significance of the Constitution as a specially tuned mechanism of legal norms and principles which directs the whole legal system and has an original character. The differences between the interpretations of the Constitution and the statute are found in the jurisprudence of the Constitutional Court. Namely, they hinge upon the notion of the Constitution as a special part of law.

Is it possible to speak about the particular strategy of the interpretation of the Constitution? Before moving further, I want to note an essential difference in the interpreter's approach to the Constitution and the disputed statute.

The Constitution is an act which all other acts must comply with. This compliance is equal to recognition of legality. From the point of view of the established legal system, the Constitution may be treated only as perfect law. Certainly, the Constitution is not perfect law on the whole, but it is such only from the point of view of the legal system based on the Constitution itself. If we see the Constitution in some other light it loses both the status of measurement for legality and that of the legal junction of the whole legal system.

Surely, a true Constitution is neither perfect nor ideal. The authors often state that

as a rule the ultimate edition of many constitutions represents more or less of a compromise between political forces behind the constitutional draft... It naturally means a situation when individual aspects of legal regulation in certain cases are passed over in silence or they are worded in such a form that allows to draw broad inferences.¹⁴

¹³ Aguila, Y., "Cinq questions sur l'interprétation constitutionnelle", *Revue Française de Droit Constitutionnel*, num. 21, 1995, p. 15.

¹⁴ Pavilonis V., "Konstitucijos interpretavimas vykdant abstrakčią teisės aktų teisėtumo kontrolę", *Konstitucinės priežiūros institucijų baigiamieji aktai. Akty koñcove instyuciji nadzoru konstytucyjnego*, Vilnius, 2000, p. 11.

After all, in the constitutional text as in any other legal text there might be gaps, inconsistencies and incoherent legal regulation.

However, the Constitutional Court treats the Constitution as the foundation of the whole legal system. In its jurisprudence the Constitutional Court smoothes down the incoherence of legal regulation and adjusts constitutional principles and norms. In other words, in the process of the constitutional interpretation a special task is assigned to constitutional justice, *i. e.* to provide a definition of well-composed regulation of the Constitution.

According to the doctrine of the Constitutional Court, the Constitution represents a measure and standard of legality. An “ideal” notion of the Constitution is being coined in the rulings of the Constitutional Court. The Constitution, which is a product of human art, a compromise with possible inconsistencies, vague spots, is gaining shape of law *par excellence* thanks to the constitutional jurisprudence. Of course, such perfection of the Constitution is rather relative since such evaluation stems only from the point of view of the system of legal regulation based on the Constitution.

The standpoint to the statute is completely different. Any statute is judged as it stands. Or, to put it more precisely, a statute is judged as it is understood by the Court. It does not matter whether the statute is incomprehensible, vague, inconsistent from the standpoint of its inner order, having gaps, *i. e.* the spectrum of judgements is very wide. However, the Constitution must always be looked at as a well-composed and purposeful system. What is important is the Court’s competence to interpret it. The opposite standpoint would be unthinkable in the light of the “Constitution-centric” legal system. The Constitutional Court does not smooth down the misshapen and incoherent statutes in the course of their interpretation, but rather it must expose and evaluate their inconsistencies in each individual case.

Another trait of constitutional interpretation is related with the character of the Constitution as the act of the highest level of legal density (*i. e.* the highest normative load).

Often one points out that while interpreting an act of such character, the Constitutional Court ought to be very creative. I disagree because the Court may not act with less creativity in respect to interpretation of legal acts other than the Constitution. The feature of creativity simply means that law cannot be interpreted in a routine way and that the clarification of legal regulation is always an intensive search. Because of more general outlook of

the constitutional provisions it takes more efforts to interpret them than in the case of the act of particular regulation.

The specific character of the Constitution as the legal act with the biggest normative density is reflected not so much by the creativity of the interpretation than by the fact that one often has to plunge into a whole chain of interpretations, when one principle gives rise to another principle, the latter, in addition, gives rise to still another principle, etc. Frequently the interpretation of the system of constitutional regulation or some elements of this system require to formulate a principle or even a constitutional institution. So we must speak not so much about creativity of the constitutional interpretation but about a multistage interpretation, an intertwined web of interpretations, and sequences of interpretations. These traits are reflected in the jurisprudence of many constitutional courts. Instead of limiting their interpretation by the statements directly laid down in the constitutional texts, the constitutional courts use creative interpretation which has the purpose to expand established principles (this is especially true concerning fundamental rights and freedoms). The courts understand that all their might is concealed in the interpretation which in turn determines the success of the judicial work in general.

