On the use of criminal intelligence information in investigating misconduct in office of a corrupt nature

Case no 11/2017-5/2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA
IN THE NAME OF THE REPUBLIC OF LITHUANIA

RULING

ON THE COMPLIANCE OF THE PROVISIONS OF THE REPUBLIC OF LITHUANIA'S LAW ON CRIMINAL INTELLIGENCE, OF THE REPUBLIC OF LITHUANIA'S LAW ON STATE SERVICE, AND OF THE STATUTE OF INTERNAL SERVICE OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

18 April 2019, no KT13-N5/2019
Vilnius

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

The court reporter – Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1 and 53^1 of the Law on the Constitutional Court of the Republic of Lithuania, at the hearing of the Court on 28 March 2019, considered, under written procedure, constitutional justice case no 11/2017-5/2018 subsequent to:

1) the petition (no 1B-12/2017) of the Vilnius Regional Administrative Court *(Vilniaus apygardos administracinis teismas)*, a petitioner, requesting an investigation into whether Paragraph 3 of Article 19 of the Republic of Lithuania's Law on Criminal Intelligence and Paragraph 2 (wording of 2 October 2012) of Article 29 of the Republic of Lithuania's Law on State Service, insofar as those paragraphs do not provide for a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Law on State Service, among other things, where the criminal intelligence information has been gathered regarding another person, but not the person with respect to whom an investigation into misconduct in office is carried out, were (or are) in conflict with Article 22 and Paragraph 1 of Article 33 of the Constitution of the Republic of Lithuania;

2) the petition (no 1B-5/2018) of the Supreme Administrative Court of Lithuania *(Lietuvos vyriausiasis administracinis teismas)*, a petitioner, requesting an investigation into whether:

– Paragraph 3 of Article 19 of the Republic of Lithuania's Law on Criminal Intelligence, insofar as that paragraph provides that "criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into [...] misconduct in office", also Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service of the Republic of Lithuania and Paragraph 1 of Article 33 of the Statute of the Internal Service of the Republic of Lithuania (wording of 25 June 2015), insofar as those paragraphs provide that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]", were in conflict with Article 22 of the Constitution of the Republic of Lithuania, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law;

– Paragraph 3 of Article 19 of the Republic of Lithuania's Law on Criminal Intelligence, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service of the Republic of Lithuania, and Paragraph 1 of Article 33 of the Statute of the Internal Service of the Republic of Lithuania (wording of 25 June 2015), insofar as those paragraphs do not establish any procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service, were (or are) in conflict with Article 22 and Paragraph 1 of Article 30 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

By the Constitutional Court's decision of 21 March 2019, the aforesaid petitions were joined into one case and it was given reference no 11/2016-5/2016.

The Constitutional Court

has established:

I

The arguments of the petitioners

1. The Vilnius Regional Administrative Court, a petitioner, applied to the Constitutional Court after suspending an administrative case in which it decided whether the head of an establishment had been lawfully and reasonably imposed the official penalty – dismissal from state service for gross misconduct in office under Item 1 of Paragraph 6 (as amended on 5 June 2012) of Article 29 of the Law on State Service (wording of 23 April 2002) (the said item specifies the following misconduct: a state servant's conduct, related to the performance of official duties, that discredits state service, undermines human dignity, or the state servant's other actions that directly violate the constitutional rights of individuals) and Item 3 (the said item specifies the following misconduct: an act with the characteristics of a corruption criminal act (misuse of office) related to the performance of official duties, even though the state servant was not brought to criminal or administrative responsibility for that act) –

where, in the course of investigating the said gross misconduct in office, information was used that had been collected with respect to another person (but not the one whose misconduct in office was investigated) during a criminal intelligence operation carried out in accordance with the Law on Criminal Intelligence.

According to the petitioner, in the administrative case considered by it, the content of the conversations recorded during the criminal intelligence operation had been challenged and the time of using the criminal intelligence information had been questioned on the grounds that the official investigation was launched only after receiving a letter from the Special Investigation Service of the Republic of Lithuania (*Specialiųjų tyrimų tarnyba*); the information specified therein had been collected one and a half years before and after almost seven months had lapsed after the beginning of the pretrial investigation against the other person; in addition, that letter did not clearly indicate when and which information was declassified.

2. The petition of the Vilnius Regional Administrative Court, the petitioner, is substantiated by the following arguments.

The impugned legal regulation did not establish a procedure for declassifying and transmitting for use criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Law on State Service. The possibilities provided for by this law for the purpose of applying the official liability of state servants include transmitting for use declassified criminal intelligence information about an act with the characteristics of a corruption criminal act committed by such state servants where the said information is transmitted even in cases where it has been collected through criminal intelligence actions with respect to another person, but not the one whose misconduct in office is investigated. Such a legal regulation does not comply with all the conditions for the lawful limitation of the rights of an individual, including the right to the inviolability of, and respect for, private life, and has violated the constitutional right of persons to enter the State Service of the Republic of Lithuania on equal terms. Therefore, doubts arise over the compliance of this legal regulation with the provisions of Article 22 and of Paragraph 1 of Article 33 of the Constitution.

3. The Supreme Administrative Court of Lithuania, the petitioner, has applied to the Constitutional Court after suspending an administrative case in which it decided on the lawfulness of the imposition of the official penalty – dismissal from the position of a statutory state servant for discrediting the name of officials under Item 7 of Paragraph 1 of Article 62 of the Statute of the Internal Service (wording of 25 June 2015) (this penalty was subsequently annulled by the Klaipėda Regional Administrative Court *(Klaipėdos apygardos administracinis teismas)*, which imposed another official penalty – reprimand under Item 2 of Paragraph 2 of Article 33 of the said statute). In this case, information (official reports, voice recordings of telephone calls, explanations) collected under the Law on Criminal Intelligence in the course of an investigation into bribery and misuse of office was used to investigate the misconduct in office. In the administrative case pending before the Supreme Administrative Court of Lithuania, the official concerned challenges the lawfulness of the use of the criminal intelligence information in the course of the official investigation and imposing the official penalties on him and states that he has not been granted access to the criminal intelligence information used.

4. The petition of the Supreme Administrative Court of Lithuania, a petitioner, is based on these arguments.

4.1. The official liability under the Statute of Internal Service (all wordings thereof) for misconduct in office, i.e. improper performance of internal service functions, non-compliance with the requirements of official ethics, or other actions that discredit the name of officials, is not criminal responsibility. Criminal acts on the one hand and misconduct in office or other acts discrediting the name of officials on the other hand are not equally dangerous: the former attack the most valuable values recognised by society, whereas the latter essentially violate the order of internal service and undermine the authority of internal service. The purpose of official liability under the Statute of Internal Service is to ensure order within the internal service system and public respect for this system, as well as to ensure that such persons whose actions manifestly show disrespect to society are not allowed to work in internal service. The application of this liability does not involve criminal proceedings and is not intended to punish persons under the criminal law for criminal acts of a corrupt nature. Thus, the possibilities of using the information collected during a criminal intelligence operation in the criminal process and the process of the application of official liability, depending on the purposes and mission of these processes, must also be different.

4.2. Both the collection and use of criminal intelligence information intervene in the private life of a person and limit a person's right to privacy. Hence, the collection and use of criminal intelligence information, including in the area of the application of official liability, are subject to the application of grounds for the limitation of human rights and fundamental freedoms.

According to the provisions of the official constitutional doctrine, the right of a person to the inviolability of private life, which is enshrined in Article 22 of the Constitution, may be limited, among others, by using criminal intelligence information if the following conditions are met: first, such a limitation is enshrined in the law; second, such a limitation pursues a legitimate objective that is important to society; third, such a limitation is necessary to achieve the stated objective and does not restrict the rights of a person manifestly beyond what is necessary to achieve that objective. It should be noted that, according to the case law of the European Court of Human Rights (hereinafter also referred to as the ECtHR), a person's right to respect for private life can be limited only following the determination of the interests of national security, public protection, or economic well-being in order to prevent violations of public order or crimes and not exceeding what is necessary to achieve these objectives.

According to the petitioner, the impugned legal regulation according to which data, collected by criminal intelligence entities and recorded in accordance with the procedure established in legal acts, about an act with the characteristics of a corruption criminal act may be declassified and used in the application of official liability under the Law on State Service does not comply with all the conditions for a lawful restriction of the rights of persons, *inter alia*, the right to the inviolability of, and respect for, private life.

4.3. Special measures in criminal intelligence operations may be used for the purposes of the prevention or proper disclosure of certain serious or very serious criminal acts, or in specific situations defined by law, and only on the grounds, conditions, and procedures established by law. In the opinion of the petitioner, the use of criminal intelligence information to bring persons to official liability is not a necessary and proportionate state measure to achieve the objective of this liability, i.e. to ensure both order within the system of internal service and the respect of the public for this system. An official of the internal service system, when committing misconduct in office or discrediting the name of officials by means of other actions, does not commit, *inter alia*, a criminal act of a corrupt nature. Therefore, the use of criminal intelligence information in applying official liability should be assessed as a measure imposed by the state, limiting the constitutional right of a person to enter internal service on equal terms, *inter alia*, his/her right to maintain the status of an internal service official. The establishment of the impugned legal regulation resulted in the failure to maintain a balance among the values entrenched in the Constitution – the public interest to ensure both order in internal service and the confidence of the public in the system of internal service and the safeguarding of the constitutional rights of a person (the right to respect for private life and the right to enter state service) that are guaranteed under Article 22 and Paragraph 1 of Article 33 of the Constitution; the establishment of the impugned legal regulation also resulted in a violation of the constitutional principle of a state under the rule of law, *inter alia*, the constitutional principle of proportionality.

4.4. Taking into account the constitutional imperative of legal certainty, the relevant provisions of the official constitutional doctrine and the jurisprudence of the ECtHR, the petitioner also points out that the use of criminal intelligence information in applying official liability must be regulated in the law/laws in a very detailed and clear manner, i.e. that the entity applying official liability would have no opportunity to abuse the powers conferred on it, to unjustifiably restrict the rights of a person, *inter alia*, violate a person's right to respect for his/her private life, whereas an official who is brought to official liability could properly make use of effective defence against arbitrary acts of public authorities. Therefore, the constitutional principle of a state under the rule of law requires that the legislature set out in a law in a detail and clear manner the procedure for the use of criminal intelligence information about an act with characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service.

In the opinion of the petitioner, neither the impugned laws nor other legal acts regulating the relationships of internal service concerning, among other things, the application of official liability to officials of the internal service system provide how, in the course of dealing under the Statute of Internal Service with an issue of official liability, criminal intelligence information about an act with characteristics of a corruption criminal act should be used, i.e. they neither explicitly nor implicitly establish a procedure for the use of the above-mentioned criminal intelligence information in applying official liability, even though, under the Constitution, taking into account the content of these relationships, such a legal regulation should be established in the Law on Criminal Intelligence, the Statue of Internal Service, or another legal act.

Since the legal acts do not provide in a detailed manner the procedure for the use of criminal intelligence information about an act with characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service, a person's right

to effective judicial protection in accordance with Paragraph 1 of Article 30 of the Constitution is unjustifiably restricted, as the person loses the opportunity to defend in a judicial manner his/her violated right to private life and his/her right to enter state service.

According to the Supreme Administrative Court of Lithuania, it cannot eliminate this gap ad hoc. In its view, such a legal regulation where a law does not specify in a detailed and clear manner the procedure for the use of information gathered on the basis of the Law on Criminal Intelligence for the purposes of applying official liability, the imperatives arising from Article 22, Paragraph 1 of Article 30, Paragraph 1 of Article 33 of the Constitution, as well as from the constitutional principle of a state under the rule of law, are violated.

II

The arguments of the representative of the party concerned

5. In the course of preparing the case for the hearing of the Constitutional Court, written explanations were received from Vitalijus Gailius, a member of the Seimas of the Republic of Lithuania, the representative of the Seimas, the party concerned, in which it is stated that the impugned legal regulation is not in conflict with Article 22 of the Constitution, Paragraph 1 of Article 30 thereof, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law. The position of the representative of the Seimas, the party concerned, is based on the following arguments.

5.1. Having established in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence the right to use criminal intelligence information in investigating misconduct in office, the limitations (certain safeguards) on this information have been simultaneously established to prevent possible abuse: 1) such information may be declassified only with the consent of the prosecutor and by decision of the head of the principal criminal intelligence institution; 2) such information is used only for investigating the misconduct of a specific nature – misconduct in office; 3) not all and not any criminal intelligence information can be declassified and used for the investigation of misconduct in office, but only information about an act with the characteristics of a corruption criminal act. In addition, the Law on Criminal Intelligence, *inter alia*, Paragraph 1 of Article 5 and Paragraph 1 of Article 7 thereof, provides for guarantees for the protection of human rights and freedoms in carrying out criminal intelligence activities.

5.2. Some of the corrupt criminal acts referred to in Paragraph 2 of Article 2 of the Republic of Lithuania's Law on the Prevention of Corruption (for example, abuse (Article 228 of the Criminal Code) or failure to perform official duties (Article 229 of the Criminal Code) are so related to the consequences that, if they do not occur, the preliminary stage of the criminal act is not distinguished and the committed act can only be classified as misconduct in office. Therefore, one of the most important – and, usually, the only – criterion for the delimitation of a corrupt criminal act and misconduct in office is the amount of damage inflicted on state service and on the public interest. The Supreme Court of Lithuania *(Lietuvos Aukščiausiasis Teismas)* has made the interpretation that the attribute of major damage, as provided for in

Article 228 of the Criminal Code, is the main criterion for the distinction between crimes against state service or public interests and misconduct in office (the Supreme Court of Lithuania, the ruling of 9 October 2007, criminal case no 2K-568/2007).

In addition, the Supreme Court of Lithuania has emphasised the evaluative character of the attribute of major damage (*inter alia*, to the state) necessary for criminal responsibility to emerge: non-property damage is generally recognised as being major if it is caused as a result of a violation of human rights and freedoms enshrined in the Constitution, of other constitutional values or principles defended under the Constitution in cases where the authority of state institutions is undermined, the confidence in the state legal system is discredited, etc.; in concluding on the existence of such damage, important circumstances are the duties (significance thereof) of a state servant who has committed unlawful actions, the duration of the act, its scope (extent), the legal acts defending the violated values, the fact whether other acts forbidden by criminal law have been committed in abuse of office, etc. (the Supreme Court of Lithuania, the ruling of 16 June 2016 in criminal case no 2K-234-222/2016); in each particular case, a court decides on the amount of damage, taking into account, *inter alia*, the importance of the culprit's current duties, the resonance in society as a result of the committed act, and the impact on the authority of the state servant and of the state institution (the Supreme Court of Lithuania, the ruling of 3 October 2013 in criminal case no 2K-351/2013).

5.3. If the declassification of criminal intelligence information collected about corruption criminal acts and its use in investigating misconduct in office were prohibited (i.e. if the relevant impugned legal regulation were repealed), some of these investigations could, in general, fail even with objective information gathered about committed misconduct in office. Such a regulation might not be in line with the constitutional principles of justice and a state under the rule of law. This could also mean that the treatment of the only evaluative attribute could lead not only to the delimitation of criminal responsibility from official liability, but also to the absolute acquittal of the person. However, the Constitutional Court has held that, under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, it is not allowed to establish any such legal regulation in the course of the application of which a person who fails to observe requirements established in legal acts could escape legal liability; this constitutional principle would be violated if the law failed to establish corresponding legal measures for persons who do not observe requirements established in legal acts (the Constitutional Court's rulings of 31 January 2011 and 6 December 2013).

5.4. According to the jurisprudence of the Constitutional Court, the human right to privacy is not absolute; a person who commits criminal acts or those contrary to law must not and may not expect privacy; the limits of the protection of the private life of an individual cease to exist in cases where, by his/her actions or in a criminal or any other unlawful manner, he/she violates the interests protected by law, or inflicts damage on particular persons, society, or the state; every individual, when violating prohibitions established in laws, is aware of the fact that this will lead to the particular reaction of state law enforcement institutions and comprehends that for a committed crime the state will apply strict measures against him/her, and that such measures will correct, hinder, or stop his/her unlawful conduct (the Constitutional Court's ruling of 8 May 2000).

In state service (whose mission is to guarantee the public interest), the employed persons cannot engage in activities that would enable the realisation of the private interests of state servants, and the corps of state servants must be formed in a special manner, taking into account the specific nature of their legal status and the special responsibility to the public for the performance of the functions assigned to them.

As such, preventive measures aimed at limiting and reducing crime should not be regarded as a constitutionally groundless limitation on the human right to privacy. However, the constitutional principle of proportionality must be respected when establishing a legal regulation that creates a possibility of violating human privacy, including through the use of the measures provided for in the Law on Criminal Intelligence. Compliance with the proportionality requirement must also be ensured by the three limitations (safeguards) of the use of criminal intelligence information for the investigation of non-criminal acts, as provided for in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, where the use of criminal intelligence information for investigating instances of misconduct in office or disciplinary offences is possible only in exceptional cases and is strictly supervised and assessed under Paragraph 16 Article 2 of the Law on Criminal Intelligence by the prosecutors, who control and coordinate the lawfulness of actions performed in criminal intelligence operations.

5.5. The Constitutional Court has held that, in cases where a certain legal regulation implicitly established in a legal act (part thereof) establishes a certain conduct and thereby supplements and extends the explicit legal regulation, there are no grounds for asserting that, purportedly, this legal act (part thereof) does not regulate certain social relations at all, since these social relations are in fact legally regulated; however, this legal regulation is consolidated in particular legal acts not explicitly, *expressis verbis*, but implicitly, and is derived from explicit legal provisions in the course of the interpretation of law (the Constitutional Court's decision of 8 August 2006).

Therefore, the representative of the party concerned disagrees that the impugned legal regulation does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service or the Law on State Service.

5.6. Thus, the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use in the investigation of misconduct in office is constitutionally justified and proportionate, in line with the public interest, and does not restrict the rights of a person more than is necessary in order to achieve constitutionally important public objectives.

III

The material received in the case

6. In the course of the preparation of the case for the hearing of the Constitutional Court, written opinions were received from: Žydrūnas Radišauskas, the Deputy Prosecutor General of the Republic of Lithuania; Žydrūnas Bartkus, who at that time was the Acting Deputy Director of the Special Investigation Service of the Republic of Lithuania; Kęstutis Budrys,

the Deputy Director of the State Security Department of the Republic of Lithuania; Milda Vainiutė, the Minister of Justice of the Republic of Lithuania; and Eimutis Misiūnas, the Minister of the Interior of the Republic of Lithuania.

6.1. In the written opinion of Žydrūnas Radišauskas, the Deputy Prosecutor General, it is stated that:

– the Law on Criminal Intelligence does not specify in what manner and in what cases the heads of the principal criminal intelligence institutions can apply to the prosecutor in order to receive his/her consent to use criminal intelligence information for the purposes provided for in Paragraph 3 of Article 19 of the Law on Criminal Intelligence; neither the Law on Criminal Intelligence nor other laws contain detailed grounds and cases where the prosecutor may disagree with the use of criminal intelligence information for these purposes;

– according to the order (No I-365) of the Prosecutor General of 19 December 2012, the prosecutors of the Office of the Prosecutor General of the Republic of Lithuania and of district prosecutors' offices authorised by the Prosecutor General to coordinate actions carried out in criminal intelligence operations and to control their legitimacy were entitled to decide on the above-mentioned consent, and, by the order (No I-204) of 14 June 2017, in order to ensure stricter control over the implementation of the objectives, set out in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, of the use of criminal intelligence information, it is established that the Prosecutor General authorises the Deputy Prosecutor General, as well as other concrete prosecutors from the Office of the Prosecutor General, to decide on the said consent;

– since 1 January 2013, the Prosecutor General's Office and the district prosecutor's offices have received 16 applications from the heads of the principal criminal intelligence institutions for consent to use the type of information provided for in Paragraph 3 of Article 19 of the Law on Criminal Intelligence in investigating disciplinary offences and/or misconduct in office; only one of the applications received was not granted because the prosecutor of the Office of the Prosecutor General assessed the described allegedly unlawful acts as of little significance;

– it can be seen from the above-mentioned applications that: 1) the prosecutor's consent is sought when a criminal intelligence entity determines that the data, collected in the course of a criminal intelligence operation, regarding the acts of a state servant or a person equated to him/her are not sufficient for the initiation of a pretrial investigation, but that these acts have indications of misconduct in office; 2) the applications addressed to the prosecutor indicate the person and the specific information (its scope) the consent for the use of which is requested; 3) according to Article 2 of the Code of Criminal Procedure of the Republic of Lithuania, the prosecutor (who, after the emergence of the indications of a criminal act, is obliged to take all the measures provided for by law to conduct an investigation and disclose the criminal act within the shortest period of time), decides on the said consent after the verification whether the criminal intelligence information intended to be used for investigating misconduct in office is sufficient for the purpose of commencing a pretrial investigation into a possible criminal act and whether it is sufficient for the purpose of

commencing an official investigation regarding allegedly committed misconduct in office; 4) the consent of the prosecutor is expressed in a separate letter or resolution on the application of the head of the principal criminal intelligence institution;

– the application of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence guarantees the protection of human rights and freedoms, including the right to the inviolability and respect of private and family life and the right to defend one's rights before a court, as the said paragraph provides that only declassified criminal intelligence information may be used to investigate, *inter alia*, misconduct in office; in addition, according to Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of this law, a person who considers that the actions of criminal intelligence entities have violated his/her rights and freedoms may file an appeal against their actions with the head of the principal criminal intelligence institution or the prosecutor, and may file an appeal against decisions of the latter with the president of the regional court or a judge authorised by him/her; thus, the person who is subjected to official liability on the basis of such information is entitled not only to have full access to it, but also to verify and assess the factual and legal grounds for obtaining and using the said information.

