BALTIC JOURNAL OF LAW & POLITICS
VOLUME 4, NUMBER 1 (2011)
ISSN 2029-0454
http://www.versita.com/bjlp

Cit.: *Baltic Journal of Law & Politics* 4:1 (2011): 154-168
DOI: 10.2478/v10076-011-0007-2

INDIVIDUAL CONSTITUTIONAL COMPLAINT IN LITHUANIA: CONCEPTION AND THE LEGAL ISSUES

Aušra Kargaudienė

Assistant Professor; Dr.
Vytautas Magnus University Faculty of Law (Lithuania)

Contact information
Address: Ožeškienės str. 18, Kaunas 44254, Lithuania
Phone: (+370 37) 751 044
E-mail address: a.kargaudiene@tf.vdu.lt; ausra.kargaudiene@ecovis.lt

Received: April 21, 2011; reviews: 2; accepted: July 22, 2011.

ABSTRACT

This article presents the concept of individual constitutional complaint and its fundamental conditions as well as the basic provisions for its development in Lithuania. The article presents currently applicable fundamental constitutional provisions which define the subjects who may refer to the Constitutional Court of the Republic of Lithuania regarding compliance of the legal act with the Constitution, and the grounds for submission of such complaint. The doctrine of the individual constitutional complaint is defined by the author on the basis of case law of Lithuanian Constitutional Court. The author presents several examples concerning with this topic; the author discuses fundamental provisions related to the issue of individual constitutional complaint which has been approved as a new conception by the Seimas (the Parliament). The following provisions are established by the Constitution and the case law of the Constitutional Court of the Republic of Lithuania: *the person whose constitutional rights or freedoms are violated shall have the right to apply to the court, the right to apply to the court is an absolute one, the Constitutional Court – a judicial institution, the Constitution is a directly applicable act, everyone may defend his or her rights by invoking the Constitution.* These provisions are provided in the conclusions of the article by defining their constitutional nature. This situation allows debate about the importance of the

individual constitutional complaint. And the debates raise the issue of the fundamental premises of this complaint.

KEYWORDS

Private person, human constitutional rights, individual constitutional complaint, *actio popularis*, the Constitutional Court of the Republic of Lithuania

INTRODUCTION

A person's right to apply to the court is established in Article 30 of the Constitution of the Republic of Lithuania. In such way, the Constitution of the Republic of Lithuania guarantees that every person must have the right to defend his or her constitutional rights and freedoms that have been violated in the courts of general and specialized competence, as well as in the Constitutional Court. Therefore, it may be stated that the conception of individual constitutional complaint is based on the legal system of the Constitution of the Republic Lithuania. However, in order to establish the private person's right to apply directly to the Constitutional Court of Lithuania, it has been declared that the institute of individual constitutional complaint must be established at the constitutional level. The right to apply to the court, which has been stated to be an absolute one in the resolutions of the Constitutional Court, is one of the most important instruments of protection of human constitutional rights and freedoms. According to the article 106 of the Constitution of the Republic of Lithuania, the courts are entitled to apply to the Constitutional Court concerning conformity of the legal act with the Constitution in solving the case. On the one hand, the right given to the courts to apply to the Constitutional Court may be considered to be sufficient protection of human rights; however, it does not guarantee that the court shall suspend the hearing of the case and shall apply to the Constitutional Court in any case where an issue of constitutionality of the law or any other legal act arises. The Constitution, which is applicable today, grants the right, but does not oblige the courts to do that when any doubt concerning conformity of the legal act with the Constitution arises. Any other constitutional provisions as well as those which are directly related to the mechanism of the execution and protection of human rights are developed in the constitutional doctrine. Formal constitutional doctrine in Lithuania is developed by the Constitutional Court.

This court is an official interpreter of the Constitution of the Republic of Lithuania. Therefore, the conception of individual constitutional complaint, which is approved by the Seimas (the Parliament), and provisions of this concept are presented within the boundaries of the resolutions of the Constitutional Court. The article presents the resolutions of the Constitutional Court which approve that the constitutional personal right to apply to the court is an absolute one. The article also discusses the case which proves the special status of the Constitutional Court in the Lithuanian courts' system. In accordance with the provisions of the Constitution (which is stated as a directly applicable legal act), every person is

entitled to defend his constitutional rights and freedoms. The main notions of the Constitutional Court's resolutions which are presented in the article prove the statement that the establishment of the provisions of individual constitutional complaint would result in complete and consistent system of defense of personal rights. Moreover, if the opportunity for the person to apply to the court directly is established at constitutional level, the provisions of defense of personal rights would be improved in Lithuania.