Creative interpretation of the Constitution is inalienable from one more trait of constitutional interpretation. The Constitution is constantly enriched, its regulations are elaborated by the interpretations of the Constitutional Court. The statute is not interpreted in this fashion. The Constitutional Court does not strive to substitute the lawmaker, the Court may rule only on the compliance of the act with the Constitution. This is determined by a different character of the statute as an act of local regulation from the Constitution as an act influencing the whole legal act. For example, article 18 of the Constitution of the Republic of Lithuania declares that human rights and freedoms are inborn. This provision is a direct foundation on which the Constitutional Court constantly supplements the catalogue of constitutional rights and underlines novelties of the fundamental rights' system. We may use the jurisprudence of the Constitutional Court in the interpretation of the principle of the state under the rule of law as an example of the constant elaboration of constitutional regulation. The position of the Constitutional Court is reflected in many rulings in which various elements of the principle of the state under the rule of law are exposed. The Constitutional Court stated:

In the Preamble of the Constitution a strife for an open, just, and harmonious civil society and law-governed state is established. It needs to be noted that the constitutional principle of the state under the rule of law is a universal one upon which the whole Lithuanian legal system as well as the Constitution of the Republic of Lithuania itself are based and that the content of the principle of the state under the rule of law reveals itself in various provisions of the Constitution and is to be construed inseparably from the strife for an open, just, and harmonious civil society and law-governed state promulgated in the Preamble of the Constitution. Along with the other requirements, the principle of the state under the rule of law enshrined in the Constitution also pre-supposes the fact that human rights and freedoms must be ensured, that all state institutions exercising state power, as well as other state institutions, must act on the grounds of law and in compliance with law, that the Constitution has the supreme juridical power and that the laws, government resolutions and other legal acts must be in conformity with the Constitution.¹⁵

The Constitutional Court has exposed various elements of the state under the rule of law: the requirements for the system of legal regulation (for example, the notion of principle prohibiting retroactive effect of laws established in 15 July 1994 ruling and later rulings of the Constitutional Court), due legal process, guarantees for human rights and freedoms, legal security, etc. Thus in the jurisprudence of the Court one notices the unfolding of various aspects of the principle of the state under the rule of law, which means that the Court is moulding ever more comprehensive and rich notion of this principle.

One must relate the possibility of legal complementation of the constitution with the notion of the Constitution as the highest part of law which is open and constantly appended. Interpreting the constitutional principles and norms, the constitutional courts often base themselves on the foreign legal doctrine and jurisprudence.

Interpretation of statutes is more simple if compared with the Constitution.

VI. Summing up what has been said, the following conclusions can be drawn:

¹⁵ The 23 february 2000 ruling of the Constitutional Court of the Republic of Lithuania, in *Official Gazette Valstybės žinios*, 2000, num. 17-41.

1. In the legal system the character, place and significance of the Constitution and the statute as types of legal acts are to be held the circumstances which determine certain peculiarities of constitutional and statutory interpretation.
2. The Constitution is the most significant part of “Constitution-centric” legal system and the only original law adopted by the founding power. This law sets the fundamentals for legal regulation. The greatest normativity potential is characteristic of its norms and principles. It is the only act in the legal system legality of which may not be disputed. The statute is an act of lawmaking which is adopted in the procedure prescribed by law and an act which regulates truly important relations. This regulation must comply with the constitutional provisions and principles because statutory regulation is the closest one to constitutional regulation. The statute is not to be held an original act of law.
3. The specific character of interpretation of the Constitution as an act of standard to measure the legality of statutes or substatutory acts is revealed not as much by the methods of interpretation as by unique point of view to this act.
4. As a measure for legality, the Constitution may be interpreted treating it solely as a well-composed system of principles and norms. *i. e.* as law *par excellence*. When the Constitutional Court sees the need it smoothes down factual shortcomings of this legal act. The Constitutional Court always interprets the Constitution as an ideal law from the standpoint of the national legal system. This means a particular strategy of the interpretation of the Constitution. The statute which is to be verified is assessed with respect to the compliance of its regulation with the Constitution and with respect to all its legally significant aspects.
5. It should be noted that the mission of constitutional interpretation which belongs to the Constitutional Court can be successful only when the methods of interpretation are used creatively. The multi-stage nature, intertwined web of interpretations, the whole sequences of interpretations are peculiar to the interpretation of the Constitution.
6. In its activity exposing the content and sense of constitutional provisions and principles, the Constitutional Court is bound by the notion

- of the Constitution as a well-composed, united act and its own earlier jurisprudence on the respective issues of constitutional regulation.
7. The Constitution is understood as an open legal system appended by constitutional jurisprudence on a regular basis.