6.2. The opinion of Žydrūnas Bartkus, who at that time was the Acting Deputy Director of the Special Investigation Service, contains the following arguments.

6.2.1. The impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for the basic principles to be followed in order to use criminal intelligence information to investigate misconduct in office: the prosecutor must give his/her consent, the head of the institution must take the relevant decision, and such information must be declassified. In applying this legal framework and in accordance with established practice, the criminal intelligence information available to the Special Investigation Service is provided and used to investigate misconduct in office only in exceptional (rare) cases and under the following procedure:

1) the head of a criminal intelligence entity, having determined that specific criminal intelligence information about an act with the characteristics of a corruption criminal act does not provide sufficient grounds for launching a pretrial investigation, but that information (which is reliable, for example, recorded by technical means) shows that misconduct in office (which has caused damage to the public interest) may have been committed, informs the Director of the Special Investigation Service about this fact so that it would be possible to decide on the declassification and transfer of such information for use in investigating the misconduct in office;

2) a letter to the authorised prosecutor on the declassification and transfer of such information to investigate the misconduct in office is drafted with the approval of the Director of the Special Investigation Service;

3) the prosecutor assesses the possibility of using specific criminal intelligence information in the criminal process and whether certain criminal intelligence information about an act with the characteristics of a corruption criminal act may contain characteristics of misconduct in office;

4) upon the receipt of the prosecutor's consent, the criminal intelligence entity applies in writing to the Special Commission of Experts, established on the basis of Article 14 of the Republic of Lithuania's Law on State Secrets and Official Secrets (wording of 19 May 2016), on the declassification of criminal intelligence information; the Special Commission of Experts assesses the expediency of declassifying the classified information, the legal and factual grounds for such declassification (it assesses whether the declassification poses a threat to criminal intelligence activities) and gives a conclusion on the declassification of the criminal intelligence information to the Director of the Special Investigation Service;

5) upon approval of the conclusion (declassification) received from the Special Commission of Experts, the Director of the Special Investigation Service approves the declassification act;

6) the Special Commission of Experts returns the declassified information to the criminal intelligence entity;

7) the criminal intelligence entity passes on the declassified information to the relevant employer for investigating the misconduct in office in accordance with the procedures provided for in laws and other legal acts.

6.2.2. According to Paragraph 7 of Article 5 of the Law on Criminal Intelligence, if, after the completion of a criminal intelligence investigation, criminal intelligence information on a criminal intelligence object has been used in accordance with the procedure envisaged in Article 19 of this law, the information collected in criminal intelligence investigation files must be stored in the classified files archive of the Special Investigation Service for five years from the completion of such proceedings; upon the expiry of the storage period, provided it is not extended due to the use of information for the implementation of criminal intelligence tasks, the criminal intelligence investigation file (information) is destroyed in the manner prescribed in legal acts.

6.2.3. The lawfulness of the activity of criminal intelligence entities and the proper protection of human rights and freedoms in the course of criminal intelligence operations are ensured by the criminal intelligence control system: 1) the Law on Criminal Intelligence (for example, Articles 22 and 24 thereof) and the provisions of legislation approved by the orders of the Prosecutor General create the grounds for carrying out external control over criminal intelligence: parliamentary control (it is also exercised by the structural unit of the Seimas – the Commission for Parliamentary Scrutiny of Criminal Intelligence of the Seimas, which is specially created for this purpose by the Statute of the Seimas of the Republic of Lithuania), control by the Government, control by the Prosecution Service, and judicial control (authorised prosecutors and judges, familiar with the necessary material of the criminal intelligence investigation file and evaluating, among others, the proportionality and expediency of the restriction of human rights, adopt decisions on authorising the methods of gathering criminal intelligence information; the prosecutors receive information on the progress and results of the authorised actions); 2) according to Article 21 of the Law on Criminal Intelligence, the principal criminal intelligence institution implements internal control of criminal intelligence in accordance with internal legal acts both in a hierarchical manner (higher-ranked officials of the Special Investigation Service control the activities of subordinate officials) and in a decentralised manner (control over the units of the Special Investigation Service not directly carrying out criminal intelligence operations, but capable

of conducting inspections of criminal intelligence activities (commissions, internal audit, investigations into irregularities committed by employees, etc.)); in addition, continuous monitoring of criminal intelligence operations of the Special Investigation Service and complex and targeted inspections are carried out.

6.2.4. Intervention into the private life of a person, when criminal intelligence information is collected and used for investigating misconduct in office, has a different legal level, so the use of lawfully and reasonably collected information does not require the legal protection of the same nature and degree as the gathering of such information (where such gathering is related to Article 22 of the Constitution).

As citizens have the right to enter the state service of the Republic of Lithuania on equal terms (Paragraph 1 of Article 33 of the Constitution), both the state and its citizens (the public) have the right to know how persons who hold certain (especially high and responsible) positions behave and how they perform their official functions; they also have the justified legitimate expectation that state service will employ only trustworthy persons, who are loyal to the state, are honest and honourable, who will respect certain ethical principles governing their activities, will not abuse their position, powers, and service, that the state and internal service will be a transparent system with a sufficient and effective mechanism of control and supervision. The constitutional right to enter the state service does not deny the duty of state servants and officials to be loyal to the state and to act in a lawful manner. This right cannot be made absolute and cannot deny the institution of the responsibility of state servants and officials for their actions, especially when the state has at its disposal lawfully gathered information showing that a state servant or official is possibly not fit for a particular position, does not meet the requirements of good repute, or his/her certain actions discredit the state or internal service (the reputation (authority) thereof).

The repeal of the impugned legal regulation, according to which criminal intelligence information can be declassified and used to investigate misconduct in office, would result in a legally flawed situation: the state, having at its disposal lawfully and reasonably collected information, the purpose of whose collection was to prevent criminal acts, to identify their characteristics and persons allegedly committing them, would not be able to use it against relevant persons and would have to destroy it should that information be not sufficient to launch a pretrial investigation and to state that the criminal acts could have been committed, but it would indicate that the actions of the person concerned have the characteristics of a corruption criminal act and that that person is possibly not fit for the position of a state servant or official; in such a case, the state would not be able to apply law and public interests and citizens' legitimate expectations would be manifestly violated.

In some cases, the use of criminal intelligence information to investigate misconduct in office has the characteristics of the restriction of a person's right to private life, but this is in compliance with the prerequisites for the restriction of this right: this restriction is established in a law (the impugned provisions of the Law on Criminal Intelligence, of the Law on State Service, and of the Statute of Internal Service), such a restriction pursues a legitimate objective that is important to society (transparent, fair, and legitimate systems of state service and internal service), such a restriction is necessary to achieve the stated objective and does not restrict the rights and freedoms of a person to an evidently greater

extent than is necessary in order to achieve that objective (this is the only opportunity for the state to use lawfully collected information on possible misconduct in office with the characteristics of a corruption criminal act); therefore, from the point of view of the Constitution, the use of criminal intelligence information in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence cannot be regarded as arbitrary or unlawful interference with a person's private life or as encroachment on his/her honour and dignity.

Thus, restricting the right to a person's private life by declassifying lawfully obtained information and using it to find out whether the relevant persons trusted by the state are abusing that trust and create reasonable assumptions to believe that they do not perform their duties properly and lawfully is justified and even necessary in order that the public sector would function in a stable, confident, objective manner and be compatible with its primary objective – the public interest.

6.2.5. The process of using criminal intelligence information to investigate misconduct in office, given that its consequences may be quite negative, can be essentially equated with criminal proceedings, and official liability in the light of its consequences can be equated with criminal responsibility; the ECtHR applies the following criteria in assessing whether in a particular case the matter of a criminal charge has been dealt with and whether a violation of law can be equated with a criminal charge provided for in Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), which was adopted in 1950: the classification of violations of law under national law (this has no decisive influence), the nature of a violation of law (the scope of application of the violated legal norm), the purpose of the penalty (whether the objective is to punish a person and discourage him/her from further violations of law), the nature and severity of the possible punishment (the ECtHR, the judgment of 23 November 1976, *Engel and Others v the Netherlands*, nos 5100/71, 5101/71, 5102/71, 5354/72, 5370/72).

6.2.6. It is questionable whether the laws should contain a detailed procedure for the use of criminal intelligence information to investigate misconduct in office, as the laws do not specify the procedure for using any kind of information for investigating misconduct in office. The manner and procedure for dealing with misconduct in office are common, this procedure does not depend on the nature of the information, on the fact from where it was received, or on the specific information on which such a procedure is conducted or is commenced. Criminal intelligence information, which can be used to investigate misconduct in office, is only one type of information that can serve as a basis for initiating official investigations and which may supplement information already obtained from other sources. Some legal acts regulating investigations into misconduct in office do not even distinguish criminal intelligence information as a separate category of information (for example, in the Statute of the Service in the Customs of the Republic of Lithuania, which is approved by means of a law). Thus, in this respect the impugned legal regulation is legally valid and sufficient in itself.

6.2.7. The impugned legal regulation, according to which criminal intelligence information may be used for investigating misconduct in office, is not in conflict with Paragraph 1 of Article 30 of the Constitution, which provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court, because the person, considering that

his/her rights or freedoms have been violated in investigating his/her allegedly committed misconduct in office and in using declassified criminal intelligence information, has the right to apply to a court to defend his/her rights:

1) according to Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence, a person who considers that the actions of criminal intelligence entities have violated his/her rights and freedoms may file an appeal against those actions with the head of the principal criminal intelligence institution or the prosecutor, and he/she may file an appeal against a decision of the head of the principal criminal intelligence institution or of the prosecutor with the president of the regional court or his/her authorised judge;

2) under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, only declassified criminal intelligence information is used in investigating misconduct in office, which means that a person has the right to access such information during the investigation of the misconduct in office; under Paragraph 2 of Article 10 of the Law on State Secrets and Official Secrets, the classified information whose time limit for classification (according to Article 8 of this law, 5, 10, 15, 30 or 75 years, a specific event, or other conditions) has not expired (has not been extended) and the expediency of classification has not ceased to exist is declassified only by decision of the head of the entity of secrets that has prepared the classified information or by decision of a person authorised by him/her;

3) under Paragraph 6 of Article 30 of the Law on State Service, the decision on the imposition of an official penalty or on recognising a person who has served as a state servant as one who has committed misconduct in office and determining the official penalty to be imposed on him/her may be appealed against in accordance with the procedure laid down in the Republic of Lithuania's Law on Administrative Proceedings;

4) according to Item 22.4 of the Description of the Procedure for Conducting Official Investigations, Imposing and Removing Official Penalties for Officials, and Adopting Decisions Regarding the Recognition of the Officials, Dismissed from Internal Service, as Those Who Have Committed Misconduct in Office and Regarding the Official Penalties to Be Imposed on Them, as approved by the order (no 1V-308) of the Minister of the Interior of 27 August 2003, an official under inspection has the right to file an appeal against the actions of the inspector, and, under Item 47, an order on the imposition of an official penalty may be appealed against to the Official Disputes Commission and/or to an administrative court in accordance with the procedure established by the Law on Administrative Proceedings.

6.2.8. Criminal intelligence research is a dynamic process, with initial criminal intelligence objects having contact points with others, so it is natural that in the course of carrying out criminal intelligence operations with respect to some objects (persons) it is possible to obtain information about other individuals and other unlawful acts they commit. According to the Law on Criminal Intelligence, data collected and recorded in accordance with the procedure established in legal acts during the activities of criminal intelligence entities when carrying out criminal intelligence tasks, where those data are not about the original objects of criminal intelligence, including persons (i.e. not solely about persons against whom an investigation is underway as a result of misconduct in office), are also deemed to be criminal intelligence information; the state must have sufficient and effective powers to

assess and use in investigating misconduct in office such lawfully gathered information about persons whose actions are potentially harmful to the public interest and incompatible with their duties, and, based on such information, to initiate separate investigations and processes; otherwise, circumstances favouring the continuation of activities detrimental to the public interest would not be eliminated. In such a process, constitutional human rights and freedoms, including the right to enter state service and the right to defend oneself before a court, are not violated.

In its ruling of 15 March 2017 on criminal responsibility for unlawful enrichment, the Constitutional Court noted, in essence, that, in proceedings ("investigations and hearings of criminal cases") regarding certain objects, in the event that new circumstances or persons who might have committed other offences transpire ("reveal characteristics of other criminal acts or those of other violations of law"), public authorities and officials are not released from the obligation to investigate them and, where there is a basis to do so, bring the persons to the relevant legal responsibility. In its conclusion of 31 March 2004, the Constitutional Court has also noted that if the operational actions were carried out against persons who had spoken by telephone with the President of the Republic of Lithuania, the control of such telephone conversations is not an operative action performed against the President of the Republic; however, lawfully made records of such telephone conversations and the records of the use of technical means for conducting operational actions may be evidence in deciding whether specific actions of the President of the Republic are in conflict with the Constitution.

The Supreme Court of Lithuania has also stated that such legal situations are possible when certain data allowing suspecting other persons in the course of criminal acts are obtained during the secret control of the content of information transmitted by telecommunications networks (the Supreme Court of Lithuania, the ruling of 1 June 2015 in criminal case no 2K-P-94-895/2015).

Thus, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which provides that criminal intelligence information about an act with the characteristics of a corruption criminal act, among others, criminal intelligence information collected in the course of a criminal intelligence operation carried out with respect to another person, but not the person against whom an investigation is conducted as a result of misconduct in office, may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into misconduct in office, is not in conflict with the Constitution.

6.3. According to Milda Vainiutė, the Minister of Justice, the conformity of the impugned legal regulation with Article 22 and Paragraph 1 of Article 33 of the Constitution, as well as with the constitutional principle of a state under the rule of law, should be treated as ambiguous:

– the fact that the data were collected in accordance with the provisions of the Law on Criminal Intelligence does not deny the possibility of using them for investigating misconduct in office if such use is constitutionally justified;

– criminal intelligence activities are based not only on the principles of the protection of human rights and freedoms, but also on the principles of the protection of the public interest (Paragraph 2 of Article 3 of the Law on Criminal Intelligence): the use of criminal intelligence information in investigating an act with the characteristics of a corruption criminal act is intended to protect the state and society – to ensure that the duties of state servants (as well as statutory duties) would be performed only by persons meeting the high requirements established in the law, who are loyal to the State of Lithuania, and who are of good repute, and to prevent damage to the state interests related to a reliable corps of state servants, thus ensuring the transparency of state service;

– however, according to the constitutional principle of a state under the rule of law, the legal regulation is required to be clear, understandable, and unambiguous; the case law of the ECtHR also emphasises the need to clarify what measures can be taken, the procedure and the conditions under which the measures may be applied, and a law must establish procedures for assisting a person to effectively protect himself/herself from officials abusing their rights granted to them (the ECtHR, the judgment of 25 March 1983, *Silver and Others v the United Kingdom*, nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, and 7136/75); in the context of covert measures of surveillance, the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to this secret and potentially dangerous interference with the right to respect for private life and correspondence (the ECtHR, the judgment of 28 June 2007, *The Association for European Integration and Human Rights and Ekimdzhiev v Bulgaria*, no 62540/00).

6.4. In the opinion of the Minister of the Interior Eimutis Misiūnas, the impugned legal regulation, according to which criminal intelligence information about an act with the characteristics of a corruption criminal act may be declassified and used in investigating misconduct in office and imposing an official penalty, is not in conflict with the Constitution, because:

– the restriction of a person's right to privacy, established by the impugned legal regulation, complies with the requirements of the Constitution for the lawful restriction of human rights and freedoms: it is established by law, it does not deny the nature of the right to privacy (information is collected only when there are grounds established in the Law on Criminal Intelligence), this restriction is necessary in a democratic society to achieve constitutionally important objectives – to protect the rights and freedoms of other persons, to ensure the transparency and prestige of state service, to reduce the likelihood of corruption in state or municipal institutions or enterprises; in addition, in the course of carrying out official investigations, information on a person's private and family life, according to the provisions of the Republic of Lithuania's Law on the Legal Protection of Personal Data, may be used only in exceptional cases where there is such a need and only with the consent of the inspected person to use it;

– a person who commits criminal acts or those otherwise contrary to law must not and may not expect privacy; the limits of the protection of the private life of an individual cease to exist in cases where, by his/her actions or in a criminal or any other unlawful manner, he/she violates the interests protected by law, or inflicts damage on particular persons, society, or the state (the Constitutional Court's ruling of 24 March 2003); the guarantee,

enshrined in Paragraph 1 of Article 33 of the Constitution, "to enter on equal terms the State Service of the Republic of Lithuania" may also be applied only to citizens who act in good faith and in a lawful manner *(ex iniuria ius non oritur)*;

– the fact that criminal intelligence information has been collected in relation to another person, but not with respect to the one against whom an investigation of misconduct in office is carried out does not change the legal assessment of the compliance of the said provisions with the Constitution; accidental discovery of information about other persons (and not those in relation to whom a criminal intelligence operation is carried out) is an integral part of criminal intelligence activities – when a criminal intelligence operation against a certain person is started, information about other persons is collected on a continuous basis, which is the essence of criminal intelligence activities, because only by collecting and supplementing the original information is it possible to collect data on criminal acts that have been or are being committed or to prevent criminal acts.

According to Eimutis Misiūnas, the Minister of the Interior, the impugned legal regulation, insofar as it does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability, should also not be regarded as being in conflict with Paragraph 1 of Article 30 of the Constitution, because:

– the constitutional right to apply to a court is absolute and a person who believes that his/her rights have been violated has the right to apply to a court even if such a right is not enshrined in a specific law;

– in accordance with the Law on Administrative Proceedings, a person who considers that his/her rights have been violated during criminal intelligence activities may apply directly to a court, regardless of whether he/she was able to defend his/her rights during the criminal process or the process of the application of official liability;

– under the legislation governing the procedure for official investigations, as approved by the Government and the Minister of the Interior, all persons who are brought to official liability have the right of access to all available information, including declassified criminal intelligence data; thus, the right of a person to defend his/her rights properly before a court is guaranteed;

– appeals can be filed with the head of the principal criminal intelligence institution or the prosecutor against criminal intelligence actions that may violate the rights and freedoms of persons (Paragraph 9 (wording of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence); prosecutors and the Minister of the Interior may require the heads of criminal intelligence institutions to carry out official investigations of the activities performed by criminal intelligence officials (Article 22 of the Law on Criminal Intelligence; Paragraph 7 of Article 33 of the Law on State Service (wording of 25 June 2015)).

On the other hand, in the opinion of Eimutis Misiūnas, the Minister of the Interior, Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as it does not provide for a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in dealing with an issue of official liability,

including the use of criminal intelligence information gathered in relation to another person, but not the one against whom an investigation into misconduct in office is carried out, is in conflict with Article 22 of the Constitution and the constitutional principle of a state under the rule of law, since all the provisions relating to the restriction of a person's right to privacy, i.e. both substantive norms (which justify restricting this right) and procedural norms (laying down the procedure for the use of collected data and appealing against the use of these data) should only be enshrined in a law; thus, the use of criminal intelligence information must also be provided for in the legal act governing the collection of this information, i.e. in the Law on Criminal Intelligence, which should be considered to be a *lex specialis* to both the Statute of Internal Service and the Law on State Service in terms of the use of this information.

7. In the course of the preparation of the case for the hearing of the Constitutional Court, written opinions regarding the application of certain EU legislation, relating to the impugned legal regulation, on ensuring the protection of personal data were also received from: Raimondas Andrijauskas, the Director of the State Data Protection Inspectorate; Karolis Dieninis, the Deputy Director General, acting as the Director General, of the European Law Department under the Ministry of Justice of the Republic of Lithuania; and Žydrūnas Bartkus, Director of the Special Investigation Service of the Republic of Lithuania.

7.1. In the opinion of Raimondas Andrijauskas, the Director of the State Data Protection Inspectorate, under the Law on Criminal Intelligence, personal data, including criminal intelligence information about an act with the characteristics of a corruption criminal act, are collected for the purposes of the prevention, investigation, detection, or prosecution of criminal acts; therefore, the processing of personal data in, *inter alia*, the collection and storage of the said information until its declassification in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence is subject to the requirements set out in Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (hereinafter referred to as Directive (EU) 2016/680), with the exception of the purposes of national security and defence to which EU law does not apply and for which each Member State is exclusively responsible (Article 2(2)(a) of Directive (EU) 2016/680). This Directive is implemented by the Republic of Lithuania's Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence (wording of 30 June 2018), which also applies to the processing of personal data for the purposes of national security or defence to the extent that other laws do not provide otherwise.

The processing of personal data for other purposes authorised by EU law or the law of a Member State, *inter alia*, when declassified criminal intelligence information about an act with the characteristics of a corruption criminal act is transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence and continues to be used in investigating disciplinary offences and/or misconduct in office, under Article 9(1) of Directive (EU) 2016/680, Regulation (EU) 2016/679 of the European Parliament and of the

Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter referred to as Regulation (EU) 2016/679) applies, because such processing of personal data is no longer linked to the purposes of the prevention, investigation, detection, or prosecution of criminal offences. Paragraph 2 of Article 7 of the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence also provides that, where personal data are processed for other purposes, Regulation (EU) 2016/679 and the Law on the Legal Protection of Personal Data apply.