1. STATE POWER AND THE RIGHT TO APPLY TO THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

The Constitution of the Republic of Lithuania[1] provides the basis for the activities of the Constitutional Court of the Republic of Lithuania; Article 105 of the Constitution provides that the Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and other acts adopted by the Seimas (the Parliament) are not in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws: i) acts of the President of the Republic; ii) acts of the Government of the Republic.

Despite the notion that the individual constitutional complaint is perhaps the most powerful among the mechanisms of the legal protection of human rights, in Lithuania the private person has no right to apply to the Constitutional Court and to initiate proceedings directly. Subjects who have the right to apply to the Constitutional Court are: the Government, not less than 1/5 of all Members of the Seimas (the Parliament), the President and the courts. A private person is not included into the Article 106 of the Constitution among the subjects who have the right to apply.

Article 5 of the Constitution provides that in Lithuania the state power shall be executed by the Seimas (the Parliament), the President of the Republic, the Government and the Judiciary. The scope of power shall be limited by the Constitution. This article also provides that the state institutions shall serve the people. All subjects provided in Article 5 of the Constitution and all institutions, which according to the same constitutional article shall serve the people, have the exceptional right to apply to the Constitutional Court—but not a private person. Although even in the ruling of 18 April 1996 the Constitutional Court held that in a

[1] The Constitution of the Republic of Lithuania approved in the referendum on 25 October 1992.

democratic state the court is the main institutional guarantee of human rights and freedoms[2], this right is still an exception.

This ambiguous situation and the experience of other countries, where the individual constitutional complaint is a part of the legal system, have became the basis for a long term discussion about the constitutional amendments. Although these projects are almost finished, they are not a part of the Lithuanian legal system yet. One of the reasons for that is the economic crisis. Paradoxically, the universal ideas of effective enforcement of human rights cannot be effectuated due to the global economic outcome. And this is a challenge for the national legal system.

2. THE CONSTITUTIONAL COURT – A JUDICIAL INSTITUTION OF LITHUANIA

Article 30 of the Constitution of the Republic of Lithuania guarantees that the person whose constitutional rights or freedoms are violated shall have the right to apply to the court. There are no exceptions, or other constitutional conditions providing to which court a private person is entitled to apply and to which court his or her application is limited. Currently the system of Lithuanian courts includes courts of general competence, administrative courts and the Constitutional Court of the Republic of Lithuania. The Constitutional Court does not belong to the court system of general competence, and it is not part of the administrative courts system. Is the Constitutional Court a judicial institution in Lithuania? This odd question was formulated and applied as a petition to the Constitutional Court in 2006. This issue as well as other issues were raised in the case, which was initiated by the group of members of the Seimas (the Parliament). The petitioner applied to the formal matter of the Constitution; The Constitution of the Republic of Lithuania includes two separate sections: "*Court*" and "*Constitutional Court*". Does this make the Constitutional Court something outside the system of courts? The Constitutional Court has stated that this form of the Constitution emphasizes the special status of Constitutional Court in the system of judicial power as well as in the system of any other state institutions executing state power[3]. The Constitutional Court was asked to analyze if the title of Article 1 of the Law on the Constitutional Court of the Republic of Lithuania "The Constitutional Court – a Judicial Institution" and the paragraph 3 of this Article stating that the Constitutional Court shall be a free and independent court which implements judicial power according to the procedure

[2] *Ruling on the Law of Commercial Banks*, the Constitutional Court of the Republic of Lithuania (1996, no. 12/95).
[3] *Ruling on the status of the Constitutional Court*, the Constitutional Court of the Republic of Lithuania (2006, no. 12/06).