Restrictions on the right to respect for private and family life, which is enshrined in Article 22 of the Constitution, *inter alia*, the secret collection of personal data for the above-mentioned purposes, must be justified by law, must be necessary and proportionate to the objective pursued, and must not violate the essence of that right. The law must, *inter alia*, specify the personal data to be processed, the specific, clearly defined, and lawful purposes for which they are processed, the maximum time limits for the prescribed restrictions and the storage of personal data processed for these purposes, the minimum requirements for individuals whose data are protected to have sufficient safeguards to effectively protect their personal data against the risk of abuse, as well as against unauthorised access thereto and unlawful use thereof.

In his opinion, Raimondas Andrijauskas, the Director of the State Data Protection Inspectorate, also noted that doubts about the proportionality of the legal regulation enshrined in Paragraph 3 of Article 19 of the Law on Criminal Intelligence arise due to the fact that criminal intelligence information is collected for use in investigating criminal acts for which the state applies the most severe – criminal – responsibility, while the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence allows this information to be used for investigating misconduct in office and disciplinary offences, which are not connected with criminal responsibility. According to Recital 29 of Directive (EU) 2016/680, personal data collected during a criminal intelligence operation in investigating a specific act with the characteristics of a criminal act could be used to investigate another act with the characteristics of a criminal act only if it is authorised under the Law on Criminal Intelligence and by taking into account specific circumstances on a case-by-case basis and assessing the proportionality of the processing of personal data for the other purposes. Moreover, such processing of personal data should be in line with the case law of the ECtHR on the restriction of the right to respect for private and family life, which is enshrined in Article 8 of the Convention.

7.2. In his opinion, Karolis Dieninis, the Deputy Director General, acting as the Director General, of the European Law Department, points out, *inter alia*, that:

– the provisions of Directive (EU) 2016/680 and of the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence, which is implementing the said Directive, are applicable only for the purposes of the prevention, investigation, detection, or prosecution of criminal offences, or the execution of criminal penalties, including collecting and storing the criminal

intelligence information referred to in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence on acts with the characteristics of corruption criminal acts (which are not considered to be related to national security and are not covered by the exception to the application of EU law);

– the provisions of Directive (EU) 2016/680 and of the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence, which is implementing the said Directive, also apply to the transmission and use of this information for the purposes of investigating misconduct in office and disciplinary offences under Paragraph 3 of Article 19 of the Law on Criminal Intelligence, provided that those offences, after assessing the nature of the offences and the sanction, are classified as crimes under this Directive, as interpreted by the Court of Justice of the European Union;

– under Directive (EU) 2016/680, the processing of personal data collected and transmitted for these purposes is not in principle prohibited for purposes other than those falling within the scope of this Directive, provided that they are established in national law, *inter alia*, the transmission and use of criminal intelligence information about acts with the characteristics of corruption criminal acts for the purposes of investigating misconduct in office and disciplinary offences in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence; however, the data transmitted must be processed in accordance with the provisions of Regulation (EU) 2016/679 and of the Law on the Legal Protection of Personal Data;

– taking into account Recital 50 of Regulation (EU) 2016/679, if the processing of the data transmitted is based on Union or Member State law and is a necessary and proportionate measure in a democratic society for the protection of overriding public interest objectives, the controller of personal data should be allowed to further process the data irrespective of the compatibility of the purposes of the processing and collection of the transmitted data; in any case, it should be ensured that the principles set out in this Regulation are applied, in particular to inform the data subject of those other objectives and of his/her rights;

– in essence, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence could serve as a legal basis for the processing of information for another purpose, but, when assessing the lawfulness of such transmission of the data, it must also be assessed whether such a measure is necessary and proportionate in a democratic society with regard to the balance of interests – the right of a person to the data protection and the public interest to apply disciplinary or official liability in cases where the characteristics of a corruption criminal act are identified; in addition, it is also important to assess the length of time for which the declassified information is stored, to whom it may be transmitted, what the data subjects' rights are, etc.; under the conditions set out in Article 23 of Regulation (EU) 2016/679, any restriction on the rights of data subjects that may be established by the legislation of a Member State must comply with the Charter of Fundamental Rights of the European Union and the Convention, as interpreted in the case law of the Court of Justice of the European Union and by the ECtHR respectively, and in particular respect the essence of those rights and freedoms (Recital 46 of Directive (EU) 2016/680).

7.3. In the opinion of Žydrūnas Bartkus, the Director of the Special Investigation Service, in the case of the collection and storage of criminal intelligence information, as well as its transfer for use, in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Directive (EU) 2016/680 and legislation implementing it are applicable, and Regulation (EU) 2016/679 applies to the entity receiving information under Paragraph 3 of Article 19 of the Law on Criminal Intelligence. However, in his opinion, it should also be emphasised that, according to Paragraph 3 of Article 19 of the Law on Criminal Intelligence, only such declassified criminal intelligence information that has detected the characteristics of a corruption criminal act may be transmitted, whereas Chapter 4, titled "Principal Provisions of Lithuania's Domestic Policy Ensuring National Security" (as amended on 12 June 2008) of the Appendix, titled "The Basics of National Security of Lithuania", to the Republic of Lithuania's Law on the Basics of National Security states that the fight against corruption is one of the highest priorities in ensuring the national security of the country. Therefore, according to Žydrūnas Bartkus, the Director of the Special Investigation Service, although the use of declassified criminal intelligence information for disciplinary offences and/or misconduct in office in each case is related to the public interest and the legitimate expectations of citizens, in individual cases the use of such information can reveal systemic violations of law that may be identified as leading to corruption, distorting the possibility of acting in the interests of the people, threatening the sovereignty of the people and the ability to participate in the exercise of power, threatening territorial independence, economic, political, and constitutional stability of the state, and having a substantial impact and inflicting damage on the public interest and legal order; in such individual cases relating to national security, EU law does not apply (Article 2(2)(a) of Directive (EU) 2016/680).

In the opinion of Žydrūnas Bartkus, the Director of the Special Investigation Service, it was also emphasised that the transmission of declassified criminal intelligence information to investigate disciplinary offences and/or misconduct in office according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence is not limited to the transmission of personal data within the meaning of Directive (EU) 2016/680 and Regulation (EU) 2016/679, but also other information not covered by the concept of personal data; therefore, such transmission of declassified criminal intelligence information also ensures the opportunity to objectively identify the circumstances of the allegedly committed disciplinary offence and/or misconduct in office, the persons that should be brought to respective responsibility, and creates the possibilities of taking preventive measures so that such offences are not repeated, and it should be assessed not only in the context of the protection of personal data, but also in the context of a state under the rule of law, objectivity, and impartiality.

IV

The specialists questioned in the case

8. In the course of preparing the case for the hearing of the Constitutional Court, the following specialists were questioned: Rūta Kaziliūnaitė, Deputy Head of the Administration Department of the Special Investigation Service; Ramūnas Merkininkas, Head of the First Division of the Second Department of Special Investigation Service and the Chairperson of the Special Commission of Experts; Daina Mažeikienė, the Chief Investigator, and Acting

Head, of the Division of Immunity and Control of the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania; Darius Valys, the Deputy Chief Prosecutor of the Organised Crime and Corruption Investigation Department of the Office of the Prosecutor General; and Antanas Stepučinskas, a prosecutor from this department.

The Constitutional Court

holds that:

I

The scope of investigation

9. The Vilnius Regional Administrative Court, a petitioner, requests an investigation into whether Paragraph 3 of Article 19 of the Law on Criminal Intelligence and Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, insofar as those paragraphs do not provide for a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Law on State Service, among other things, where the criminal intelligence information has been gathered regarding another person, but not the person with respect to whom an investigation into misconduct in office is carried out, were (or are) in conflict with Article 22 and Paragraph 1 of Article 33 of the Constitution;

10. The Supreme Administrative Court of Lithuania, a petitioner, requests an investigation into whether:

– Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as that paragraph provides that "criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into […] misconduct in office", also Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 1 of Article 33 of the Statute of the Internal Service (wording of 25 June 2015), insofar as those paragraphs provide that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in […] the Law on Criminal Intelligence […]", were in conflict with Article 22 of the Constitution of the Republic of Lithuania, the provision "Citizens shall have […] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law;

– Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of the Internal Service (wording of 25 June 2015), insofar as those paragraphs do not establish any procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service, were (or are) in conflict with Article 22 and

Paragraph 1 of Article 30 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

Thus, it can be seen from the petition of the Supreme Administrative Court of Lithuania that it, challenging, *inter alia*, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which establish that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence", essentially impugns the possibility of declassifying and using criminal intelligence information for the purposes of investigating misconduct in office and states that no such procedure has been established.

11. As can be seen from the arguments of the petitioners, they raise, *inter alia*, the issue of a legislative omission, i.e. they argue that, respectively, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) do not provide for a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability; in their opinion, such a procedure should be established under the Constitution.

12. It should be noted that the petitioners do not impugn the compliance of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

In this context, it should be noted that the Supreme Administrative Court of Lithuania, a petitioner, when impugning, *inter alia*, the constitutionality of Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), insofar as those paragraphs do not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability under the Statute of Internal Service, states that this legal regulation violates, *inter alia*, the requirements arising from Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law. At the same time, account should also be taken of the fact that both petitioners impugn the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence with the Constitution, insofar as that paragraph does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, and this information may also be used, in the course of investigating misconduct in office allegedly committed by state servants, under Paragraph 2 (wording of 2 October 2012) (impugned by one of the petitioners, i.e. the Vilnius Regional Administrative Court) of Article 29 of the Law on State Service. The Supreme Administrative Court of Lithuania, a petitioner, in the above-mentioned regard (*inter alia*, concerning compliance with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law), impugns the provisions of Paragraph 1 of Article 26 (wording of

27 June 2013) of the Statute of Internal Service and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which are analogous to those established in the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service.

Thus, in this constitutional justice case, the Constitutional Court will also investigate the compliance of the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

13. Taking into account the issues raised by the petitioners in their petitions regarding the compliance of the impugned legal regulation with the Constitution, the Constitutional Court will investigate in this constitutional justice case whether:

1) Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of the Internal Service (wording of 25 June 2015), insofar as those paragraphs establish the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office, were (or are) in conflict with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law;

2) Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as that paragraph does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out), is in conflict with Article 22 and Paragraph 1 of Article 30 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law;

3) Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of the Internal Service (wording of 25 June 2015), insofar as those paragraphs do not establish a procedure for the use of criminal intelligence information in investigating misconduct in office where that information has been transmitted in the cases and manner established in the Law on Criminal Intelligence, were in conflict with Article 22 and Paragraph 1 of Article 30 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

II

The impugned legal regulation enshrined in the Law on Criminal Intelligence and the related

legal regulation

14. In this constitutional justice case, *inter alia*, the constitutionality of the legal regulation established in Paragraph 3 of Article 19, titled "The Use of Criminal Intelligence Information", of the Law on Criminal Intelligence, according to which criminal intelligence information about an act with the characteristics of a corruption criminal act may be declassified and used in investigating misconduct in office, is impugned.

15. In this context, it is necessary to disclose the circumstances and evolution of the impugned legal regulation, which provides for the possibility of using in investigating misconduct in office criminal intelligence information gathered on the basis of the Law on Criminal Intelligence.

15.1. The possibility of using the data obtained in the course of operational activity for the purpose of investigating misconduct in office was established in Lithuania for the first time when the Seimas adopted, on 28 April 2011, the Republic of Lithuania's Law on Supplementing and Amending Article 17 of the Law on Operational Activities, which came into force on 1 July 2011. This law amended the Republic of Lithuania's Law on Operational Activities, adopted on 20 June 2002 (which had replaced the no longer valid Law of the Republic of Lithuania on Operational Activities, which was adopted as far back as on 22 May 1997 instead of the no longer valid Law of the Republic of Lithuania on Operational Activities adopted on 15 July 1992). Article 1 of the Law on Operational Activities adopted on 20 June 2002 defines the purpose of this Law as follows: to regulate legal bases of operational activities, principles and tasks of operational activities, rights and duties of entities of operational activities, conduct of operational actions and operational investigation, participation of persons in operational activities, use and disclosure of operational information, as well as the financing, control, and supervision of this activity.

Under Article 3 (wording of 30 June 2010) of the Law on Operational Activities, "operational activities" were considered to be the overt and covert intelligence activities carried out by entities of operational activities in accordance with the procedure laid down by law (Paragraph 1), and "operational intelligence information" was defined as the data obtained by entities of operational activities in the course of operational actions while solving the tasks of operational activities and recorded in accordance with the procedure laid down in legal acts (Paragraph 4).

Paragraph 3 (wording of 28 April 2011, which was in force from 1 July 2011 until 31 December 2011) of Article 17 (which provided for the cases of the use of operational intelligence information), titled "Transmission and Use of Classified Operational Intelligence Information and Other Classified Information Prepared on the Basis Thereof", of the Law on Operational Activities prescribed: "Where classified operational intelligence information about an act with the characteristics of a corruption criminal act as committed by a person has not been used in accordance with the procedure laid down in Paragraph 2 of this Article, it may be declassified by decision of the head of the principal institution of the entity of operational activities and may be used in investigating a disciplinary offence and/or misconduct in office."

15.2. Thus, the legal regulation established in Paragraph 3 (wording of 28 April 2011) of Article 17 of the Law on Operational Activities allowed the use of collected operational information about an act with the characteristics of a corruption criminal act for the investigation of disciplinary offences and/or misconduct in office. Only declassified operational information could be used for the investigation of disciplinary offences and/or misconduct in office.

This legal regulation also established other conditions under which the said operational information could be declassified and used, *inter alia*, in investigating misconduct in office: only the head of the principal institution of the entity of operational activity had the right to declassify the said operational information; not all operational information could be used for the investigation of misconduct in office, but only information about an act with the characteristics of a corruption criminal act; this information could only be used if it had not been used in criminal proceedings; as mentioned above, in order to use this information to investigate misconduct in office, it was required to declassify it beforehand.

15.3. In the explanatory memorandum to the draft law that established the aforementioned provision of Paragraph 3 (wording of 28 April 2011) of Article 17 of the Law on Operational Activities, it was stated, among other things, that the said draft aimed to consolidate the possibility of the head of the principal institution of the operational activity entity to decide on the use of operational information collected in the course of an operational investigation, where this information has not been confirmed, for the investigation of, *inter alia*, misconduct in office, prior to its declassification in accordance with the procedure established in legal acts.

16. The Law on Operational Activities expired on 1 January 2013, when, on the same day, the Law on Criminal Intelligence came into force, which was adopted by the Seimas on 2 October 2012 and whose Paragraph 3 of Article 19 is impugned in this constitutional justice case.

16.1. Article 1 of the Law on Criminal Intelligence establishes, *inter alia*, the legal bases, principles, and tasks of criminal intelligence, the rights and duties of criminal intelligence entities, regulates the conduct of criminal intelligence investigations, the use of criminal intelligence information, as well as the coordination and control of criminal intelligence operations.

16.2. As stated in the explanatory memorandum to the draft Law on Criminal Intelligence and to other draft laws related to the said law, the Law on Operational Activities did not sufficiently ensure the protection of human rights and freedoms, the control of the activities of operational activities entities, therefore, the Law on Operational Activities is aimed, *inter alia*:

– to regulate criminal intelligence activities in more detail – to define the concepts used in criminal intelligence, *inter alia*, to replace the term “operational activities”, which is not used in most democratic states, with the term “criminal intelligence”;

– to identify specific ways and means of collecting criminal intelligence information, the grounds and procedures for the use, storage, and destruction of such information;

– to strengthen control over the activities of criminal intelligence entities;

– to regulate the activities and coordination of criminal intelligence institutions in more detail and clarity;

– to ensure more effective protection of human rights and freedoms in the collection and use of criminal intelligence information.

16.3. Thus, the Law on Criminal Intelligence, which was adopted on 2 October 2012, aimed, *inter alia*, to regulate criminal intelligence activities in more detail than this was done in the previously valid Law on Operational Activities, to tighten control over the activities of criminal intelligence entities, to establish specific ways and means of collecting criminal intelligence information, and the grounds of using this information in order to ensure, *inter alia*, more effective protection of human rights. In this context, it should be noted that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for the possibility of using criminal intelligence information to investigate, *inter alia*, misconduct in office, and this possibility is taken over from Paragraph 3 of Article 17 of the Law on Operational Activities (wording of 28 April 2011).

It should also be noted that both operational information under the Law on Operational Activities and criminal intelligence information under the Law on Criminal Intelligence was/is collected for the special purposes set out in the aforementioned laws.

17. In the context of this constitutional justice case, it should also be noted that Paragraph 1 of Article 19, titled "The Use of Criminal Intelligence", of the Law on Criminal Intelligence, *inter alia*, provides:

"1. Criminal intelligence information may be used in the following cases:

1) to carry out criminal intelligence tasks;

2) in cooperation with criminal intelligence entities;

3) in providing information about a person in accordance with the procedure established in the Republic of Lithuania's Law on the Prevention of Corruption;

[...]

5) in the cases provided for in Paragraphs 3 and 4 of this Article and in other cases provided for by law."

Thus, Paragraph 1 of Article 19 of the Law on Criminal Intelligence establishes the cases of the use of criminal intelligence information. Item 5 of Paragraph 1 of the same article states that criminal intelligence information may be used, *inter alia*, in the case provided for in Paragraph 3 of this article, which, as mentioned above, is impugned in this constitutional justice case.

18. The impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence prescribes: “Criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into a disciplinary offence and/or misconduct in office.”

This legal regulation has not been amended and/or supplemented.

As mentioned above, in this constitutional justice case, the Constitutional Court examines the constitutionality of Paragraph 3 of Article 19 of the Law on Criminal Intelligence only insofar as it relates to the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use in investigating misconduct in office.

Thus, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for a special case of the use of criminal intelligence information: when information gathered on the grounds and according to the procedure established by the Law on Criminal Intelligence in the course of the specific criminal intelligence tasks specified in this law shows that an act with the characteristics of a corruption criminal act may have been committed, such information may be declassified and used, *inter alia*, in investigating misconduct in office.

19. In interpreting the impugned legal regulation, laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, the notion of criminal intelligence information should first be disclosed.

19.1. Under Paragraph 7 of Article 2 of the Law on Criminal Intelligence, criminal intelligence information is deemed the data recorded during activities carried out by criminal intelligence entities when solving criminal intelligence tasks and collected in the manner prescribed in legal acts. This notion of criminal intelligence information should be interpreted in the context of other provisions of the Law on Criminal Intelligence, *inter alia*, those that identify criminal intelligence tasks, as well as criminal intelligence objects and the criminal intelligence investigation grounds that may trigger the collection of criminal intelligence information.

19.2. In this context, it is worthwhile mentioning the specific tasks of criminal intelligence that are established in Article 4 of the Law on Criminal Intelligence: identification of persons who prepare, commit, or have committed criminal acts; search for persons who hide from a pretrial investigation or the court, as well as search for convicted persons; protection of individuals against criminal acts; search for missing persons; search for items, money, securities, or other assets related to the commission of criminal acts; ensuring internal security of criminal intelligence entities.

19.3. According to the legal regulation laid down in Article 2 of the Law on Criminal Intelligence, criminal intelligence objects are defined as possible criminal acts, persons preparing or committing such acts, or those who have committed them, active actions of such persons to neutralise criminal intelligence, other events and persons related to national security (Paragraph 10); in the context of this law, criminal intelligence investigation is understood as an organisational tactical form of criminal intelligence where, when there are

grounds for a criminal intelligence investigation, the methods and means of gathering criminal intelligence information are used in accordance with the procedure established by this law in order to implement criminal intelligence tasks (Paragraph 13).

Paragraph 8 of Article 2 of the of the Law on Criminal Intelligence sets out specific ways of gathering criminal intelligence information: agent activities, interviews, inspections, screening, controlled transport, simulation of a criminal act, ambushes, surveillance, secret operations, tasks of law enforcement authorities.

19.4. It can be seen from the legal regulation established in Paragraph 1 (as amended on 30 June 2016 and 20 December 2018) and Paragraph 2 of Article 8 of the Law on Criminal Intelligence, which lays down the grounds for a criminal intelligence investigation, that a criminal intelligence investigation aimed at gathering criminal intelligence information is performed when there are data (or such data are received) about a serious or grave crime that is being prepared, is being committed, or has been committed, or about less serious crimes referred to in the articles of the Criminal Code that are pointed out in these paragraphs, or about those who are preparing, are committing, or have committed such acts, as well as when a suspect, an accused person, or a convicted person goes into hiding, a person goes missing, or the protection of individuals from criminal influence is implemented.

Under Paragraph 3 Article 8 of the Law on Criminal Intelligence, if, during the conduct or completion of a criminal intelligence investigation, the characteristics of a criminal act are detected, a pretrial investigation is initiated immediately (except in the exceptional cases indicated, such as in the case of a threat to the legitimate interests of the criminal intelligence entity).

19.5. In this context, it should also be mentioned that the legal regulation established in Articles 9–15 of the Law on Criminal Intelligence lays down specific possible criminal intelligence actions, as well as ways and means of collecting such information, such as: secretly entering the home of a person, service spaces or other premises, enclosed areas, or means of transport (Article 11), surveillance (Article 15), and establishes the procedure for authorising these actions and the time limits for the application and extension of criminal intelligence actions.

19.6. In the context of this constitutional justice case, it should be noted that Article 10 of the Law on Criminal Intelligence is relevant in the administrative cases examined by the petitioners – this article provides for one of the possible actions for the collection of criminal intelligence information, i.e. the use of technical means in accordance with a special procedure, the application of the procedure of the secret examination of postal items and their documents, of the control and seizure of postal items, and of the secret control of correspondence and other communications:

– these actions are authorised by reasoned orders by the presidents of regional courts or judges authorised by them on the basis of reasoned submissions by prosecutors based on data provided by the heads of criminal intelligence entities or deputy heads authorised by them, confirming the necessity and factual basis of performing such actions (Paragraph 1);

– these actions are authorised for a maximum period of three months; this period may be extended by the authorisation of these actions in the same manner as they were ordered; the number of extensions is not limited, but the total period may not exceed 12 months, except in cases where such actions are authorised by the president of the regional court on the recommendation of the Prosecutor General or the prosecutor from the Office of the Prosecutor General authorised by him/her for a period of more than 12 months (Paragraphs 5 and 6).

Thus, Article 10 of the Law on Criminal Intelligence, on the basis of which the collected criminal intelligence information was used in investigating misconduct in office in the administrative cases considered by the petitioners, regulates in detail, *inter alia*, the procedure for the application of the secret control of correspondence and other communication – it establishes the conditions of the application of, and the procedure for sanctioning, the above-mentioned measures and the technical means used in applying such measures, as well as the terms of their application and the procedure for extending these terms. It should be noted that, under the legal regulation established in Paragraphs 5 and 6 of Article 10 of the Law on Criminal Intelligence, this way of collecting criminal intelligence information, i.e. the secret control of correspondence and other communication, can be applied for quite a long time (i.e. sanctioned for up to three months, which can be extended in each case up to three months, and up to 12 months in total; however, in exceptional cases, it is allowed to extend and even exceed the maximum time limit set in this article).

19.7. Consequently, it should be noted from the aspect relevant in this case that, under Paragraph 3 of Article 19 of the Law on Criminal Intelligence, only declassified criminal intelligence information can be used in investigating misconduct in office; the said paragraph, according to Paragraph 7 of Article 2 of that law, if interpreted in conjunction with the above-mentioned legal regulation consolidated in Articles 2, 4, and 8–15 of this law, is understood as information, collected on the basis of the Law on Criminal Intelligence, about criminal intelligence objects (*inter alia*, possibly prepared criminal acts, possibly being committed or committed criminal acts, and persons who prepare, are committing, or have committed criminal acts) and where the said information is gathered in order to achieve special objectives of criminal intelligence, such as to detect criminal acts or to carry out their prevention, to identify persons who prepare, are committing, or have committed criminal acts, to ensure the internal security of intelligence entities; this information is collected by using the criminal intelligence information collection methods and technical means laid down in the Law on Criminal Intelligence, but only where there are grounds for a criminal intelligence investigation, *inter alia*, where data are available or received about a certain crime that is being prepared, is being committed, or has been committed, or about persons who are committing or have committed such actions, or when the protection of individuals from criminal influence is implemented.

20. In the context of the constitutional justice case at issue, it should be noted that, as mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for the possibility of declassifying and using criminal intelligence information gathered on the basis of the Law on Criminal Intelligence for the investigation of misconduct in office under appropriate conditions:

– not all criminal intelligence information can be used for the investigation of misconduct in

office, but only information about an act with the characteristics of a corruption criminal act;

– such criminal intelligence information may be declassified and used only by decision of the head of the principal criminal intelligence institution;

– before taking such a decision, the head of the principal criminal intelligence institution must obtain the consent of the prosecutor for declassifying the above-mentioned information and using it for investigating misconduct in office;

– in the investigation of misconduct in office, it is allowed to use only declassified criminal intelligence information about an act with the characteristics of a corruption criminal act.

20.1. As mentioned above, one of the conditions that are established in the impugned legal regulation and under which criminal intelligence information can be declassified and used for the purposes of the investigation of misconduct in office is related to the specific nature of this information – it is allowed to use only information about an act with the characteristics of a corruption criminal act.

20.1.1. In this connection, it should be noted that, in the context of the impugned legal regulation, the concept of an act with the characteristics of a corruption criminal act must be interpreted in accordance with the provisions of the Law on the Prevention of Corruption. This law is intended for the prevention of corruption, *inter alia*, in state service (Article 1), in order to detect and eliminate the causes and conditions of corruption and to discourage persons from committing criminal acts of a corrupt nature (Paragraph 1 (wording of 3 April 2003) of Article 2, Items 1 and 2 of Paragraph 2 (as amended on 3 April 2003) of Article 3).

20.1.2. Criminal acts of a corrupt nature referred to in Paragraph 2 (wording of 21 June 2011) of Article 2 of this law include bribery, trade in influence, graft, or other criminal acts if they are committed in the public administration sector or by providing public services with a view of seeking personal gain or gain for other persons: abuse of office or misuse of powers, abuse of authority, forgery of documents and measuring devices, fraud, appropriation or embezzlement, disclosure of an official secret or a commercial secret, incorrect income, profit or assets statements, laundering illicitly acquired money or assets, interfering with activities of a state servant or a person carrying out public administration functions, or any other criminal acts where the commission of such acts is aimed at seeking or soliciting a bribe or graft, or concealing or disguising the acceptance or giving of a bribe or graft.

Thus, in the context of the impugned legal regulation, acts with the characteristics of a corruption criminal act are understood in a broad sense – such acts are all the acts of a corrupt nature listed in Paragraph 2 (wording of 21 June 2011) of Article 2 of the Law on the Prevention of Corruption, which may be divided into certain categories:

1) acts that are also consolidated in the Criminal Code (Articles 225–227 of Chapter XXXIII, titled “Crimes and Offences against State Service and the Public Interest), which are bribery, trading in influence, and graft;

2) other criminal acts that are consolidated in different chapters of the Criminal Code and have certain additional features, i.e. they are committed in the public administration sector or by providing public services with a view of seeking personal gain or gain for other persons; the list of these acts is wide and involves a diverse range of acts, such as abuse of office or misuse of powers, abuse of authority, forgery of documents and measuring devices, fraud, appropriation or embezzlement, disclosure of an official secret or a commercial secret, incorrect income, profit or assets statements, laundering illicitly acquired money or assets, interfering with activities of a state servant or a person carrying out public administration functions;

3) any other criminal acts where the commission of such acts is aimed at seeking or soliciting a bribe or graft, or concealing or disguising the acceptance or giving of a bribe or graft.

20.1.3. In the context of this constitutional justice case, it should be noted that, according to the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, in investigating misconduct in office, it is allowed to use only declassified criminal intelligence information about any of the acts having the characteristics of criminal acts of corrupt nature that are referred to in Paragraph 2 (wording of 21 June 2011) of Article 2 of the Law on the Prevention of Corruption, i.e. about instances of misconduct in office with the characteristics of a corruption criminal act. For the purpose of investigating other types of misconduct in office (without the characteristics of a corruption criminal act), the information gathered on the basis of the Law on Criminal Intelligence cannot be used.

20.2. As mentioned above, another condition established in the impugned provision of Paragraph 3 of Article 19 of the Law on Criminal Intelligence stipulates that this information may be declassified and used only for the purposes of investigating misconduct in office only by decision of the head of the principal criminal intelligence institution.

20.2.1. In this context, it should be mentioned that the principal criminal intelligence institutions are listed in Paragraph 11 (wording of 23 December 2013) of Article 2 of the Law on Criminal Intelligence: the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, the Prison Department under the Ministry of Justice of the Republic of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Police Department under the Ministry of the Interior of the Republic of Lithuania, the Special Investigation Service, the Dignitary Protection Department under the Ministry of the Interior of the Republic of Lithuania, and the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania; the Second Investigation Department under the Ministry of National Defence of the Republic of Lithuania and the State Security Department also have the rights and duties of the principal criminal intelligence institutions when their units carry out criminal intelligence investigations on the grounds and in accordance with the procedure established in this law.

Thus, the heads of all of these criminal intelligence institutions, under the impugned legal regulation established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, have the right to decide on the declassification of criminal intelligence information and its use in investigating misconduct in office.

20.2.2. In this context, it should be noted that, according to the Law on Criminal Intelligence, units (whose list and scope of activities are established by the Government (Paragraph 12 of Article 2)) of the principal criminal intelligence institutions where those units, as mentioned above, are authorised to conduct criminal intelligence and, when solving criminal intelligence tasks, collect and record criminal intelligence information in the course of their activities in accordance with the procedure laid down in legal acts (Paragraph 7 of Article 2) are considered criminal intelligence units.

It should also be mentioned that, by its resolution (No 108) of 6 February 2013 on approving the list of criminal intelligence entities and establishing the scope of their criminal intelligence, the Government approved the list of the structural (territorial) units of the principal criminal intelligence institutions, which are pointed out in the Law on Criminal Intelligence, and stipulated that they could carry out criminal intelligence activities within the competence of their respective institution. This government resolution was amended by the government resolution (No 167) of 19 February 2014 and the government resolution (No 60) of 23 January 2019, however, the legal regulation relevant to this case has not changed.

20.2.3. Thus, according to Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information about an act with the characteristics of a corruption criminal act may be declassified and used in investigating misconduct in office only by decision of the heads of the principal criminal intelligence institutions, which are specified in Paragraph 11 (wording of 23 December 2013) of Article 2 of this law and whose units – criminal intelligence entities – have gathered and recorded the relevant information; by making such a decision, the heads of the principal intelligence institutions decide at the same time whether the criminal intelligence information transmitted for the purposes of investigating misconduct in office is about an act with the characteristics of a corruption criminal act.

20.3. At the same time, it should also be noted that, in order to achieve the objectives of the Law on Criminal Intelligence, *inter alia*, to tighten control over the activities of criminal intelligence entities and ensure more effective protection of human rights, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence compared to the legal regulation that was effective until then (which had been laid down in Paragraph 3 (wording of 28 April 2011) of Article 17 of the Law on Operational Activities) established, in addition to the conditions for the declassification of criminal intelligence information and its use for the purposes of investigating misconduct in office, an additional condition – the declassification of such information and its use in investigating misconduct in office requires the consent of the prosecutor. The consent of the prosecutor was not required under the Law on Operational Activities.

20.3.1. Paragraph 2 of Article 16 of the Law on Criminal Intelligence defines the prosecutor whose consent is required under the said impugned provision as the Prosecutor General, or the prosecutors of the Office of the Prosecutor General, or the prosecutors of regional prosecutor's offices who are authorised by the Prosecutor General and who control the legality of criminal intelligence actions and coordinate their performance.

20.3.2. Some relevant provisions of the Republic of Lithuania's Law on the Prosecution Service (wording of 22 April 2003) should also be mentioned in this context. Article 2 of this law establishes the duty of the Prosecution Service to help ensure lawfulness (Paragraph 1), as well as, on the grounds and in accordance with the procedure established by law, organise and lead pretrial investigations, *inter alia*, control the activities of pretrial investigation officials (Paragraph 2).

Under Paragraph 1 of Article 166 (wording of 28 June 2007) of the Code of Criminal Procedure, a pretrial investigation is started, *inter alia*, after the prosecutor detects the characteristics of a criminal act, and Paragraph 6 (wording of 11 May 2017) of Article 168 thereof establishes, *inter alia*, the duty of the prosecutor, if he/she refuses to start a pretrial investigation and provided there exist data on an administrative offence or an offence provided for in other legal acts, to transmit the relevant material, complaint, or application to be resolved in accordance with the procedure established in the Code of Administrative Offences of the Republic of Lithuania or in other legal acts.

20.3.3. It has also been mentioned that, under the legal regulation laid down in Paragraph 3 of Article 8 of the Law on Criminal Intelligence, if, during the performance or upon the completion of a criminal intelligence investigation the characteristics of a criminal act become evident, a pretrial investigation is started immediately.

20.3.4. Thus, when interpreting the impugned legal regulation established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence in conjunction with the aforementioned legal regulation laid down in Paragraph 16 of Article 2 and Paragraph 3 of Article 8 of this law, as well as in the context of the provisions of Paragraphs 1 and 2 of Article 2, of the Law on the Prosecution Service (wording of 22 April 2003) and the provisions of Paragraph 1 of Article 166 (wording of 28 June 2007) and Paragraph 6 (wording of 11 May 2017) of Article 168 of the Code of Criminal Procedure, it is clear that the Prosecutor General, or the prosecutors of the Office of the Prosecutor General, or the prosecutors of regional prosecutor's offices who are authorised by the Prosecutor General have the right to give consent to declassify criminal intelligence information and to use it in investigating misconduct in office.

In this context, it should be noted that, under the impugned legal regulation consolidated in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, interpreted in conjunction with the legal regulation laid down in Paragraph 1 of Article 2 of the Law on the Prosecution Service (wording of 22 April 2003), according to which one of the main tasks of the Prosecution Service is to ensure lawfulness, the prosecutor, before giving such consent, must fully assess the received criminal intelligence information and the possibilities of using it for starting a pretrial investigation of a possibly committed criminal act; the prosecutor also has the duty to assess, on the basis of available criminal intelligence information and with the aim of ensuring lawfulness, whether this information is sufficient to investigate misconduct in office and whether it may be regarded as information about an act with the characteristics of a corruption criminal act and could be declassified and used in investigating misconduct in office.

Under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, interpreted in conjunction with Paragraph 2 of Article 1 of the Law on the Prosecution Service (wording of 22 April 2003), which establishes one of the main tasks of the

Prosecution Service – to ensure lawfulness, the prosecutor must refuse to give consent to declassify criminal intelligence information and use it in investigating misconduct in office if giving such consent is not in line with the principle of lawfulness, *inter alia*, if giving such consent does not meet the requirements arising from the principles of the protection of legitimate expectations and proportionality, or the requirements that are laid down in other legal acts and govern the declassification of the said information and its use in investigating misconduct in office, *inter alia*, the requirements for the terms of bringing to official liability, are not followed; the prosecutor must also refuse to give consent to declassify criminal intelligence information and use it in investigating misconduct in office in cases where, pursuant to Paragraph 3 of Article 8 of the Law on Criminal Intelligence, a criminal intelligence investigation leads to the establishment of the characteristics of a criminal act and available data make it clear that a pretrial investigation must be started, or where this information, among other things, is not related to an act with the characteristics of a corruption criminal act, or is not sufficient for the investigation of misconduct in office, or is not related to an act of corrupt nature at all, or, for example, it is about an act that would be negligible from the point of view of official liability.

20.4. As mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes another condition – only declassified criminal intelligence information may be used in investigating misconduct in office.

20.4.1. This condition must be interpreted in the context of the provisions of the Law on State Secrets and Official Secrets, which regulates the principles and procedure for the marking, classification, storage, use, declassification of, and the coordination and control of the protection actions of information constituting a state secret or an official secret, as well as the administration of, and other requirements for, classified information (Paragraph 1 of Article 1).

20.4.2. Under Article 7 of the of the Law on State Secrets and Official Secrets, criminal intelligence gathered on the basis of the Law on Criminal Intelligence may constitute a state or official secret.

Paragraph 1 of Article 2 of the Law on State Secrets and Official Secrets defines the classification of information as meaning the recognition of information as a state secret or an official secret, the application of a certain classification to the said information, the laying down of a time limit for the classification and establishment of the required protection. At the same time, it should be mentioned that Article 8 of the Law on State Secrets and Official Secrets lays down the time limits for the classification of such information – 5, 10, 15, 30, or 75 years (Paragraphs 1 and 2); the same article also states that this information may be classified until a certain event upon taking place whereof the classification of information ceases to be relevant (Paragraph 3), and that longer time periods for the classification of information may be established (Paragraphs 4 and 5).

Under Paragraph 10 of Article 2 of the Law on State Secrets and Official Secrets, the declassification of classified information means the cancellation of a classification applied to information and established protection; it should be noted from the aspect relevant to this

constitutional justice case that, as mentioned above, only information declassified in accordance with the procedure established in legal acts may be used in investigating misconduct in office.

In this context, reference should also be made to Article 10 of the Law on State Secrets and Official Secrets, which lays down the grounds for declassifying classified information. Under the legal regulation established in this article, information may be declassified where the time limit for classification as established in this law expires or the expediency of classification ceases to exist (Paragraph 1); the classified information whose time limit for classification has not expired may be declassified only by decision of the head of the entity of secrets that has prepared the classified information or by decision of a person authorised by the head of the entity of secrets (Paragraph 2).

Under Paragraph 17 of Article 2 of the Law on State Secrets and Official Secrets, an entity of secrets means a state or municipal institution the activities whereof are related to the classification and declassification of information, the use and/or protection of classified information, also an establishment or enterprise that has been granted the status of an entity of secrets and that is subordinate to or assigned to the area of regulation of such an institution.

20.4.3. In the context of this constitutional justice case, it should also be mentioned that, according to the legal regulation established in Article 14 of the Law on State Secrets and Official Secrets, a special standing commission of experts (formed by decision of the head of an entity of secrets) or a person responsible for the protection of classified information (if the said commission is not formed) submits to the head of the entity of secrets proposals or conclusions regarding, among other things, the declassification of classified information (Item 3 of Paragraph 1, Paragraph 2).

20.4.4. When interpreting the impugned legal regulation established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence in the context of Paragraphs 10 and 17 of Article 2 and Article 14 of the Law on State Secrets and Official Secrets, as well as in the context of other provisions of this law, it should be noted that the principal criminal intelligence institutions, whose heads have the right to make decisions on the declassification of criminal intelligence, are also considered to be entities of secrets. Thus, the standing special expert commissions formed by these heads of the principal criminal intelligence institutions, who are also the heads of the entities of secrets, or the persons responsible for the protection of classified information, who are appointed by the said heads, submit to them, in accordance with the above-mentioned legal regulation laid down in Article 14 of the Law on State Secrets and Official Secrets, proposals and conclusions regarding the declassification of classified information.

20.4.5. In this context, it should also be noted that, under the legal regulation established in Item 4 of Article 11 of the Law on State Secrets and Official Secrets, the Government is obliged to establish, *inter alia*, the procedure for declassifying classified information. It should be mentioned that the Government, by its resolution (No 1307) of 5 December 2005 (wording of 12 October 2016) approved the Description of the Procedure for the Administration and Declassification of Classified Information, Paragraph 76 whereof stipulated that the decision to declassify classified documents is formalised by means of an act of the declassification of

classified documents. Having declared this resolution invalid by means of its resolution (No 820) of 13 August 2018, which entered into force on 1 October 2018, the Government established an identical legal regulation in Item 76 of the Description of the Procedure for the Administration and Declassification of Classified Information, which was approved by the latter government resolution.

20.4.6. In interpreting the impugned legal regulation established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence in conjunction with the above-mentioned provisions of the Law on State Secrets and Official Secrets, *inter alia*, with the provisions of Articles 2, 10, 14 of this law, it should be noted that, in order to use criminal intelligence information in investigating misconduct in office in cases where the time period of its classification has not expired, it must be declassified in accordance with the procedure established in legal acts; the decision to declassify the said information must be made by the head of the entity of secrets that prepared it, i.e. the head of the principal criminal intelligence institution or a person authorised by him/her. Under the legal regulation laid down in Item 3 of Paragraph 1 and Paragraph 2 of Article 14 of the Law on State Secrets and Official Secrets, the taking of such a decision must be preceded by an appropriate conclusion of the special committee of experts or of the person responsible for the protection of classified information; this conclusion, although it must be presented to the head of the principal criminal intelligence institution, does not bind him/her. When deciding on the declassification of classified information, the said head has the right, having received the consent from the prosecutor, to take a final decision on the declassification of the said classified information and its use for the investigation of misconduct in office.

20.5. Thus, when interpreting in a systemic manner the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence together with the legal regulation established in the other above-mentioned provisions of this law, of the Law on the Prevention of Corruption, of the Law on the Prosecution Service (wording of 22 April 2003), of the Code of Criminal Procedure, and of the Law on State Secrets and Official Secrets, the conclusion should be drawn that criminal intelligence information, which, under Paragraph 7 of Article 2 of the Law on Criminal Intelligence, is understood as data collected and recorded in the manner prescribed in legal acts during the activities of criminal intelligence entities when carrying out criminal intelligence tasks, must be about an act with the characteristics of a corruption criminal act and this information may be declassified and used for the investigation of misconduct in office only under all of the conditions referred to in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which also entail the following stages of the respective procedure:

1) when, in the course of carrying out or after completing a criminal intelligence investigation under Article 8 (as amended on 30 June 2016 and 20 December 2018) of the Law on Criminal Intelligence, the collected criminal intelligence information shows that an act with the characteristics of a corruption criminal act may have been committed, the head of the criminal intelligence entity informs about this fact the head of the relevant principal criminal intelligence institution (which is provided for in Paragraph 11 (wording of 23 December 2013) of Article 2 of the Law on Criminal Intelligence), who, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, has the right to decide on the declassification of criminal intelligence information and its use for the investigation of misconduct in office;

2) the head of the principal criminal intelligence institution, having determined, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, that the criminal intelligence information available to him/her shows that misconduct in office of a corrupt nature and with the characteristics of a criminal act, specified in Paragraph 2 (wording of 21 June 2011) of Article 2 of the Law on the Prevention of Corruption, has been possibly committed, applies to a specially authorised prosecutor, as pointed out in Paragraph 16 of Article 2 of the Law on Criminal Intelligence, so as to obtain his/her consent to the declassification of that information and its use for the investigation of such misconduct;

3) the authorised prosecutor, seeking to ensure the lawfulness requirement in accordance with Paragraphs 1 and 2 of Article 2 of the Law on the Prosecution Service (wording of 22 April 2003), must, before giving such consent, fully assess the received criminal intelligence information and the possibilities of its use in criminal proceedings in accordance with Paragraph 3 of Article 8 of the Law on Criminal Intelligence and Paragraph 1 of Article 166 (wording of 28 June 2007) of the Code of Criminal Procedure; in addition, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence gives rise to the prosecutor's duty to assess, on the basis of available criminal intelligence information, whether that information is sufficient to investigate misconduct in office and may be regarded as information about an act with the characteristics of a corruption criminal act that could be declassified and used for the investigation of misconduct in office; the authorised prosecutor has the right to decide on a case-by-case basis whether to give such consent;

4) having obtained the prosecutor's consent to the declassification of information about an act with the characteristics of a corruption criminal act and its use for the investigation of misconduct in office, the head of the principal criminal intelligence institution, before taking a decision pursuant to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, applies to a special commission of experts or to a person responsible for the protection of classified information and asks for a conclusion on the declassification of that criminal intelligence information (Paragraph 10 of Article 2 and Article 14 of the Law on State Secrets and Official Secrets);

5) although the head of the principal criminal intelligence institution has the duty to obtain a conclusion from the said special commission of experts or from the person responsible for the protection of classified information, this conclusion is not binding on the head of the principal criminal intelligence institution; according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, the said head has the right, after obtaining the consent from the prosecutor, to take a final decision on the declassification of the said classified criminal intelligence information and its use for the investigation of misconduct in office.