established by the Constitution of the Republic of Lithuania and this Law is not in conflict paragraphs 1, 2 of Article 5 and paragraph 1 of Article 111 of the Constitution. Doubts were based on the provision that in accordance with the paragraph 1 of Article 5 of the Constitution the state power in Lithuania shall be executed by the Seimas (the Parliament), the President of the Republic and the Government of the Republic, and the Judiciary. According to paragraph 1 of Article 111 of the Constitution, the courts system of the Republic of Lithuania shall comprise the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts and district courts. The Constitutional Court has declared that the title of Article 1 of the Law on the Constitutional Court and paragraph 3 of this Article are not in conflict with these constitutional notions. In this case the Constitutional Court has emphasized that the courts executing judicial power in Lithuania are assigned to more than one system. Now there are three courts systems in Lithuania: i) the Constitutional Court executes constitutional judicial control; ii) the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional and district courts comprise the system of general competence; iii) according to paragraph 2 of Article 111 of the Constitution, for administrative, labor, family and cases of other categories, specialized courts may be established pursuant to law (now in Lithuania there is one system of specialized courts – the system of administrative courts, it is comprised of the Supreme Administrative Court of Lithuania and regional administrative courts). The powers of the Constitutional Court are stated in the Constitution, and these powers represent this court as a part of the judiciary system. The resolution emphasizes that in accordance with the Constitution, the Constitutional Court is an institution of constitutional justice. This court executes constitutional judicial control by making resolutions on compliance of legal acts of lower power with legal acts of higher power under its competence and by executing any other constitutional powers. The main task of this court is to guarantee the superiority of the Constitution in the legal system, to ensure the constitutional legitimacy and to implement constitutional judicial control.

3. THE PRIVATE PERSON'S RIGHT TO APPLY TO COURT IS AN ABSOLUTE ONE

The judicial defense of the private person's constitutional rights and freedoms is an essential element of the constitutional institute of a person's rights and freedoms. Part 1 of Article 30 of the Constitution provides for a procedural right of person to apply to the court. This right to apply to the court is an absolute one. This provision is established in several resolutions of the Constitutional Court. It is not

permitted to restrict nor deny this right[4]. The resolution of the Constitutional Court of 30 June 2000[5] affirms that this person's right may not be limited or contradicted. The Constitutional Court has declared that under the Constitution that the legislator is obliged to establish such legal regulation where all disputes related to violation of person's rights and freedoms could be solved in court. The pre-trial procedure of solving the disputes may be also prescribed by legal acts. However, the Constitutional Court has emphasized in its resolutions that such legal regulation which could contradict the right of the person who believes that his rights or freedoms have been violated to defend his rights and freedoms in court[6] may not be established. Therefore, taking into account the above provisions of the resolutions of the Constitutional Court, it is obvious that the court (including the Constitutional Court) may be considered to be a specific instrument of protection of constitutional human rights and freedoms.

As already stated, citizens in Lithuania, contrary to other countries, may not apply directly to the Constitutional Court; however, it should be stated that a number of claims (issues related to the implementation of constitutional rights of a private person) are submitted to the Constitutional Court by implementing the provision of Article 6 of the Constitution. This article provides for Constitution a title of integral and directly applicable act, and everyone may defend his or her right by invoking the constitutional notions directly. The legal issue of compliance of the legal act can raise during the considerations of cases in general competence or administrative courts. Article 110 of the Constitution provides that a judge may not apply a law which is in conflict with the Constitution. In cases when there are grounds to believe that the law or other legal act which should be applied in a specific case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court requesting it to decide whether the law or other legal act is in compliance with the Constitution.

There is the question whether such legal regulation which provides conditions for the initiation of the procedure in the Constitutional Court is sufficiently effective and ensures efficient protection of constitutional human rights. Procedural provisions which regulate the beginning of the procedure for submission of claims

[4] *Ruling on the right to apply to court*, the Constitutional Court of the Republic of Lithuania (2004, no. 23/02).
[5] *Ruling on the right to compensation for damage inflicted by unlawful actions of interrogatory and investigatory bodies, the prosecutor's office and court*, the Constitutional Court of the Republic of Lithuania (2000, no. 30/98-13/99).
[6] *Ruling on the compliance of paragraph 2 of Article 48 of the Republic of Lithuania law on the organization of the national defence system and military service with the Constitution of the Republic of Lithuania*, the Constitutional Court of the Republic of Lithuania (2002, no. 32/2000); *Ruling on restoration of the rights of ownership*, the Constitutional Court of the Republic of Lithuania (2003, no. 27/01-5/02-01/03).

to the Constitutional Court, as well as the adoption of the court resolution regarding this issue, have become the issue in the case law of the Constitutional Court.