20.6. Thus, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence consolidates the possibility of declassifying criminal intelligence information gathered on the basis of the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act and using such information in investigating misconduct in office, which is a separate case of the use of such information provided for in the said law, and, at

the same time, establishes the procedure for adopting a decision on the declassification of such criminal intelligence information and its use for the purposes of the investigation of misconduct in office.

20.7. At the same time, it should be noted that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not specify that only criminal intelligence information collected in the course of a criminal intelligence investigation against a specific person may be declassified and used in investigating misconduct in office allegedly committed by namely that person.

In interpreting the impugned legal regulation in conjunction with other provisions of the Law on Criminal Intelligence, *inter alia*, with Article 8 (as amended on 30 June 2016 and 20 December 2018) of this law, which establishes the grounds for criminal intelligence investigation, the conclusion should be drawn that, where, in the course of carrying out a criminal intelligence investigation with respect to a certain person, information is collected about another person and that information shows that that other person has possibly committed misconduct in office with the characteristics of a corruption criminal act, such information may also be declassified under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence and be used to investigate the misconduct in office of a corrupt nature committed by that other person.

21. In this context, it should also be noted that, in view of the specific objectives of the Law on Criminal Intelligence, as defined in Article 1 thereof, this law is not intended specifically to regulate the procedure for the use of declassified criminal intelligence information in investigating misconduct in office; therefore, it need not establish a specific procedure for the use of criminal intelligence information, declassified in the manner prescribed in legal acts (*inter alia*, in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence and with the provisions of the Law on State Secrets and Official Secrets) in investigating misconduct in office.

22. In the context of the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, it is also important to disclose the content of the other provisions of the same law that, *inter alia*, provide guarantees for the protection of human rights and freedoms in conducting a criminal intelligence investigation.

22.1. In this context, it should also be mentioned that Paragraph 1 of Article 7 of the Law on Criminal Intelligence lays down the general obligations of criminal intelligence entities, *inter alia*, to ensure the protection of the rights and legitimate interests of persons (Paragraph 1), as well as to ensure that all criminal intelligence information is collected for the sole purpose of carrying out specific criminal intelligence tasks and the information obtained is used only for its intended purpose in accordance with the procedure established by this law (Item 8).

It should be noted from the aspect relevant to the constitutional justice case at issue that, as mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes a separate case of the use of criminal intelligence information about an act with the characteristics of a corruption criminal act for a specific purpose, i.e. this information may only be used for investigating misconduct in office. Thus, also when deciding the issue

of the declassification of criminal intelligence information and its use under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, the requirement for ensuring the protection of the rights and legitimate interests of a person applies.

22.2. It should also be mentioned that Article 5 (as amended on 23 December 2013 and 27 September 2018) of the Law on Criminal Intelligence lays down the fundamental principles of the protection of human rights and freedoms in carrying out criminal intelligence actions, such as: at the time of carrying out criminal intelligence actions, human rights must not be violated; however, there may be individual limitations on human rights and freedoms, but they must be temporary and apply only in the manner prescribed by law in order to protect the rights and freedoms, as well as property, of other persons, and public and national security (Paragraph 1); at the request of a person who has been subjected to criminal intelligence actions and, as a result of such actions, has experienced negative consequences in cases where the information received has not been confirmed and no pretrial investigation has been initiated, the data collected about him/her must be provided (Paragraph 6); in the case of a violation of human rights, criminal intelligence entities must restore the violated rights and freedoms and compensate for the damage in the manner prescribed in legal acts, and their superior must inform the person about the human rights violations committed against him/her (Paragraphs 5 and 8); a person who believes that the actions of criminal intelligence entities have violated his/her rights has the right to file an appeal with the head of the principal criminal intelligence institution or the prosecutor against the said actions, and has the right to file an appeal against their decisions with the president of the regional court or a judge authorised by him/her (Paragraph 9).

22.3. In order to achieve the same objective – to ensure the protection of human rights and freedoms in implementing criminal intelligence tasks, Paragraph 7 of Article 5 of the Law on Criminal Intelligence also lays down the rules for the storage (keeping) and destruction of certain criminal intelligence information:

– if, during or after the criminal intelligence investigation, it is established that the criminal intelligence information about the criminal intelligence object has not been confirmed or that criminal intelligence tasks will not be implemented, the collection of information about the object must immediately be stopped and the collected information destroyed;

– if, after the completion of the criminal intelligence investigation, the confirmed criminal intelligence information about the criminal intelligence object has not been used in accordance with the procedure laid down in Article 19 of the Law on Criminal Intelligence, the information on the private life of the person must be destroyed within three months; any other confirmed information not used in accordance with the procedure established in Article 19 of this law, which is contained in the files of dismissed criminal investigation cases or/and information systems, is stored in the manner prescribed in legal acts.

22.4. When interpreting in a systemic manner the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence in the context of the aforementioned provisions of Paragraphs 1, 6, 8, and 9 of Article 5 (as amended on 23 December 2013 and 27 September 2018) and of Paragraph 1 of Article 7 of this law, it should be noted from the aspect relevant to the constitutional justice case at issue that the declassification of criminal intelligence information about an act with the characteristics of

a corruption criminal act in order to use it for the investigation of misconduct in office must comply with the human rights safeguards enshrined in the above-mentioned provisions of the Law on Criminal Intelligence.

At the same time, it should also be noted that a person who believes that the actions of criminal intelligence entities have violated his/her rights by using, in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information collected against him/her about misconduct in office with the characteristics of a corruption criminal act allegedly committed by him/her has the right to file an appeal with the head of the principal criminal intelligence institution or the prosecutor against the actions of the criminal intelligence entities, and has the right to file an appeal against their decisions with the president of the regional court or a judge authorised by him/her (Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence); the person who has been subjected to criminal intelligence actions has the right, when this information becomes public (i.e. after it is declassified), to require that the said data be provided to him/her (Paragraph 6 of Article 5 of the Law on Criminal Intelligence).

22.5. In this context, it should also be mentioned that, as stated above, criminal intelligence information (Paragraph 7 of Article 2, Article 4, Article 8 (as amended on 30 June 2016 and 20 December 2018) of the Law on Criminal Intelligence) that has been collected, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, about an act with the characteristics of a corruption criminal act must not be declassified and used for the investigation of misconduct in office in cases where the investigation of the above-mentioned misconduct in office would not be possible, *inter alia*, where the term of bringing a person to official liability has expired.

III

The impugned legal regulation enshrined in the Law on State Service and in the Statute of Internal Service and the related legal regulation

23. As mentioned above, in this constitutional justice case, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service is also impugned to the extent that the said paragraph provides for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office, and to the extent that it does not establish a procedure for the use of criminal intelligence information, which is transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, in investigating misconduct in office.

24. On 8 July 1999, the Seimas adopted the Law on State Service, which has been amended and/or supplemented on several occasions, among other things, by the Republic of Lithuania's Law Amending the Law on State Service (adopted by the Seimas on 23 April 2002), which set out the Law on State Service in its new wording; by the Republic of Lithuania's Law Amending and Supplementing Articles 2, 4, 9, 14, 15, 16, 29, and 30 of the Law on State Service (adopted on 4 July 2003), which amended, *inter alia*, Article 29 of the Law on State Service; by the Republic of Lithuania's Law Amending and Supplementing Articles 4, 9, 18, 29, and 44 of the Law on State Service and Supplementing the Law with Articles 3^1 and 30^1

(adopted on 28 April 2011), which supplemented, *inter alia*, Paragraph 2 of Article 29 of the Law on State Service, *inter alia*, in the light of the amendment to the Law on Operational Activities (where the said amendment consolidated the above-mentioned Paragraph 3 (wording of 28 April 2011) of Article 17 of this law); and by the Republic of Lithuania's Law on Amending Article 29 of the Law on State Service (adopted on 2 October 2012), which came into force on 1 January 2013 and which consolidated the impugned Paragraph 2 of this article.

25. The impugned Paragraph 2 (wording of 2 October 2012) of Article 29, titled "Official Penalties", of the Law on State Service prescribed: "An official penalty shall be imposed taking into account the guilt, the causes, circumstances, and consequences of the misconduct in office, the performance of the state servant before the misconduct in office was committed, circumstances mitigating or aggravating official liability, and the information provided in the cases and according to the procedure laid down in the Law on the Prevention of Corruption and the Law on Criminal Intelligence. Information obtained in accordance with the Law on Prevention of Corruption may be used for imposing an official penalty on the state servant only if this information has been declassified in accordance with the procedure established in legal acts."

Thus, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service established the criteria according to which state servants may be imposed an official penalty, i.e., when imposing such a penalty, the following specific criteria of the imposition of such a penalty had to be taken into account: the guilt of the state servant, the causes, circumstances, and consequences of the misconduct in office, the performance of the state servant before the misconduct in office was committed, circumstances mitigating or aggravating official liability. At the same time, this paragraph stipulated that, when imposing an official penalty, account is also taken of the information provided in the cases and according to the procedure laid down in the Law on the Prevention of Corruption and the Law on Criminal Intelligence, i.e. the obligation was established to take into account in every concrete case, when imposing the said penalty, the information provided in the cases and manner prescribed in the Law on the Prevention of Corruption and the Law on Criminal Intelligence.

25.1. In this context, it should be noted that, as mentioned above, under Paragraph 7 of Article 2 of the Law on Criminal Intelligence, the data recorded during activities carried out by criminal intelligence entities when solving criminal intelligence tasks and collected in the manner prescribed in legal acts is deemed criminal intelligence information. It should also be mentioned that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for a separate case of the use of criminal intelligence information collected on the basis of this law about an act with the characteristics of a corruption criminal act – this information may be declassified and used only for the purposes of investigating misconduct in office.

25.2. When interpreting, in the context of the provisions of the above-mentioned Paragraph 7 of Article 2 and of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, the obligation, established by the legislature in the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, to take into account, *inter alia*, the information transmitted in the cases and manner prescribed in the Law on

Criminal Intelligence, it should be noted that it must be understood only as an obligation to assess, in investigating misconduct in office, the information transmitted in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence about allegedly committed misconduct in office where that information either could (or can) serve as a basis for starting an investigation into misconduct in office or could (or can) be used in investigating such misconduct, i.e. in order to establish (prove) the fact of misconduct in office, the causes, circumstances, and consequences of the commission of the said misconduct, the guilt of the state servant, the performance of the state servant before the misconduct in office was committed, and circumstances mitigating or aggravating official liability.

Consequently, according to the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, this information should not in itself be considered an independent and/or additional criterion for imposing official penalties.

25.3. In this context, it should also be mentioned that Paragraph 2 of Article 30^1 (wording of 28 April 2011) of the Law on State Service listed the circumstances aggravating official liability, *inter alia*, the commission of misconduct in office to the detriment of the public interest or for selfish reasons (Item 5), where those circumstances also had to be taken into account when imposing official penalties under the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service.

26. The impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service should be interpreted in the context of other provisions of the Law on State Service and of other related legal acts defining, *inter alia*, the concept of misconduct in office, the types of official penalties, and the procedure for the imposition thereof.

27. Paragraph 12 of Article 2 of the Law on State Service stipulated that misconduct in office means a failure of a state servant to perform or to properly perform his/her duties as a result of the guilt of the state servant.

Paragraph 3 of Article 29 (wording of 4 July 2003, as subsequently amended and supplemented) (whose Paragraph 2 (wording of 2 October 2012) is impugned in this case), titled "Official Penalties", of the Law on State Service, prescribed that, for misconduct in office, one of the following official penalties may be imposed on a state servant: a note of warning, reprimand, severe reprimand, dismissal from office.

Thus, under Paragraph 3 of Article 29 (wording of 4 July 2003, as subsequently amended and supplemented), titled "Official Penalties", of the Law on State Service, misconduct in office, i.e. a failure of a state servant to perform or to properly perform his/her duties as a result of the guilt of the state servant, could have resulted in the imposition on the state servant one of the following official penalties: a note of warning, reprimand, severe reprimand, dismissal from office.

27.1. Paragraph 3 of Article 29 (wording of 4 July 2003, as subsequently amended and supplemented), titled "Official Penalties", of the Law on State Service, among other things, also prescribed:

– dismissal from office as an official penalty may be imposed for gross misconduct in office as well as for any other misconduct in office where the state servant has received a severe reprimand at least once over the past 12 months (Paragraph 4);

– serious misconduct in office means misconduct that results in a serious breach of the provisions of the laws or other normative legal acts governing state service and the activities of state servants or that grossly breach the duties of a state servant or the principles of ethics for state servants (Paragraph 5);

– the following shall be considered to be a gross breach:

"1) a state servant's conduct related to the performance of official duties that discredits state service or undermines human dignity, or any other actions that directly violate the constitutional rights of individuals;

2) disclosure of a state, official, or commercial secret;

3) any act with the characteristics of a corruption criminal act where that act is related to the performance of official duties even if it did not incur criminal responsibility or administrative liability in respect of the state servant;

4) abuse of office and a gross violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service;

5) involvement in activities incompatible with state service;

[...];

8) a violation of the accounting of state or municipal funds and assets, which has significantly affected the correctness of data of financial and budget implementation reports, consolidated statements and/or other reports of a state or municipal institution or establishment, or a significant violation of the lawfulness of the possession, use, and disposal of state or municipal funds and assets, which is determined by decision of the Auditor General or his/her deputy or the municipal auditor;

[...];

10) other instances of misconduct that grossly breach the duties of a state servant or the principles of ethics for state servants" (Paragraph 6 (as amended on 13 May 2010, 5 June 2012, and 15 December 2015)).

27.2. Thus, under the legal regulation laid down in Paragraph 6 of Article 29 (wording of 4 July 2003, as subsequently amended and supplemented) of the Law on State Service, as interpreted in conjunction with Paragraph 4 of that article, the most severe official penalty – dismissal from office – could be imposed for gross misconduct in office provided for in the Law on State Service, as well as for other misconduct in office provided that the state servant has received a severe reprimand at least once over the past 12 months.

Consequently, even the strictest official penalty under the Law on State Service – dismissal from office – could be imposed in accordance with the specific criteria (established in the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service) for the imposition of official penalties: the causes, circumstances, and consequences of the commission of misconduct in office, the guilt of the public servant, his/her performance before the misconduct in office was committed, and circumstances mitigating or aggravating official liability; as mentioned above, declassified criminal intelligence information transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not in itself constitute under the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service an independent and/or additional criterion for imposing official penalties that should be taken into account when imposing them.

27.3. It has also been mentioned that, according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, declassified criminal intelligence information only about misconduct in office with the characteristics of a corruption criminal act could to be transmitted for the purposes of the investigation of misconduct in office. Although only one type of gross misconduct in office, provided for in Item 3 (wording of 5 June 2012) of Paragraph 6 of Article 29 of the Law on State Service, committed by a state servant was defined *expressis verbis* as an act with the characteristics of a corruption criminal act, still, other types of misconduct in office, *inter alia*, gross misconduct, could have the characteristics of a corruption criminal act.

27.3.1. In this context, it should be mentioned that, under Paragraph 13 (wording of 4 July 2003) of Article 2 of the Law on State Service, abuse of office was understood as an act or failure to act by a state servant where the official position is used for purposes other than the interests of service or not in accordance with the laws or other legal acts, or is used for selfish purposes (unlawful appropriation of property, funds, etc. belonging to another or unlawful transfer thereof to other persons) or for other personal reasons (revenge, envy, careerism, unlawful provision of services, etc.), and also any actions by a state servant exceeding the powers conferred on him/her or any his/her arbitrary actions.

It should also be mentioned that Paragraph 2 of Article 3 of the Law on State Service prescribed the basic principles of ethics for state servants, *inter alia*: propriety, which means that a state servant must be flawless and incorruptible, refuse gifts, money, or services, exceptional privileges or concessions from persons or organisations, which may exert influence on him/her while he/she is performing the duties of a state politician or his/her official duties (Item 4); exemplariness, which means that a state servant must, among other things, duly perform his/her duties and be of good repute (Paragraph 8). At the same time, it should be mentioned that it was specified in Item 10 (wording of 13 May 2010) of Paragraph 6 of Article 29 of the Law on State Service that a gross breach against the duties of a state servant or the principles of ethics for public servants was gross misconduct in office, which also incurred the strictest official penalty – dismissal from office.

27.3.2. Thus, both abuse of office, provided for in Paragraph 13 (wording of 4 July 2003) of Article 2 of the Law on State Service, *inter alia*, the use of an official position for purposes other than the interests of service or for selfish purposes, and gross violation of the principles of ethics for state servants, which are provided for in Paragraph 2 of Article 3 of

the Law on State Service, *inter alia*, the acceptance of gifts, money, or services, exceptional privileges or concessions from persons or organisations, which may exert influence on him/her while he/she is performing his/her official duties could also have the characteristics of a corruption criminal act.

27.3.3. In summary, it should be noted that criminal intelligence information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, could be used not only for the purpose of investigating misconduct in office with the characteristics of a corruption criminal act, as referred to *expressis verbis* in Item 3 (wording of 5 June 2012) of Paragraph 6 of Article 29 of the Law on State Service, but also for the investigation of other misconduct in office with the characteristics of a corruption criminal act that could lead to the official penalty – dismissal from office, for instance, the gross misconduct in office – abuse of office – which is specified in Item 4 (wording of 15 December 2015) of Paragraph 6 of Article 29 of the Law on State Service, or the gross misconduct in office – a gross breach of the duties of a state servant or of the principles of ethics for state servants – which is pointed out in Item 10 (wording of 13 May 2010) of the latter paragraph.

28. In this context, mention should also be made of the provisions of Paragraph 1 (as amended on 7 June 2007) of Article 44, titled "Dismissal of State Servants from Office", of the Law on State Service, under which a state servant could be dismissed from office, among other things, where:

"15) the official penalty – dismissal from office – is imposed for the gross violations specified in Items 1–4 of Paragraph 6 of Article 29 of this Law; [...]

18) the official penalty – dismissal from office – is imposed for types of misconduct in office that are not specified in Item 15 of Paragraph 1 of this Article".

Thus, a state servant could be dismissed on the grounds specified in Item 15 or Item 18 of Paragraph 1 (as amended on 7 June 2007) of Article 44 of the Law on State Service, i.e. after he/she had been imposed the official penalty – dismissal from office – for the types of gross misconduct in office, *inter alia*, with the characteristics of a corruption criminal act, provided for in Paragraph 6 (as amended on 13 May 2010, 5 June 2012, and 15 December 2015) of Article 29 of the Law on State Service, by taking account of the specific criteria for imposing official penalties provided for in the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service (the causes, circumstances, and consequences of the misconduct in office, the guilt of the state servant, the performance of the state servant before the misconduct in office was committed, circumstances mitigating or aggravating official liability). As mentioned above, these criteria for imposing official penalties could be established (proved) on the basis of, *inter alia*, the information transmitted in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

29. In this context, it should also be mentioned that Item 19 (wording of 5 June 2012) of Paragraph 1 of Article 44 of the Law on State Service provided for separate grounds for dismissal of a state servant – when, based on information provided in the cases and under the procedure established in the Law on the Prevention of Corruption or based on other information or data, the person who recruited the state servant draws the conclusion that the state servant does not meet the requirements of good repute and, therefore, cannot

continue to perform the duties of a state servant. This separate ground of dismissal from state service – non-compliance with the requirements of good repute – was not mentioned in the Law on State Service as misconduct in office, and dismissal from office in that case was not considered an official penalty. As mentioned above, declassified criminal intelligence information transmitted under Paragraph 3 of Article 19 of the Law on Criminal Intelligence could (or can) be used only for the purposes of the investigation of misconduct in office. Therefore, the other information or data referred to in Item 19 (wording of 5 June 2012) of Paragraph 1 of Article 44 of the Law on State Service could not be the information transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

Thus, when assessing the compliance of a state servant with the requirements of good repute and when dismissing the state servant under Item 19 (wording of 5 June 2012) of Paragraph 1 of Article 44 of the Law on State Service due to his/her failure to comply with the good repute requirements, where the procedure for the investigation of misconduct in office was not started, declassified criminal intelligence transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act could not be used; this information could (or can) be used in assessing the compliance of a state servant with good repute requirements only where there was an investigation into the specific misconduct in office referred to in Paragraph 6 (as amended on 13 May 2010, 5 June 2012, and 15 December 2015) of Article 29 of the Law on State Service, such as the conduct of a state servant in the performance of his/her official duties where such conduct discredited state service and degraded human dignity (Item 1).

30. The procedure for imposing official penalties, *inter alia*, the procedure for the investigation of misconduct in office, established in the Law on State Service and other legal acts, is relevant to this constitutional justice case.

30.1. In this context, it should be noted that Paragraph 1 of Article 30 (wording of 5 June 2012), titled “The Imposition of Official Penalties”, of the Law on State Service prescribed, *inter alia*, that an investigation into misconduct in office is started at the initiative of the person who recruited the state servant or where the said person receives official information about misconduct in office by the state servant; an official penalty must be imposed not later than within one month after the day of the disclosure of misconduct in office; an official penalty may not be imposed if a period of six months has expired from the day of the commission of the misconduct in office, except for the cases where an official penalty must be imposed not later than within three years after the day of the commission of the misconduct.

Thus, declassified criminal intelligence information transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence could (or can) be used in the investigation of misconduct in office for no longer than the period of bringing relevant persons to official liability, i.e. no more than three years from the date of the commission of the misconduct in office.

30.2. Article 30 (wording of 5 June 2012) of the Law on State Service also prescribed that the decision on imposition of an official penalty or on recognition that a person holding the position of a state servant has committed misconduct in office, and on the establishment of

the official penalty to be imposed on him/her is to be taken by the person who recruited the state servant (Paragraph 5); the procedure for taking such decisions is established by the Government (Paragraph 7); these decisions may be appealed against in accordance with the procedure laid down in the Law on Administrative Proceedings (Paragraph 6).

In this context, attention should be drawn to the fact that Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service also prescribed that disputes regarding the dismissal of a state servant from office are resolved in accordance with the procedure established in the Law on Administrative Proceedings.

30.3. In the context of imposing official penalties, the Rules on the Imposition of Official Penalties on State Servants (wording of 14 July 2010, as amended on 24 October 2012) (hereinafter referred to as the Rules), as approved by the government resolution (No 977) of 25 June 2002, are relevant; the Rules prescribed, *inter alia*, that:

– a state servant suspected of having committed misconduct in office must be informed of the beginning of the investigation of that misconduct within five working days of the beginning of such an investigation, and must be supplied with the available information on the misconduct in office (Item 7); he/she may, within no more than five working days of the date of the receipt of such a notification, submit his/her written explanation regarding the misconduct in office (Item 8);

– a state servant suspected of having committed misconduct in office has the right to participate in the on-the-spot verification of factual data relating to the misconduct, to demand the disqualification of the state servant (commission or a member thereof) authorised to investigate the misconduct, to appeal against his/her (or their) actions or omission; after the investigation of the misconduct has been completed, to access a reasoned conclusion regarding the investigation results and other material of the investigation of the misconduct (Item 9);

– a state servant suspected of having committed misconduct in office may have a representative who has the same rights as the said state servant; an advocate or another person who is legally qualified may be such a representative (Item 10);

– the decision on the recognition that the misconduct in office has or has not been committed is served on the state servant with signed confirmation within three working days after signing it (in certain cases, after its entry into force or after the termination of the state servant's temporary incapacity for work, secondment, or leave) (Item 15);

– decisions on the imposition of an official penalty or on the recognition that a person holding the position of a state servant has committed misconduct in office, and on the establishment of the official penalty to be imposed on him/her may be appealed against in accordance with the procedure laid down in the Law on Administrative Proceedings (Item 22).

30.4. Summarising the aforementioned legal regulation governing the procedure for the imposition of official penalties, *inter alia*, the procedure of the investigation of misconduct in office, it should be noted that:

– an investigation into misconduct in office could be launched, *inter alia*, on the initiative of the person who recruited the state servant or upon the receipt of official information about misconduct in office committed by the state servant (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service);

– the official penalty had to be imposed within one month from the date on which the misconduct in office was discovered, but not later than six months from the date on which the misconduct was committed, except in cases where it could be imposed within three years from the date of the commission of the misconduct (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service);

– a person recognised guilty of committing misconduct in office, *inter alia*, gross misconduct in office, and/or who has been imposed an official penalty, *inter alia*, dismissal from the respective position in state service, had the right to file an appeal against such a decision with the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings (Paragraph 6 of Article 30 (wording of 5 June 2012), Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service, Item 22 of the Rules);

– a person brought to official liability had the right to have a representative (an advocate or another legally qualified person could be such a representative) (Item 10 of the Rules), to be informed of the beginning of the investigation of misconduct in office, as well as be supplied with the available information on the misconduct in office (Item 7 of the Rules), to submit his/her written explanation regarding the misconduct in office (Item 8 of the Rules), to participate in the on-the-spot verification of factual data relating to the misconduct and, after the completion of the investigation of the misconduct, to access a reasoned conclusion regarding the investigation results and other material used in the course of the investigation of the misconduct (Item 9 of the Rules); thus, he/she, among other things, had the right to access all the declassified criminal intelligence information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, used in the course of the investigation of the misconduct in office.

31. At the same time, it should be mentioned that Article 30 (wording of 5 June 2012) of the Law on State Service, Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service, or any other provisions of the same law did not stipulate that a state servant suspected of having committed misconduct in office had the right, *inter alia*, to participate in the on-the-spot verification of factual data relating to the misconduct, to have a representative, or to have access to a reasoned conclusion regarding the results of the investigation and to other material of the investigation of the misconduct. The listed safeguards for a person suspected of having committed misconduct in office were consolidated in the Rules only. In addition, the person being brought to official liability under the Law on State Service was not guaranteed his/her right to submit explanations, which was provided for only in Item 8 of the Rules.

Thus, although, under the overall legal regulation, the rights of a state servant brought to official liability were guaranteed during the procedure for the investigation of misconduct in office, however, these rights were not established in a law.

In this context, it should also be mentioned that, as stated above, under Paragraph 6 of Article 30 of the Law on State Service, decisions on the imposition of official penalties could be appealed against in accordance with the procedure established by the Law on Administrative Proceedings, and Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service prescribed that disputes regarding the dismissal of a state servant from office are resolved in accordance with the procedure established in the Law on Administrative Proceedings.

32. In the context of the constitutional justice case at issue, it should also be mentioned that, on 29 June 2018, the Seimas passed the Republic of Lithuania's Law Amending the Law (No VIII-1316) on State Service, which, with some exceptions listed therein, came into force on 1 January 2019.

The said law amended the Law on State Service by setting it out in its new wording; however, the legal regulation consolidated in Paragraph 2 of Article 33 of the Law on the State Service (wording of 29 June 2018) is identical to the one established in the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, while the related legal regulation enshrined in the other provisions of the Law on State Service has remained unchanged in the aspects impugned in the constitutional justice case at issue, except that Item 1 of Paragraph 5 of Article 33 of the Law on State Service (wording of 29 June 2018) established gross misconduct in office, which was defined as the conduct of a public servant in the performance of his/her official duties, among other things, that degrades the reputation of the institution or of the servant himself/herself, but Item 17 of Paragraph 1 of Article 51 of the same law also established the separate grounds – incompatibility with requirements for good repute – for dismissal of a state servant from office. The dismissal of a state servant in this case is not considered an official penalty.

33. At the same time, it should be mentioned that, on 27 December 2018, the Government adopted the resolution (No 1390) on the amendment of the resolution (No 977) of the Government of the Republic of Lithuania of 25 June 2002 on the Rules on the Imposition of Official Penalties on State Servants, which came into force on 1 January 2019 and which, having set out the said government resolution (No 977) of 25 June 2002 (as amended on 24 October 2012) in its new wording, named the Rules as "The Description of the Procedure for the Imposition of Official Penalties on State Servants"; however, from the aspects impugned in the constitutional justice case at issue, the legal regulation laid down in this description is identical to the one enshrined in the Rules.

34. As mentioned above, in this constitutional justice case, in addition to the discussed impugned legal regulation consolidated in Paragraph 3 of Article 19 of the Law on Criminal Intelligence and in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, one of the petitioners also impugns Paragraph 1 of Article 26 (wording of 27 June 2013) of the Law on State Service and Paragraph 1 of Article 33 of the Law on State Service (wording of 25 June 2015), insofar as those paragraphs establish the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office, and insofar as those paragraphs do not establish a procedure for the use of criminal intelligence information, which is transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, about an act with the characteristics of a corruption criminal act.

35. On 29 April 2003, the Seimas adopted the Republic of Lithuania's Law on the Approval of the Statute of Internal Service, which came into force on 1 May 2003. The Statute of Internal Service, approved by this law, has been amended and/or supplemented on several occasions, *inter alia*, by means of the Republic of Lithuania's Law on Amending and Supplementing Articles 24 and 26 of the Statute of Internal Service and Supplementing the Statute with Article 26^1, which was adopted on 27 June 2013 and came into force in 15 July 2013 and which, having amended and supplemented Article 26 of the Statute of Internal Service, laid down the impugned Paragraph 1 of the said article; also, by means of the Republic of Lithuania's Law Amending the Statute of Internal Service, which was adopted on 25 June 2015 and, with the exceptions set out therein, came into force on 1 January 2016; this law amended the said statute (as amended on 27 June 2013) and set it out in its new wording by also consolidating the impugned Paragraph 1 of Article 33.

36. The impugned Paragraph 1 of Article 26 (wording of 27 June 2013), titled "Official Penalties", of the Statute of Internal Service, prescribed: "Official penalties shall be imposed for misconduct in office. An official penalty shall be imposed taking into account the guilt of the official who committed the misconduct in office, the causes, circumstances, and consequences of the misconduct in office, the performance of the official before the misconduct in office was committed, circumstances mitigating or aggravating official liability, and the information provided in the cases and according to the procedure laid down in the Law on the Prevention of Corruption and the Law on Criminal Intelligence. Information obtained in accordance with the Law on Prevention of Corruption may be used for imposing an official penalty on the official only if this information has been declassified in accordance with the procedure established in legal acts."

The legal regulation enshrined, by means of the above-mentioned law adopted by the Seimas on 25 June 2015, in the impugned Paragraph 1 of Article 33, titled "Official Penalties and Their Imposition", of the Statute of Internal Service (wording of 25 June 2015) was identical to the one established in Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service.

Thus, the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) prescribed that officials are imposed official penalties for misconduct in office and consolidated the criteria according to which such penalties are imposed, i.e., when imposing an official penalty, account was to be taken of the specific criteria for its imposition, as set out in this paragraph – the guilt of the official who committed the misconduct, the causes, circumstances, and consequences of the misconduct in office, the performance of the official before the misconduct in office was committed, circumstances mitigating or aggravating official liability. At the same time, this paragraph stipulated that, when imposing an official penalty, account is also taken of the information provided in the cases and manner prescribed in the Law on the Prevention of Corruption and the Law on Criminal Intelligence, i.e. the obligation was established to take into account in every concrete case, when imposing the said penalty, the information provided in the cases and according to the procedure laid down in the Law on the Prevention of Corruption and the Law on Criminal Intelligence.

36.1. In this context, it should be noted that, as mentioned above, under Paragraph 7 of Article 2 of the Law on Criminal Intelligence, criminal intelligence information is deemed the data recorded during activities carried out by criminal intelligence entities when solving criminal intelligence tasks and collected in the manner prescribed in legal acts. It should also be mentioned that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for a separate case of the use of criminal intelligence information collected on the basis of this law about an act with the characteristics of a corruption criminal act – this information may be declassified and used only for the purposes of investigating misconduct in office.

36.2. When interpreting the obligation, established by the legislature in the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and in the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), to take into account, *inter alia*, the information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence in the context of the provisions of the above-mentioned Paragraph 7 of Article 2 of the Law on Criminal Intelligence and of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, it should be noted that it must be understood only as an obligation to assess, in investigating allegedly committed misconduct in office, the information transmitted in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence where that information could (or can) serve as a basis for starting an investigation into misconduct in office or could (or can) be used in investigating such misconduct, i.e. in order to establish (prove) the fact of misconduct in office, the causes, circumstances, and consequences of the commission of the said misconduct, the guilt of the official, the performance of the official before the misconduct in office was committed, and circumstances mitigating or aggravating official liability.

Consequently, according to the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), this information should not in itself be considered an independent and/or additional criterion for imposing official penalties.

37. The impugned legal regulation entrenched in Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and in Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) should be interpreted in the context of other provisions of the Statute of Internal Service and of other related legal acts defining, *inter alia*, the concept of misconduct in office, the types of official penalties, and the procedure for the imposition thereof.

38. It should be mentioned that Paragraph 6 (which was valid until 31 December 2015) of Article 2 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 7 of Article 2 of the Statute of Internal Service (wording of 25 June 2015) prescribed that misconduct in office means a violation of the order of internal service set out in this statute and in other legal acts or failure to perform duties of an official due to his/her guilt.

Paragraph 2 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 2 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) prescribed that an official may be imposed one of the following official penalties: a note of warning, a reprimand, a severe reprimand, demotion by one rank, transfer to a lower position, dismissal from internal service.

Thus, Paragraph 2 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 2 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) allowed the imposition of one of the following official penalties for the commission of misconduct in office, i.e. a violation of the order of internal service or failure to perform duties of an official due to his/her guilt: a note of warning, a reprimand, a severe reprimand, demotion by one rank, transfer to a lower position, dismissal from internal service.

38.1. Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service prescribed that an official penalty – dismissal from internal service – may be imposed, *inter alia*, for:

"1) a violation of the restrictions that are established in Article 24 of this Statute and are applicable to an official;

2) a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service with the aim to receive illegal income or privileges for himself/herself or others;

[...]

5) misconduct in office, if the official penalty – a severe reprimand or a more severe sanction – was previously imposed on him/her at least once in last 12 months."

Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) prescribed that the official penalty – dismissal from internal service – may be imposed, *inter alia*, for:

"1) a violation of the restrictions that are established in Article 31 of this Statute and are applicable to an official;

2) conduct that discredits state service or degrades human dignity, or other acts that directly violate people's constitutional rights;

3) disclosure of a state, official, or commercial secret;

4) abuse of office or a violation of the requirements of the Republic of Lithuania's Law on the Coordination of Public and Private Interests in State Service;

5) any act with the characteristics of a corruption criminal act where that act is related to the performance of official duties even if it did not incur criminal responsibility in respect of the official;

[...]

8) misconduct in office, if the official penalty – a severe reprimand or a more severe sanction – was previously imposed on the official at least once in last 12 months."

It should be noted that Items 2, 3, 5 of Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), compared to the previously valid legal regulation consolidated in Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, established new types of misconduct in office (which had not been established in the previously valid Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service) for which an official could be imposed the official penalty – dismissal from internal service:

– conduct that discredits state service or degrades human dignity, or other acts that directly violate people's constitutional rights (Item 2);

– disclosure of a state, official, or commercial secret (Item 3);

– any act with the characteristics of a corruption criminal act where that act is related to the performance of official duties even if it did not incur criminal responsibility in respect of the official (Item 5).

38.2. Thus, according to the legal regulation laid down in Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), the most severe official penalty – dismissal from internal service – could be imposed for misconduct in office respectively provided for in those paragraphs if the official penalty – a severe reprimand or a more severe sanction – was previously imposed on the official at least once in last 12 months (respectively, Items 5 and 8 of the said paragraphs).

Consequently, even the strictest official penalty under the Statute of Internal Service – dismissal from internal service – could be imposed in accordance with the specific criteria (established respectively in the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and in the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015)) for the imposition of the official penalties: the causes, circumstances, and consequences of the commission of misconduct in office, the guilt of the official who has committed misconduct in office, his/her performance before the misconduct in office was committed, and circumstances mitigating or aggravating official liability. As mentioned above, declassified criminal intelligence information transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not in itself constitute under the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) an independent and/or additional criterion for imposing official penalties that should be taken into account when imposing them.

38.3. It has also been mentioned that, according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, only declassified criminal intelligence information about misconduct in office with the characteristics of a corruption criminal act could to be transmitted for the purposes of the investigation of misconduct in office.

In this context, it needs to be noted that Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service did not provide for any type of misconduct in office that would have been identified *expressis verbis* as having the characteristics of a corruption criminal act, and, from among the types of misconduct in office provided for in Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) for which the official penalty – dismissal from internal service – could be imposed, there was only one type of misconduct in office that was provided for in Item 5 of the latter paragraph and that was *expressis verbis* referred to as an act with the characteristics of a corruption criminal act related to the performance of official duties, even though the official was not held criminally responsible for this act.

38.4. It should be noted, however, that the other types of misconduct in office (*inter alia*, for which the official penalty – dismissal from internal service – could be imposed) could have the characteristics of a corruption criminal act, such as a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service with the aim to receive illegal income or privileges for himself/herself or others, as provided for in Item 2 of Paragraph 3 of Article 26 of the Statute of Internal Service (wording of 27 June 2013), or abuse of office and a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service, as provided for in Item 4 of Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015).

38.5. In this context, it should also be mentioned that, according to Item 5 of Paragraph 2 of Article 26^1 (wording of 27 June 2013) of the Statute of Internal Service and Item 5 of Paragraph 2 of Article 34 of the Statute of Internal Service (wording of 25 June 2015), the commission of misconduct in office, *inter alia*, for selfish reasons, was one of the circumstances aggravating official liability.

38.6. To sum up, it should be noted that, according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information could (or can) be used not only in investigating the specific misconduct in office referred to in Item 5 of Paragraph 3 of Article 33 of the Law on State Service (wording of 25 June 2015), but also in investigating other types of misconduct in office with the characteristics of a corruption criminal act, *inter alia*, a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service with the aim to receive illegal income or privileges for himself/herself or others, as provided for in Item 2 of Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, or any other misconduct in office committed for selfish reasons for which the most severe official penalty – dismissal from internal service – could be imposed.

39. In this context, mention should be made of the provisions of Item 14 of Paragraph 1 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) and Item 13 of Paragraph 1 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), under which an official could be dismissed from internal service, among others, "if the official penalty – dismissal from internal service – is imposed on him/her".

Thus, an official could be dismissed from internal service on the grounds specified in Item 14 of Paragraph 1 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) and Item 13 of Paragraph 1 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), i.e. after the official penalty – dismissal from internal service – has been imposed on him/her for the types of misconduct in office, *inter alia*, the types of misconduct in office with the characteristics of a corruption criminal act, provided for respectively in Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service or in Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), by taking into account the concrete criteria for imposing official penalties (as established in the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service or in the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015)), i.e. the criteria such as the causes, circumstances, and consequences of the misconduct in office, the guilt of the official who committed the misconduct, the performance of the official before the misconduct in office was committed, circumstances mitigating or aggravating official liability. As mentioned above, these criteria for imposing official penalties could be established (proved) on the basis of, *inter alia*, the information transmitted in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

40. In this context, it should also be mentioned that Item 7 of Paragraph 1 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) and Item 7 of Paragraph 1 of Article 62 of the Statute of Internal Service (wording of 25 June 2015) provided for separate grounds for dismissing an official from internal service – upon the decision that his/her conduct has discredited the name of officials. These separate grounds for dismissal from internal service – discrediting the name of officials – were not referred to in the Law on State Service as misconduct in office and dismissal from internal service in that case was not considered an official penalty.

It should be mentioned that Paragraph 1 of Article 56 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 1 of Article 66 of the Statute of Internal Service (wording of 25 June 2015) prescribed that, among other things, in cases where there are the above-mentioned grounds for dismissal – discrediting the name of officials – the official is dismissed from internal service on the next day after the occurrence or establishment of the fact (circumstance) because of which he/she may not continue his/her service.

40.1. As mentioned above, declassified criminal intelligence information transmitted in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence could (or can) be used only for the purposes of the investigation of misconduct in office. Thus, in the course of assessing whether the conduct of an official discredited the name of officials for which he/she could be dismissed from internal service pursuant to Item 7 of Paragraph 1 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) or Item 7 of Paragraph 1 of Article 62 of the Statute of Internal Service (wording of 25 June 2015) and where no investigation into misconduct in office was carried out, it was not (or is not) possible to use

declassified criminal intelligence information transmitted under Paragraph 3 of Article 19 of the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act.

40.2. In this context, it should also be noted that Paragraph 7 of Article 2 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 5 of Article 2 of the Statute of Internal Service (wording of 25 June 2015) stipulated that the discrediting of the name of officials means an act committed due to the guilt of an official where that act is related or unrelated to the performance of official duties, however, that act apparently discredits the authority of the internal service system, destroys confidence in an internal affairs establishment, or compromises it.

As mentioned above, misconduct in office means a violation of the order of internal service set out in the Statute of Internal Service and in other legal acts or failure to perform duties of an official due to his/her guilt (Paragraph 6 of Article 2 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 7 of Article 2 of the Statute of Internal Service (wording of 25 June 2015)).

Thus, interpreting the above-mentioned provisions of the Statute of Internal Service systemically, the conclusion should be drawn that an official's conduct that has allegedly degraded the name of officials due to his/her guilt if, due to such an act (action or omission), the official did not perform his/her duties, could also be treated as misconduct in office.

40.3. Consequently, under Paragraph 3 of Article 19 of the Law on Criminal Intelligence, declassified criminal intelligence information about an act with the characteristics of a corruption criminal act could (or can) be used in order to assess whether the name of officials has been discredited only in cases where there was an investigation into a concrete instance of misconduct in office referred to respectively in Paragraph 3 (wording of 27 June 2013) of Article 26 of the Statute of Internal Service or Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), as, for instance, a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service with the aim to receive illegal income or privileges for himself/herself or others (Item 2 of Paragraph 3 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service), abuse of office or a violation of the requirements of the Law on the Coordination of Public and Private Interests in State Service (Item 4 of Paragraph 3 of Article 33 of the Statute of Internal Service (wording of 25 June 2015)).