4. THE ISSUE REGARDING ARTICLE 4 AND ARTICLE 165 OF THE CODE OF CIVIL PROCEDURE

On October 24, 2007, the Constitutional Court of the Republic of Lithuania announced a ruling[7] expressing its position regarding two provisions of the Code of Civil Procedure of the Republic of Lithuania.

The petitioner raised doubts regarding Article 4 of the Code of Civil Procedure, which provides that the courts, "when they apply law, shall take account of the construction of application of law which is contained in the rulings adopted under cassation procedure and announced under procedure of Republic of Lithuania Law on Courts." Also the petitioner requested to investigate whether Article 165 which provides, that "a separate complaint may be lodged against a court ruling on suspending the case, save the ruling whereby one applies to the Constitutional Court or an administrative court", is not in conflict with the Constitution.

The initiator of the case, Vilnius Regional Court (*Vilniaus apygardos teismas*), thought that Article 4 of the Code of Civil Procedure obliges the courts to take into account the interpretations of the application of law provided in resolutions adopted by the Supreme Court of Lithuania in the procedure of cassation and does not request taking into account the whole practice of the courts of general practice. The Constitutional Court has stated that this provision does not include the word "only"; therefore it may and must be interpreted in solving the cases as not preventing the courts from taking into account the interpretations of application of law provided in resolutions adopted in the procedure of cassation as well as the interpretations of application of law provided in the resolutions adopted by other courts of higher instance if they are precedent to respective court in solving analogous case as well as their practice in application of law. Court precedents are the sources of law. Use of precedents as the grounds is a condition for implementation of equal consecutive practice of courts. In this resolution the Constitutional Court has emphasized that the precedents of courts may not be ignored without any grounds, they must be evident and should not be in conflict with formal constitutional doctrine. Also, the Constitutional Court has stated that the court precedents (as sources of law) may not be over-valued and should be used as grounds in prudent manner. In adjudicating the cases, the power of precedent shall be born only by previous court

[7] *Ruling on court precedents and on lodging complaints against court rulings whereby one applies to the Constitutional Court or an administrative court*, the Constitutional Court of the Republic of Lithuania (2007, no. 26/07).

decisions that have been made in analogous cases where factual circumstances are identical or very similar to the circumstances of the case where the precedent has been created. The Constitutional Court has emphasized that in case of competition between precedents, the priority should be given to the precedent created by the court of higher instance or higher level; also, the time of creation and other significant factors should be taken into account (for example: if a specific precedent reflects the practice of courts or is a single case; persuasion of argumentation of the decision; composition of the court adopting the decision [if the decision has been adopted by one judge or a chamber of judges or extended chamber of judges or full composition of court]; if separate opinions of judges on a previous decision have been expressed; possible significant social, economic, political, cultural and other changes in the society that have occurred after adoption of the court decision which has precedent). The Constitutional Court has emphasized that in the cases where the court practice must be adjusted, the courts may depart from the previous precedents that have been binding them before and create new precedents by providing proper and clear arguments.

This case also analyzed the constitutionality of the provision of Article 165 of the Code of Civil Procedure which states that a separate complaint may not be filed in relation to the court resolution to suspend the case and apply to the Constitutional Court or administrative court. This notion of the Code of Civil Procedure, according the petitioner, permits the consideration that the prohibition to lodge a complaint against the court ruling regarding the suspension of the case might be in conflict with the constitutional principles of a state under the rule of law, equality of persons before the law and the courts. The petitioner requested to investigate whether Article 165 is not in conflict with Paragraph 1 of Article 29 (*it is established that all persons shall be equal before the law, the court and other state institutions and officials*) and Article 109 of the Constitution (*Article 109 provides that in the Republic of Lithuania justice shall be administered only by courts; while administering justice, the judge and courts shall be independent; when considering cases, judges shall obey only the law; the court shall adopt decisions in the name of the Republic of Lithuania*).