41. The procedure for imposing official penalties, *inter alia*, the procedure for the investigation of misconduct in office, established in the Statute of Internal Service and other legal acts, is relevant to this constitutional justice case.

41.1. In this context, it should be mentioned that Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Article 33 of the Statute of Internal Service (wording of 25 June 2015), which are intended to regulate the imposition of official penalties, prescribed, among other things, that, when there is information on possible misconduct in office on the part of the official, an official investigation is carried out (Paragraph 7 of both articles); an official penalty must be imposed within 30 days from the date on which the misconduct in office was discovered; an official penalty may not be imposed if one year has expired from

the day of the commission of the misconduct in office, except for the cases where an official penalty must be imposed not later than within three years after the day of the commission of the misconduct in office (Paragraph 4 of both articles).

Thus, declassified criminal intelligence information about an act with characteristics of a corruption criminal act transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, could (or can) be used in the investigation of misconduct in office for no longer than the period of bringing relevant persons to official liability, i.e. no more than three years from the date of the commission of the misconduct in office.

41.2. Article 26 of the Statute of Internal Service (wording of 27 June 2013) and Article 33 of the Statute of Internal Service (wording of 25 June 2015) also prescribed:

– an official penalty on an official is imposed or the decision to recognise that an official who has been dismissed from internal service committed misconduct in office and to impose the respective official penalty on him/her is taken by the head who recruited him/her (Paragraph 10 of both articles);

– the procedure for carrying out official investigations, imposing on officials official penalties and abolishing them, as well as the procedure for taking decisions on the recognition that an official who has been dismissed from internal service committed misconduct in office and on the penalties to be imposed on him/her, is established by the Minister of the Interior (Paragraph 12 of both articles);

– disputes concerning the imposition of official penalties are settled in accordance with the procedure established in legal acts (Paragraph 13 of both articles).

In this context, attention should be drawn to the fact that Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015) also prescribed that disputes concerning the dismissal of officials from internal service are settled in accordance with the procedure established in legal acts.

41.3. In the context of the imposition of official penalties, the Description of the Procedure for Carrying Out Official Investigations, Imposing on Officials Official Penalties and Cancelling Thereof, and for Adopting Decisions on Recognising that the Officials Dismissed from Internal Service Have Committed Misconduct in Office and on Official Penalties That Should Be Imposed on Them (wording of 9 November 2015) (hereinafter referred to as the Description), as approved by the order (No 1V-308) of the Minister of the Interior of 27 August 2003, is also relevant. The Description, among other things, prescribed:

– the official under inspection must be informed of the fact that an official investigation was started within 20 days following its beginning (subject to the exceptions noted) together with the available data on the misconduct in office; in addition, he/she must be informed immediately, by means of a supplementary notice, of the newly discovered characteristics of

the misconduct in office (Items 9 and 23); upon the receipt of such a notice, the official under inspection has the right to submit explanations, requests, and evidence (Items 9, 22.1, and 24);

– upon the completion of an official investigation, the official under inspection has the right to access the conclusion of the official investigation and the material collected during the inspection, as well as to receive a copy thereof; classified information contained in the official investigation materials is provided only to the officials under inspection holding a document issued in accordance with the established procedure, certifying the right of the person to handle or access the classified information of the Republic of Lithuania; copies of classified documents are not provided (Item 22.2);

– during the procedure of the imposition of an official penalty, the official under inspection has the right to be assisted by an advocate or another authorised representative (Item 22.3);

– the official under inspection has the right to appeal against the inspector's actions (Item 22.4);

– the official who has been imposed an official penalty, his/her advocate, or another authorised representative has the right to lodge an appeal against the order concerning the imposition of an official penalty with the service disputes commission or with the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings (Item 47).

41.4. Summarising the aforementioned legal regulation governing the procedure for the imposition of official penalties, *inter alia*, the procedure of the investigation of misconduct in office, it should be noted that:

– an official investigation could be carried out upon the receipt of information on alleged misconduct in office by an official (Paragraph 7 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 7 of Article 33 of the Statute of Internal Service (wording of 25 June 2015));

– an official penalty had to be imposed within 30 days from the discovery of the misconduct in office, but not later than one year from the date on which the misconduct was committed, except in cases where it could be imposed within three years from the date of the commission of the misconduct (Paragraph 4 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 4 of Article 33 of the Statute of Internal Service (wording of 5 June 2012));

– the official had the right to appeal against decisions on imposing an official penalty, *inter alia*, on dismissing him/her from internal service, to the service disputes commission or the administrative court in accordance with the procedure laid down in legal acts (i.e. the Law on Administrative Proceedings) (Paragraph 13 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) or Paragraph 13 of Article 33 and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), as well as Item 47 of the Description);

– the official against whom an official investigation was started had the right to an advocate or another authorised representative (Item 22.3 of the Description), to be informed of an opened official investigation and to receive all available information on misconduct in office allegedly committed by him/her (Items 9 and 23 of the Description), to submit explanations, requests, and evidence (Items 9, 22.1, and 24 of the Description); upon the completion of the official investigation, such an official had the right to access the conclusion of the official investigation and all the material collected and used during the investigation, as well as to receive a copy thereof (Item 22.2 of the Description); thus, the said official, among other things, had the right to full access to all the declassified criminal intelligence information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, used in the course of the official investigation.

42. At the same time, it should be mentioned that Paragraphs 4, 7, 10, 12, 13 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraphs 4, 7, 10, 12, 13 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003), Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), or any other provision of the Statute of Internal Service did not prescribe that an official suspected of having committed misconduct in office had the right, *inter alia*, to have his/her representative, to receive all the available data concerning misconduct in office allegedly committed by him/her, to have access to the conclusion of the official investigation and to all the material collected and used during the official investigation, to receive a copy thereof. The guarantees listed for the person suspected of having committed misconduct in office are contained only in the said Description. In addition, the Statute of Internal Service did not guarantee a person brought to official liability the right to submit explanations, which was only provided for in Items 9, 22.1, and 24 of the Description.

Thus, although, under the overall legal regulation, the said rights of a state servant brought to official liability were guaranteed during the procedure for the investigation of misconduct in office, however, these rights were not established in a law.

In this context, it should also be stated that, as mentioned above, Paragraph 13 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 13 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) only prescribed that disputes concerning the imposition of official penalties are settled in accordance with the procedure established in legal acts, while Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003) and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015) prescribed that disputes concerning the dismissal of officials from internal service are settled in accordance with the procedure laid down in legal acts.

43. In the context of the constitutional justice case at issue, it should also be mentioned that, on 29 June 2018, the Seimas passed the Republic of Lithuania's Law Amending the Statute of Internal Service, which, with some exceptions listed therein, came into force on 1 January 2019.

This law set out the amended Statute of Internal Service in its new wording; however, the legal regulation consolidated in Paragraph 1 of Article 39 of the Statute of Internal Service (wording of 29 June 2018), which is identical to the legal regulation established in

Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and in Paragraph 1 Article 33 of the Statute of Internal Service (wording of 25 June 2015), and the related legal regulation that is entrenched in the other mentioned provisions of the Statute of Internal Service have remained unchanged from the aspects impugned in this constitutional justice case, except that the Statute of Internal Service (wording of 29 June 2018) provides, among other things, that an official investigation is carried out where there is information about discrediting the name of officials (Paragraphs 7 and 8 of Article 39), which may result in dismissal from internal service (Item 7 of Paragraph 1 of Article 72).

44. At the same time, it should be mentioned that, on 12 February 2019, the Minister of the Interior issued order (no 1V-142) on amending the order (no 1V-55) of the Minister of the Interior of the Republic of Lithuania of 15 January 2019 on the implementation of the Statute of Internal Service of the Republic of Lithuania, which came into force on 13 February 2019. By means of this order, the Description that had been in effect until then was declared null and void and the Description of the Procedure for Carrying Out Official Investigations, and for Imposing Penalties on Officials of Internal Service and Cancelling Them (hereinafter referred to as the Description approved on 12 February 2019) was approved; the legal regulation entrenched in the Description approved on 12 February 2019 is identical from the aspects impugned in this constitutional justice case to the one established in the above-mentioned Description, except that the procedure for carrying out official investigations established in the Description approved on 12 February 2019 applies not only to misconduct in office committed by officials, but also to acts degrading the name of officials. Thus, the Description approved on 12 February 2019 prescribes equal rights, applicable in the course of official investigations, for an official suspected of committing misconduct in office and an official suspected of committing an act degrading the name of officials (*inter alia*, to have his/her representative, to receive all the available data concerning misconduct in office allegedly committed by him/her, to have access to the conclusion of the official investigation and to all the material collected and used during the official investigation, to receive a copy thereof). In the context of this constitutional justice case, it needs to be mentioned that these rights of an official suspected of committing misconduct in office or of an act degrading the name of officials, as well as the rights of an official suspected of committing misconduct in office provided for in the Description that had been in effect before (at the time of the validity of the legal regulation impugned in this constitutional justice case), are prescribed only in Description approved on 12 February 2019, but not in the Statute of Internal Service, which was approved by means of a law.

45. To sum up, in the context of the constitutional justice case at issue, the impugned legal regulation established in Paragraph 2 (wording of 2 October 2012) Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), as well as the related legal regulation established in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence and the other legal regulation mentioned from the relevant aspect, it should be noted that:

– it is clear from the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence that it provides for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act collected in accordance with the Law on Criminal Intelligence and using that information for the special purpose – the

investigation of the types of misconduct in office provided for in the Law on State Service and the Statute of Internal Service for committing which state servants/officials may be imposed the most severe official penalty – dismissal from the respective position in state service; this information could not (or cannot) be used for any other purpose;

– the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) prescribe that official penalties for misconduct in office are imposed on state servants and officials in accordance with the criteria, specified in the said paragraphs, for the imposition of official penalties: the causes, circumstances, and consequences of the commission of misconduct in office, the guilt of the state servant or official who has committed misconduct in office, his/her performance before the misconduct in office was committed, and circumstances mitigating or aggravating official liability; moreover, the obligation imposed by the legislature to take into account, *inter alia*, the information provided in the cases and manner prescribed in the Law on Criminal Intelligence when imposing an official penalty should be understood as merely an obligation to assess the information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, about an allegedly committed act with the characteristics of a corruption criminal act where this information could (or can) serve as the grounds for launching an investigation into misconduct in office or can be used in investigating such misconduct in office, i.e. in order to establish (prove) the fact of misconduct in office, the causes, circumstances, and consequences of the commission of misconduct in office, the guilt of the state servant or official, his/her performance before the misconduct in office was committed, and circumstances mitigating or aggravating official liability;

– under the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), criminal intelligence information that is declassified and transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence should not in itself be considered an independent and/or additional criterion for imposing official penalties, which must be taken into account when imposing them;

– the criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence about an allegedly committed misconduct in office with the characteristics of a corruption criminal act after its declassification becomes public and, as any other public information, material, or data, it could (or can) be used in investigating misconduct in office of such a type and, therefore, neither the Law on State Service nor the Statute of Internal Service needed to establish a specific procedure for the use of declassified criminal intelligence information in investigating misconduct in office.

IV

The provisions of the Constitution and the official constitutional doctrine

46. In this constitutional justice case, the Constitutional Court is examining the compliance of the legal regulation under which criminal intelligence information about an act with the characteristics of a corruption criminal act could (or can) be declassified for the purposes of the investigation of misconduct in office with Article 22 and Paragraph 1 of Article 30 of the Constitution, the provision "Citizens shall have […] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

47. Article 22 of the Constitution prescribes:

"Private life shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity."

47.1. When interpreting the concept of the inviolability of the private life of a person, the Constitutional Court has noted that the inviolability of private life established in Article 22 of the Constitution implies the right of a person to privacy (*inter alia*, the Constitutional Court's rulings of 21 October 1999, 23 October 2002, and 24 March 2003); the right of a person to privacy, which is consolidated in this article, includes the inviolability of private, family, and home life, the physical and psychological inviolability of a person, the secrecy of personal facts, the prohibition on publicising received or acquired confidential information, etc.; thus, under the Constitution, private life is the personal life of an individual: the way of life, marital status, living surroundings, relationships with other people, the views, convictions, or habits of an individual, his/her physical or psychological state, health, honour, dignity, etc. (*inter alia*, the Constitutional Court's conclusion of 19 December 2017 and its ruling of 11 January 2019).

The Constitutional Court has also held that the provisions of Paragraphs 3 and 4 of Article 22 of the Constitution protect the private life of a person from unlawful interference by the state, other institutions, their officials, and other persons (the Constitutional Court's rulings of 19 September 2002 and 29 December 2004).

47.2. It should be noted that Paragraphs 1–4 of Article 22 of the Constitution, which guarantee the right of a person to privacy, *inter alia*, the right to respect for private life and for its inviolability, as well as the right to the inviolability of personal correspondence, telephone conversations, and other communications, and which consolidate a prohibition on arbitrary or unlawful interference with everyone's private and family life, as well as on encroachment upon everyone's honour and dignity, imply that all paragraphs of Article 22 of the Constitution are interrelated and should be interpreted in conjunction with one another; it would not be possible to adequately ensure the right of a person to respect for his/her private life, honour and dignity, for the inviolability of his/her correspondence or other

communication if information on the person's private life were collected differently from what is provided for in Paragraph 3 of Article 22 of the Constitution, i.e. not exclusively upon a justified court decision and not exclusively according to the law, or if laws did not establish respective guarantees for the protection of the person's rights meant to protect him/her from arbitrary or unlawful interference with his/her personal and family life.

At the same time, it is worth mentioning that a person's private life is a broad category, which is difficult to define in every case. The right of a person to respect for his/her private life, which is enshrined in Article 22 of the Constitution, and the protection of this right should be interpreted broadly on the basis of the principle of the dynamic interpretation of human rights, taking into account, *inter alia*, societal developments, as well as scientific and technological progress, which gives further possibilities of interfering into the private life of a person, such as, with the aim of preventing crime or achieving other public order objectives, by collecting, storing, using, and retaining not only samples of a person's fingerprints, of his/her voice, but also of a person's cellular or DNA samples, or by carrying out by means of technology mass surveillance of cyber spaces used by individuals, *inter alia*, the tracking of individuals via the Global Positioning System (GPS).

In the context of the constitutional justice case at issue, it needs to be noted that, according to the Constitution, *inter alia*, Article 22 thereof, the principle of respect for the private life of a person implies the positive obligations of the state to take respective measures while seeking to ensure the right of a person to the protection of his/her private and family life, including the protection of his/her honour and dignity in the course of, *inter alia*, secretly gathering information about that person for criminal justice or other lawful purposes, as well as using such information in the cases and according to the procedures provided for by law.

47.3. According to the Constitution, a person's right to privacy is not absolute (the Constitutional Court's ruling of 29 December 2004). The Constitutional Court has repeatedly stressed in its rulings that, under the Constitution, it is allowed to limit the exercise of the rights and freedoms of a person, *inter alia*, the right to respect for and protection of private life, if these conditions are followed: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons, the values consolidated in the Constitution, as well as the constitutionally important objectives; the limitations do not deny the nature and essence of the rights or freedoms; the constitutional principle of proportionality is followed (*inter alia*, the Constitutional Court's rulings of 26 January 2004, 21 June 2011, and 9 May 2014).

The Constitutional Court has also held that, paying regard to the constitutional principle of proportionality, the rights and freedoms of a person may not be limited by means of a law more than necessary in order to reach the legitimate objectives that are important to society (*inter alia*, the Constitutional Court's rulings of 7 July 2011, 17 February 2016, and 11 January 2019); the protection of common interests in a democratic state under the rule of law must not deny a specific human right or freedom as such (*inter alia*, the Constitutional Court's rulings of 9 December 1998, 26 February 2015, and 11 January 2019).

In this context, it needs to be mentioned that the Constitutional Court has also held that a legal regulation limiting the rights and freedoms of a person, as provided in a law, must be such that would create the preconditions for assessing, to the extent possible, an individual

position of each person and, in view of all important circumstances, for individualising as appropriate the specific measures that are applicable to and limit the rights of that person (the Constitutional Court's rulings of 7 July 2011 and 14 April 2014).

On the other hand, according to the Constitution, the autonomous interests of an individual and the public interest cannot be opposed and must be coordinated (since both individual rights and the public interest are constitutional values), and a fair balance must be struck here (*inter alia*, the Constitutional Court's rulings of 6 May 1997, 13 December 2004, and 15 May 2007).

47.4. It should also be noted that the legal concept of a person's right to respect for his/her private life is related to the legitimate expectations of the inviolability of his/her private life; if a person commits criminal acts or those contrary to law, violates by means of unlawful actions the interests protected by law, inflicts damage on, or poses a threat to, particular persons, society, or the state, he/she is aware, or must and can be aware, of the fact that this will trigger an appropriate reaction from state institutions and that, for a breach of law being committed (or one already committed), the state may apply coercive measures through which a certain influence will be exerted on his/her conduct (*inter alia*, the Constitutional Court's rulings of 24 March 2003, 29 December 2004, and 26 February 2015).

In its ruling of 8 May 2000, the Constitutional Court held that a person who commits criminal acts or those contrary to law must not and may not expect privacy; the limits of the protection of the private life of an individual cease to exist in cases where, by his/her actions or in a criminal or any other unlawful manner, he/she violates the interests protected by law, or inflicts damage on particular persons, society, or the state.

47.5. In this context, it should also be mentioned that the Constitutional Court has emphasised that, when a person performs acts of a public character, and if he/she understands, must understand, or is capable of understanding such a fact, such actions of a public character will not be protected under Article 22 of the Constitution and such a person may not expect privacy (the Constitutional Court's rulings of 8 May 2000 and 23 October 2002). In addition, the interest of the public to know more about persons taking part in social and political activities than about others is constitutionally justified; such persons, as a rule, are called public persons (the Constitutional Court's ruling of 23 October 2002). The activities of state and municipal officials linked with the performance of the functions of state and municipal power and administration are always of a public nature; in a democratic state under the rule of law, the public performance of duties by state officials and state servants is one of the essential principles of the protection against their arbitrariness or abuse (the Constitutional Court's rulings of 8 May 2000 and 13 December 2004).

47.6. The Constitutional Court has also emphasised that the Constitution consolidates such a concept of a democratic state whereby the state not only seeks to protect and defend a person and society from crimes and other dangerous violations of law, but also is able to do this effectively (*inter alia*, the Constitutional Court's rulings of 29 December 2004, 15 March 2008, and 15 March 2017).

47.7. In the context of the constitutional justice case at issue, it should be noted that, if any person, *inter alia*, a state servant/official, is committing criminal or other acts that are contrary to law, for instance, is committing misconduct in office, he/she must be aware that, under the Constitution, *inter alia*, Article 22 thereof, and the constitutional principle of a state under the rule of law, such his/her actions will trigger an appropriate reaction from authorised state institutions, meaning that a violation of law (whether being committed or already committed) may lead to coercive measures lawfully and reasonably enforced by the state, where those coercive measures will not only have a certain effect on the conduct of that person, but also interfere with his/her private life. A person, *inter alia*, a state servant/official, who has committed a criminal or another act that is contrary to law, *inter alia*, misconduct in office, or has otherwise injured the interests protected by law, or has inflicted damage on individual persons, society, or the state should not and must not expect that his/her private life will be protected in the same way as the private life of persons who do not violate laws or who act in the public interest.

47.8. It needs to be noted that Paragraphs 3 and 4 of Article 22 of the Constitution entrench the duty of the legislature to establish by law the procedure for gathering information on the private life of a person (the Constitutional Court's ruling of 19 September 2002).

In the context of the constitutional justice case at issue, it should be noted that, under the Constitution, *inter alia*, Article 22 thereof, and the constitutional principle of a state under the rule of law, the legislature, having established the powers of state institutions to secretly collect, in the cases and according to the procedure established by law, information about persons for the purposes of criminal justice or for other legitimate purposes, is also obliged to establish in the law the cases and conditions of the use of such collected information, *inter alia*, to consolidate the possibility of transferring this information to other state institutions for use for other legitimate purposes established by law, including for the investigation of misconduct in office.

48. Paragraph 1 of Article 33 of the Constitution prescribes: "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania."

The Constitutional Court has held that state service relationships comprise not only the relationships linked to the implementation of the right of citizens to enter on equal terms the state service of the Republic of Lithuania, but also the relationships that arise after they enter state service and when they perform their duties in state service (*inter alia*, the Constitutional Court's rulings of 13 December 2004, 7 July 2001, and 27 February 2012). The relationships between the provision "Citizens shall have the right [...] to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 of the Constitution and the provision "Everyone may freely choose a job or business" of Paragraph 1 of Article 48 thereof may be regarded as relationships between a *lex specialis* and a *lex generalis*; under the Constitution, a person who seeks to implement his/her constitutional right to work has the right to decide freely whether to choose a job in the private sector or a private business, or to seek to be employed in state service (the Constitutional Court's ruling of 13 August 2007).

48.1. As noted by the Constitutional Court, the right of citizens to enter on equal terms the State Service of the Republic of Lithuania (Paragraph 1 of Article 33 of the Constitution) is not absolute: the state cannot and does not assume the obligation to employ every person in state service; state service must be qualified, it must be able to fulfil tasks commissioned to it; the higher the position or the more important the area of activities, the higher the requirements that are raised before persons holding such positions (the Constitutional Court's rulings of 4 March 1999, 13 August 2007, 22 January 2008, and 7 July 2011).