The Constitutional Court has declared that one of the essential elements of the principle of a legal state, as prescribed by the Constitution, is the principle stating that a legal act being in conflict with the legal act of a higher power should not be applied, and that the court powers to suspend the case and to apply to the Constitutional Court, requesting to analyze compliance of the legal act with the Constitution, are directly established by the Constitution. This resolution emphasizes that no court of general competence of the higher instance and no

specialized court has any power to evaluate the court resolution of the lower instance to suspend the case and to apply to the Constitutional Court in relation to the compliance of the legal act with the Constitution. Only the Constitutional Court has this competence. The Constitutional Court has the competence to eliminate doubts related to the compliance of the legal act with the Constitution that arise in the court adjudicating the case.

However, any application of the court in relation to the compliance of the legal act with the Constitution does not result in the analysis, *per se*, of this issue in the Constitutional Court. The Constitutional Court has emphasized more than once that when applying to the Constitutional Court with the request to analyze if the law or any other legal act (or a part of it) is not in conflict with the Constitution and by providing arguments for the opinion expressed in the application in relation to the conflict between the law or any other legal act (or a part of it) and the Constitution, the courts may not limit themselves to general ideas or statements as well as to the fact that the law or any other legal act (or a part of it), according to them, is in conflict with the Constitution; instead they must specify clearly which questionable articles of legal acts (their parts, paragraphs) are in conflict with the Constitution and to what extent, according to them; and they must provide clear legal arguments to justify their position in relation to compliance of every provision of the questionable legal act (or a part of it) with the Constitution. Otherwise, the court application to analyze the compliance of the law or any other legal act (or a part of it) with the Constitution may be considered to be in conflict with the requirements of Article 67 of the Law on the Constitutional Court (resolutions of the Constitutional Court of December 12, 2005, January 16, 2006, January 17, 2006, decisions of the Constitutional Court of January 17, 2006, July 5, 2007, September 6, 2007, September 12, 2007, October 14, 2008). Such legal regulation determines that the person's possibility to protect his rights at the constitutional level is postulated by the will of the subjects who are entitled to apply to the Constitutional Court (in this case, courts of general competence and administrative courts). The courts' will to apply or not to apply to the Constitutional Court as well as their abilities and skills in formulating the complaint in qualified manner is an essential factor.

5. CONCEPTION OF INDIVIDUAL CONSTITUTIONAL COMPLAINT

According to the Constitution of the Republic of Lithuania, any person whose constitutional rights and freedoms are violated shall have the right to apply to the court. The constitutional right to apply to the court is an absolute one (the above-

mentioned resolutions of the Constitutional Court of June 30, 2000, of August 17, 2004, prove this notion); this right may not be restricted or contradicted. In accordance with the Constitution, the person must have the right to defend his constitutional rights and freedoms that have been violated in the courts of general and specialized competence as well as in the Constitutional Court. Such right is a special instrument of protection of constitutional rights and freedoms against unlawful decisions of the public authorities. Therefore, it is obvious that the concept of an individual constitutional complaint is determined by the constitutional system in Lithuania. In the legal system of Lithuania, the institution of an individual constitutional complaint must be established and protection of this institution must be guaranteed at the constitutional level. These are the provisions under which the conception of an individual constitutional complaint has been established. A resolution on approval[8] of the conception of individual constitutional complaint was adopted by Seimas (the Parliament) of the Republic of Lithuania on July 4, 2007. This conception was partially amended in 2009[9]. The aim and tasks of this conception are to define the model of establishment of the institute of individual constitutional complaint.

Before the approval of the conception, there was a lot of discussions on the model to be chosen (*actio popularis* or *constitutional complaint*) among theoreticians and practitioners of law. However, the limit between *an actio popularis* and *constitutional complaint* is sometimes difficult to define. The distinction between *an actio popularis* and *a constitutional complaint* can be clear in theory, but in legal practice they may overlap. However, the main difference is that a constitutional complaint differs from the other, that the person may apply to the Constitutional Court when specific human rights and freedoms of a specific person are violated. To avoid abundant complaints to the Constitutional Court, some countries have selected specific restrictions under which the petition may be filed. However, despite different models of individual constitutional complaints, it exists in a number of countries (e.g. Austria, Cyprus, Germany, Hungary, Slovakia, etc.). Therefore, the establishment of the institute of individual constitutional complaint in Lithuania has been effected by globalization factors related to the procedure of unification of protection of human rights.

[8] *Resolution on Approval of the Conception of Individual Constitutional Complaint*, Official Gazzette (2007, no. 77-3061).
[9] *Resolution on Amendment of the Resolution of Seimas "On Approval of the Conception of the Institute of Individual Constitutional Complaint*, Official Gazzette (2009, no. 152-6323).

6. PRINCIPLES OF THE CONCEPTION AND PROPOSED LEGAL REGULATION

The following principles and fundamental provisions of legal regulation of individual constitutional complaint are established by the conception, which was approved by the Seimas (the Parliament). This conception states that the subject of the individual constitutional complaint shall be the person whose constitutional rights and freedoms are violated. The person entitled to file a complaint may be a private person. The right to apply is granted to legal persons: companies, political parties, various organizations, etc. The grounds for applying to the Constitutional Court shall be the law of the Republic of Lithuania or any other legal act (or a part of it) adopted by the Seimas (the Parliament), the act of the President of the Republic, the act (or a part of it) of the Government of the Republic of Lithuania under which a decision has been adopted which violates human rights and freedoms ensured by the Constitution. The essential provision for applying to the Constitutional Court is that before applying to the Constitutional Court, a private person must have used all instruments of legal defense that are guaranteed by the Constitution (Article 106 of the Constitution). The provision for the use of all instruments of legal defense is not defined in more detail in the conception, but it is thought that a proper definition of this provision at the legislative level is necessary in order to avoid ambiguity in evaluation of the provisions for acceptance of the complaint. This is a significant provision because the right to apply the Constitutional Court should have a strict term. The conception proposes fixing the term during which the complaint of a private person may be submitted; the term should not be longer than three months from the moment of the final decision adopted by the state authorities. It is proposed in the conception that the complaint of private person would be drawn up by the lawyer. There is one exception: if the private person (the petitioner) has an university degree in law. This person is allowed to draw up the petition by him- or herself. The provision stating that the lawyer must be present at the time of drawing up the complaint is almost identical to the provision of the Code of Civil Procedure (Article 347) which defines mandatory requirements to the contents of the complaint of cassation which is submitted to the Supreme Court of Lithuania. However, the complaint of cassation of the legal person may be drawn up by the employee of the legal person who has higher university degree in law; such provision establishing the exception to the legal person is not provided in the conception of individual constitutional complaint.

In accordance with the conception, the stamp tax should be minimal. Therefore, there would be assumptions and conditions for making this instrument of

constitutional defense publicly available and available to socially sensitive persons. However, taking into account the importance of individual constitutional complaint to the individual who submits the complaint as well as to the legal system, the issue of non-imposition of the stamp tax on the complaint could be discussed. But this is not established in the current conception. The initial selection of complaints from private persons in the Constitutional Court should be established. This could be performed by the judge of the Constitutional Court or the chamber of judges. The Constitutional Court could be responsible for acceptance of the complaint to be heard in the Constitutional Court under submission or recommendation of a single judge or chamber of judges in accordance with the general rule. The complaint must specify the questionable law or any other legal act of the Seimas, the act (or a part of it) of the President of the Republic or Government of the Republic of Lithuania under which the decision violating constitutional rights and freedoms of the private person has been adopted; constitutional right and freedom which has been violated and nature of violation; factual circumstances justifying the complaint. The complaint should have other covering documents: final decision adopted by the state authority, required number of copies, receipt of paid stamp tax, etc.

Having analyzed individual constitutional complaint, direct legal consequences of the decision (the resolution) of the Constitutional Court would be the private person’s right to apply for the defense of violated right to the state or municipal authority where a decision violating constitutional person's rights and freedoms has been adopted, following the law or any other act (or a part of it) of the Seimas, the act (or a part of it) of the President of the Republic or the Government which were in conflict with the Constitution.

The concept of individual constitutional complaint also provides other possible consequences of this legal regulation. The opinion exists, that the establishment of the institute of individual constitutional complaint should reduce the number of persons who apply to the European Court of Human Rights by imposing petitions against Lithuania. However, obviously, the number of cases in the Constitutional Court of the Republic of Lithuania would increase. Evaluating the number of applications of Lithuanian citizens to the European Court of Human Rights, it could be predicted that people will use their right to apply to the Constitutional Court actively in future. The process and the procedures of hearing such cases should change correspondingly. As the workload for judges and other court personnel increases, internal work system and structure should be reviewed. Having introduced new powers of the Constitutional Court (hearing of individual constitutional complaints), the Constitutional Court as well as its internal system of

work organization should be reorganized. This reorganization should provide the effective procedure. Taking into account the above mentioned changes, additional and inevitable assignations from the state budget, that are necessary for reorganization of the Constitutional Court and implementation of proper and effective functions, should be considered.

Actually, the concept of individual constitutional complaint, taking into account its consequences to the Constitutional Court's status in the courts systems, will extend the list of subjects who are entitled to apply to the Constitutional Court. But this concept does not change any grounds for the considerations of constitutional cases; the grounds for the considerations of a case concerning the compliance of a legal act with the Constitution in the Constitutional Court now is a legally justified doubt that the entire legal act or part of thereof is in conflict with the Constitution. This legal justified doubt would be a reason for a private person's petition, as well. Therefore the exclusive role of the Constitutional Court in the courts system of Lithuania would not be changed radically. It will stay a special institution of judicial constitutional control. However, it is obvious that the establishment of individual constitutional complaint would result in the changes of individual legal status.

CONCLUSIONS

The concept of individual constitutional complaint was created and developed by the notions of the Constitution of the Republic of Lithuania and case law (the jurisprudence) of the Constitutional Court of the Republic of Lithuania. The concept, adopted by the Seimas (the Parliament), was enforced by the rulings of Constitutional Court, in which the status of Constitutional Court and the right of private person to apply to the court were emphasized once again.

The main provisions established in the case law of the Constitutional Court have become and now are implemented on the basis of the conception of constitutional complaints. They include the following provisions:

- *the private person* whose constitutional rights or freedoms are violated shall *have the right to apply to the court*;
- *the right to apply* to the court is *an absolute* one;
- the Constitutional Court is *a judicial institution*;
- the Constitution is *a directly* applicable act;
- *everyone* may defend *his or her rights* by invoking the Constitution.

The issue of protection of human rights today has become one of the most important tasks set before the state. However, the purpose of protecting human

rights effectively may not be considered only on the formal level, i.e. only by enforcing the fundamental principles of constitutional state and universally acknowledged legal norms in the constitutional documents. The issue of the institution of an individual constitutional complaint was developed by case law of the Constitutional Court together with the change of status of a private person in a modern democratic society. The challenges have to be overcome, because the individual personal choice of a rights protection mechanism becomes more important than the collective regulations or the public authorities decisions. These challenges, related to the constitutional amendments, also can be a great instrument to reduce the tension between the private person and the public authority, if the last mentioned does not serve properly, as set down in Article 5 of the Constitution – "State institutions shall serve the people".

BIBLIOGRAPHY

1. *Resolution on Amendment of the Resolution of Seimas "On Approval of the Conception of the Institute of Individual Constitutional Complaint".* Official Gazzette, 2009, no. 152-6323.
2. *Resolution on Approval of the Conception of Individual Constitutional Complaint*. Official Gazzette, 2007, no. 77-3061.
3. *Ruling on court precedents and on lodging complaints against court rulings whereby one applies to the Constitutional Court or an administrative court.* The Constitutional Court of the Republic of Lithuania, 2007, no. 26/07.
4. *Ruling on restoration of the rights of ownership.* The Constitutional Court of the Republic of Lithuania, 2003, no. 27/01-5/02-01/03.
5. *Ruling on the compliance of paragraph 2 of Article 48 of the Republic of Lithuania law on the organization of the national defence system and military service with the Constitution of the Republic of Lithuania.* The Constitutional Court of the Republic of Lithuania, 2002, no. 32/2000.
6. *Ruling on the Law of Commercial Banks.* The Constitutional Court of the Republic of Lithuania, 1996, no. 12/95.
7. *Ruling on the right to apply to court.* The Constitutional Court of the Republic of Lithuania, 2004, no. 23/02.
8. *Ruling on the right to compensation for damage inflicted by unlawful actions of interrogatory and investigatory bodies, the prosecutor's office and court*. The Constitutional Court of the Republic of Lithuania, 2000, no. 30/98-13/99.
9. *Ruling on the status of the Constitutional Court.* The Constitutional Court of the Republic of Lithuania, 2006, no. 12/06.