48.2. Under the Constitution, state service is service to the State of Lithuania and the civic People; therefore, state service should be loyal to the State of Lithuania and its constitutional order; only persons who are loyal to the state and whose loyalty to the state and credibility do not raise any doubts may work in state institutions (*inter alia*, the Constitutional Court's rulings of 13 August 2007 and 7 July 2011).

Various provisions of the Constitution – its norms and principles, *inter alia*, the provision of Paragraph 1 of Article 33 thereof that citizens have the right to enter state service on equal terms – give rise to the constitutional principle of the transparency of state service; this principle implies certain requirements that must be respected when public authorities, their officials, and state servants are forming a corps of state servants; the transparency of state service is a necessary precondition against the consolidation of corruption and protectionism, against the discrimination of some persons and granting privileges to others, and against the abuse of power; thus, the transparency of state service is also a necessary precondition for people for trusting public authorities and the state in general (the Constitutional Court's ruling of 22 January 2008). The principle of the transparency of state service should be interpreted while taking into consideration other provisions of the Constitution, *inter alia*, the constitutional principles of a state under the rule of law, justice, democracy, responsible governance, as well as the constitutional concept of state service, which implies, among other things, the publicity and openness of state service as a system (the Constitutional Court's ruling of 22 January 2008). The constitutional provision that state institutions serve the people, the constitutional imperative of an open society, the constitutional concept of state service, and the openness of state service also imply the requirement for publicity of state service as a system (the Constitutional Court's ruling of 13 December 2004).

In the context of this constitutional justice case, it should also be noted that the Constitution, *inter alia*, the provision of Paragraph 3 of Article 5 thereof that state institutions serve the people, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, and the constitutional principles of transparency and publicity of state service give rise to the duty of the state to take all possible measures, *inter alia*, in order that corruption and the abuse of power in state service be prevented.

In this context, it should be noted that corruption as a social phenomenon has negative material and moral effect on the political and economic system of the state, damages, *inter alia*, the reputation of state servants and officials, undermines the authority of the institutions in which they work and the authority of all of state service, encourages disrespect for laws and creates the preconditions for violating human rights, undermines the trust of the public in the state, its institutions, democratic government of the state, and law; thus, corruption destroys the constitutional foundations of a democratic state under the rule

of law. In addition, the emergence of corruption encourages such conduct of persons working in state and municipal institutions that does not meet the powers conferred on them or the standards of conduct that are laid down in legal acts and encourages such conduct that is intended to benefit themselves or others to the detriment of the interests of the state as a whole or of separate persons.

48.3. Constitutional requirements for state service as a system also imply certain constitutionally reasonable requirements for persons who seek to implement their constitutional right to enter on equal terms state service or who have already become state servants (the Constitutional Court's rulings of 13 December 2004 and 13 August 2007).

In this context, it should be noted that the corps of state servants consists of persons working in state/municipal institutions through which state/municipal functions are performed (the Constitutional Court's ruling of 13 December 2004). Thus, the requirements arising from the Constitution to persons employed in state service are applicable to state servants, officials, and other equivalent persons who work in state/municipal institutions through which state/municipal functions are performed.

48.4. Under the Constitution, a state servant must properly fulfil his/her duties when observing the Constitution and law; he/she must be loyal to the State of Lithuania and its constitutional order, must observe the Constitution and laws, must respect, protect, and defend human rights and freedoms, must be impartial and neutral in regard to participants of the political process, must be just, must avoid a conflict between public and private interests, must not succumb to illegal pressure or illegal requirements, must not act in an arbitrary manner and must not abuse service, must follow the requirements of professional ethics, must protect his/her reputation as a state servant and the authority of the institution in which he/she is employed, etc.; decisions adopted by a state servant must be transparent and their reasoning must be clear; the opportunities provided by state service must not be used for personal benefit or in political activity; a state servant may not use his/her status for his/her private benefit or the private benefit of his/her close relatives or other persons (the Constitutional Court's ruling of 13 December 2004).

The legal regulation of state service relationships must be such that would make it possible to make sure that the aforementioned requirements are not violated; public and democratic control over the activity of state servants and decisions adopted by them is an important condition of the trust of society in the state and its law; the liability of a state servant for violations of law committed while in state service must be established by law (the Constitutional Court's ruling of 13 December 2004). Under the Constitution, the legislature has the duty to regulate state service relationships, and the system of state service should function in such a manner that not only liability would be established for violations committed while in state service, but also persons who commit violations while in state service would actually be held liable (the Constitutional Court's ruling of 13 August 2007).

48.5. The Constitutional Court held in its rulings of 25 May 2004 and 13 December 2004 that, in order that the citizens could reasonably trust state officials so that it would be possible to ascertain that all state institutions and all state officials follow the Constitution and law and obey them, and that those who do not obey the Constitution and law would not hold the office for which the confidence of the citizens is needed, it is necessary to ensure a public

democratic control over the activity of the state officials and their accountability to society comprising, *inter alia*, the possibility of removing from office those state officials who violate the Constitution and law, who bring their personal interests or the interests of a certain group above the public interests, or who bring discredit on state authority by their actions.

49. In the context of the constitutional justice case at issue, it should be noted that a person who has exercised his/her right, established in Paragraph 1 of Article 33 of the Constitution, to enter state service must be loyal to the state and work in such a way that his/her loyalty to the state and his/her credibility would not give rise to any doubts, that the citizens could reasonably trust in state servants/officials, that state service would be qualified and capable of performing the tasks assigned to it, *inter alia*, in preventing the abuse of power and corruption in state service.

49.1. At the same time, it needs to be noted that, in order to ensure proper functioning of state service, its transparency and publicity, the prevention of the manifestations of corruption or acts of a corrupt nature in state service is, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, one of the constitutionally important objectives of the state.

Thus, if a state servant/official allegedly commits criminal acts or other acts that are contrary to law, *inter alia*, misconduct in office, he/she, under the Constitution, *inter alia*, Article 22 and Paragraph 1 of Article 33 thereof, as well as according to the constitutional principle of a state under the rule of law, may be subject to state coercive measures, which have a certain effect on his/her conduct while simultaneously limiting the exercise, *inter alia*, of his/her right to the protection of private life or the right to enter state service in order to reach the constitutionally important objectives, *inter alia*, to ensure the transparency and publicity of state service.

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and according to the constitutional principle of a state under the rule of law, it is not allowed to establish such a legal regulation where, in the course of its application, a state servant/official who fails to comply with constitutionally justified requirements laid down in the Constitution and other legal acts with respect to state service as a system and persons working in it could escape legal liability; the law must lay down appropriate legal measures, i.e. the liability of the state servant/official for the violations committed by him/her, including misconduct in office; one of the sanctions established by law for misconduct in office may be the dismissal of the state servant/official from office. Otherwise, without introducing the possibility of applying the relevant legal liability to such a state servant/official, a situation would be created that would not be tolerated under the Constitution, i.e. such persons would be allowed to work in state service who do not meet the requirements arising from the Constitution, i.e. requirements such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, avoidance of a conflict between public and private interests, and non-abuse of office.

49.2. In the context of this constitutional justice case, it also needs to be noted that, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and according to the constitutional concept of state service and the constitutional principle of a state under the rule of law,

information about persons secretly collected by other authorised state institutions may also be used, in the cases and according to the procedure established by law, for criminal justice or other lawful purposes when seeking to achieve the constitutionally important objectives, i.e. ensuring the proper functioning of state service as well as its transparency and publicity, preventing, *inter alia*, the abuse of power and corruption in state service, detecting criminal and other unlawful acts, *inter alia*, misconduct in office, including that of a corrupt nature, that are allegedly being committed or have been committed by a state servant/official, which are incompatible with the said requirements, arising from the Constitution, for state service as a system and for state servants/officials, and creating the preconditions for the proper application of legal liability to persons who commit violations in state service where that liability serves as a public form of control over servants/officials of a democratic state and of their accountability to society; the use of such information can not only have a certain impact on the conduct of the state servant/official, but also interfere, *inter alia*, with his/her private life.

50. Paragraph 1 of Article 30 the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court.

The Constitutional Court has held on more than one occasion that, in a democratic state, the court is the main institutional guarantee of human rights and freedoms (*inter alia*, the Constitutional Court's rulings of 18 April 1996 and 10 December 2012, as well as its decision of 28 June 2016); each person who believes that his/her rights or freedoms are violated has the right to the judicial protection of his/her violated constitutional rights and freedoms (*inter alia*, the Constitutional Court's rulings of 17 August 2004 and 13 May 2010, as well as its decision of 28 June 2016); the implementation of the right to apply to a court is determined by the fact that the person himself/herself understands that his/her rights or freedoms are violated (the Constitutional Court's rulings of 1 October 1997 and 28 March 2006, as well as its decision of 28 June 2016). The violated rights, *inter alia*, acquired rights, and legitimate interests of a person must be defended regardless of whether they are directly consolidated in the Constitution; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of both private persons and state institutions (*inter alia*, the Constitutional Court's rulings of 8 May 2000 and 28 March 2006, as well as its decision of 28 June 2016).

The Constitutional Court has held that, under Paragraph 1 of Article 30 of the Constitution, a person must be guaranteed the right to an independent and impartial arbiter of a dispute who, on the basis of the Constitution and laws, would settle a legal dispute on its merits; each person has this right (*inter alia*, the Constitutional Court's rulings of 1 October 1997, 12 July 2001, and 17 August 2004).

Under the Constitution, the legislature has the duty to lay down such a legal regulation on the basis of which all disputes concerning the violation of the constitutional rights and freedoms of persons could be resolved before a court (*inter alia*, the Constitutional Court's ruling of 5 July 2013 and its decision of 28 June 2016). Under the Constitution, a legal situation where it is impossible to defend a certain right or freedom of persons (as well as to defend such a right before a court), even though those persons believe that such a right or freedom is violated, is impermissible; the Constitution does not tolerate such a legal situation (*inter alia*, the Constitutional Court's rulings of 18 April 1996 and 13 December 2004,

as well as its decision of 11 January 2019). The Constitutional Court has held on more than one occasion that the constitutional right of a person to apply to a court cannot be interpreted as meaning that, purportedly, the legislature may establish only such a legal regulation under which a person seeking to defend his/her rights and freedoms that, in his/her opinion, were violated would be able to apply to a court only directly in all situations. Legal acts can also establish a prelitigation procedure for settling disputes; however, it is not permitted to establish any such legal regulation that would deny the right of a person who believes that his/her rights or freedoms are violated to defend his/her rights or freedoms before a court (*inter alia*, the Constitutional Court's rulings of 2 July 2002, 17 August 2004, and 16 January 2006).

51. The guarantee of the judicial protection of the rights and freedoms of a person is a necessary condition for administering justice and an inseparable element of the content of the constitutional principle of a state under the rule of law (the Constitutional Court's rulings of 30 June 2000, 13 December 2004, and 1 March 2019).

The Constitutional Court has held that the constitutional principle of a state under the rule of law and the right of a person to apply to a court (which is consolidated in Paragraph 1 of Article 30 of the Constitution) imply the right of a person to the due process of law, *inter alia*, to the due court process, which is a necessary condition for resolving a case in a fair manner (*inter alia*, the Constitutional Court's rulings of 9 June 2015, 11 October 2018, and 1 March 2019). Under the Constitution, every person who is brought to legal responsibility has the right to fair legal proceedings (the Constitutional Court's ruling of 10 November 2005).

52. In this context, it should be mentioned that, when interpreting Paragraph 1 of Article 109 of the Constitution, according to which only courts administer justice in the Republic of Lithuania, the Constitutional Court has held that, when administering justice, courts must ensure the implementation of the law that is expressed in the Constitution, laws, and other legal acts, they must guarantee the supremacy of law and protect human rights and freedoms; Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner, and to adopt reasoned and well-founded decisions (*inter alia*, the Constitutional Court's rulings of 24 October 2007, 31 January 2011, and 1 December 2017).

52.1. The principle of justice consolidated in the Constitution, as well as the provision that justice is administered by courts, means that not the adoption of a decision as such in a court, but, rather, the adoption of a just court decision constitutes a constitutional value; such justice that is administered by a court only in a perfunctory manner is not the justice that is consolidated in and protected and defended by the Constitution (*inter alia*, the Constitutional Court's rulings of 24 October 2007, 25 September 2012, and 1 December 2017). When adopting a decision in a case, the court must always follow the laws and law, *inter alia*, the principles of justice, reasonableness, proportionality, and good faith, which stem from the Constitution (the Constitutional Court's rulings of 15 March 2008 and 1 December 2017).

52.2. The Constitutional Court has also noted that Paragraph 1 of Article 109 of the Constitution gives rise to the fact that the legislature may not establish such a legal regulation that would deny the powers of a court to administer justice (the Constitutional Court's ruling of 5 July 2013); it is not allowed to establish such a legal regulation that would

prevent a court from adopting a just decision in a case and, thus, from implementing justice where the court takes into account all important circumstances of the case, follows law, and does not violate the imperatives of justice and reasonableness stemming from the Constitution (*inter alia*, the Constitutional Court's rulings of 21 September 2006, 6 December 2012, and 1 December 2017).

52.3. The right of persons to a public and fair hearing of their case by an independent court, as consolidated in the Constitution, *inter alia*, Paragraph 2 of Article 31 thereof, and the principles of a state under the rule of law and justice imply the model of a court as an institution administering justice where a court may not be understood as a passive observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court; seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself, or to commission certain institutions/officials that they perform such actions (the Constitutional Court's ruling of 16 January 2006).

52.4. In this context, attention should also be drawn to the fact that, while interpreting a court's powers to administer justice, which arise from Paragraph 1 of Article 109 of the Constitution, the Constitutional Court has emphasised that no court decision may be entirely substantiated by information constituting a state secret (or other classified information), which is unknown to the parties (or one party) to the case. When the relationships linked with state secrets (or other classified information) and their protection are regulated by means of laws, it must also be established in what cases, under what procedure and conditions information constituting a state secret (or other classified information) may be declassified (the Constitutional Court's ruling of 15 May 2007).

53. In the context of the constitutional justice case at issue, it should be noted that the right of a public servant/official, which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the protection of his/her rights violated as a result of the application of official liability must be real, i.e. the person in question must have real opportunities to effectively defend under the judicial procedure his/her violated rights against, in his/her opinion, the unlawful actions of the state/municipal institutions and/or against the abuse of the powers granted to them in the course of the application of the state coercive measures, *inter alia*, in secretly collecting information/data about the person and by using that information for the purposes of the investigation of misconduct in office; such a person has the right to defend his/her violated rights and legitimate interests effectively, irrespective of whether or not they are directly enshrined in the Constitution.

It should also be noted that the right of a state servant/official, which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and from the constitutional principle of a state under the rule of law, to apply to a court regarding the protection of his/her rights violated as a result of the application of official liability also implies his/her right to the due court process and a fair court decision. During the dispute before a court, it is necessary to ensure the right of the state servant/official to have full access to all the material, data, or information used in the investigation of the misconduct in office, *inter alia*, the information about him/her secretly collected in the course of applying state coercive measures, where the said information has been declassified in accordance with the

procedure and under the conditions set by law, and has been transmitted for use for the purposes of the investigation of the misconduct in office, as well as the right to access the evidence used in the case; in addition, he/she has the right to provide explanations, to challenge the lawfulness or authenticity of the evidence used in the investigation of the misconduct in office, to challenge the necessity and proportionality of the use of the evidence, and to challenge all the factual and legal circumstances relating to the imposition of an official penalty. The state servant/official in the court proceedings must have the right to defend himself/herself effectively, *inter alia*, to have his/her representative, and the state servant/official must be given sufficient time and opportunities to prepare properly for defence.

A court (judge), while performing the duty to administer justice, arising from Paragraph 1 of Article 109 of the Constitution, must also assess whether the use of the aforementioned declassified information in investigating misconduct in office for which a person may be dismissed, *inter alia*, from the position in public service, has violated the constitutional rights of the state servant/official, *inter alia*, the right to the protection of the inviolability of private life and of correspondence, which is ensured by Article 22 of the Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof.

At the same time, it needs to be mentioned that, according to the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, as well as the constitutional principle of a state under the rule of law, a court must provide in every concrete case clear and sufficient legal arguments and reasons for its decision.

54. In this context, it should also be noted that the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, the constitutional principle of a state under the rule of law, and the constitutional imperatives of justice and reasonableness give rise to the requirement for the legislature also to regulate the procedure for imposing official penalties, *inter alia*, the procedure of investigating, in a manner that would ensure due process, the misconduct in office committed by a state servant/official. The guarantees of the due process of law during the procedures of the investigation of misconduct in office also include the ensuring of the constitutional rights of a public servant/official, *inter alia*, the right to the protection of the inviolability of private life and of correspondence, which is guaranteed in Article 22 of the Constitution, and the right to enter state service on equal terms, which is consolidated in Paragraph 1 of Article 33 thereof; the said guarantees also create the preconditions for preventing unlawful actions of the state/municipal institutions and/or the abuse of the powers granted to them when they apply state coercive measures, *inter alia*, official liability, including the use of information secretly collected, in the cases and in accordance with the procedure established in laws, by other authorised state institutions in investigating misconduct in office of a corrupt nature for which the most severe official penalty – the dismissal of the state servant/official from office – may be applied.

A state servant/official has the right to be informed of the beginning of an investigation into misconduct in office; he/she has the right, at the beginning of the investigation into misconduct in office and throughout such proceedings, to have full access to any material, data, or information used in the investigation where that information about him/her was

collected, *inter alia*, secretly by means of state coercive measures, was declassified in accordance with the procedure established in laws, and was transmitted for use for the purposes of the investigation of misconduct in office; he/she also has the right to have full access to evidence used in this investigation; in addition, he/she has the right to be heard and to present his/her explanations during that procedure, when respective decisions are taken against him/her; the state servant/official has the right to challenge the material or evidence used in his/her misconduct-in-office case, to question the lawfulness of such use, to demand that the evidence that he/she considers inadmissible should not be used, to contest all factual and legal circumstances relating to the imposition of an official penalty. During the procedure of investigating the misconduct in office, it is necessary to ensure the right of the state servant/official to effective defence, *inter alia*, the right to have his/her representative.

55. The Constitutional Court, while interpreting in its ruling of 15 March 2017 the requirements arising, *inter alia*, from Article 31 of the Constitution, the constitutional principle of a state under the rule of law, the right of a person to defence and to the due process of law, also noted that, if investigations and hearings of criminal cases where persons are suspected and accused of having committed a certain crime do not establish (prove) any characteristics of this crime, but reveal characteristics of other criminal acts or those of other violations of law, public authorities and officials are not released from the obligation to investigate them and bring the persons to the relevant legal liability where there is a basis to do so.

Thus, in the context of the constitutional justice case at issue, it should be noted that, according to the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and under the constitutional concept of state service, the constitutional principle of a state under the rule of law, among other things, the imperatives of lawfulness, necessity in a democratic society, and proportionality, which arise from the said principle, if the application by the state of the relevant coercion measures, established by law, to a state servant/official or another person, in particular designated for the investigation of criminal acts, does not reveal the characteristics (as they have not been proved) of the body of a crime, but detects the characteristics of other possibly committed acts that are contrary to law, *inter alia*, misconduct in office, including that of a corrupt nature, which are incompatible with the requirements stemming from the Constitution for state servants/officials (as, for instance, the proper performance of their duties in compliance with the Constitution and law, avoidance of a conflict between public and private interests, and non-abuse of office, the adoption of transparent and reasoned decisions) or identifies state servants/officials who allegedly committed them, state institutions and officials have the duty to properly investigate such violations of law and to bring the said state servants/officials to respective legal liability where there is a basis to do so, *inter alia*, by using, in the cases and according to the procedure established by law, information collected secretly by other authorised state institutions about them, which discloses the aforementioned violations of law, *inter alia*, misconduct in office, allegedly committed by them.

Such use of this information for investigating misconduct in office is based on constitutionally important objectives of the protection of the public interest; it aims to protect the interests of the state, of state service, and of all society, to prevent, *inter alia*, corruption in state service, to strengthen the credibility and responsibility of state service

and of every state servant/official, and to guarantee that only such persons hold the positions of state servants (*inter alia*, statutory positions) who meet the high requirements established by law, who are loyal to the State of Lithuania, and who are of good repute.

56. In the context of this constitutional justice case, it needs to be noted that, as mentioned above, under Article 109 of the Constitution, it is not allowed to establish any such restrictions that would deny the powers of a judge and a court to administer justice properly, *inter alia*, would hinder the adoption of a fair and reasoned decisions in a case. Thus, a court (judge), when settling a dispute on the imposition of an official penalty, must, on a case-by-case basis, fully assess all the material, data, or information used in investigating misconduct in office. The court (judge) must decide in each case whether information about a person that has been collected secretly in the manner established in laws, declassified in accordance with the procedure laid down in legal acts, and transmitted, *inter alia*, for use for the purposes of the investigation of the misconduct in office committed by the said person, can be considered evidence in a concrete case, whether such information complies with requirements for the lawfulness and credibility of evidence, and whether such use is necessary in a democratic society and is in line with the principle of proportionality; at the same time, the state servant/official must be afforded effective protection against possible arbitrariness by public authorities and a real opportunity of defending himself/herself regarding his/her allegedly violated rights and freedoms, *inter alia*, his/her right to the inviolability of private life and correspondence, which is defended in Article 22 of the Constitution, his/her right to enter state service on equal terms, which is entrenched in Paragraph 1 of Article 33 thereof, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of the use of declassified information as evidence in the investigation of his/her misconduct in office, which includes the duty of the court (judge) to assess whether in that concrete case the legitimate objectives pursued could be achieved by other less restrictive measures.

57. The presumption of innocence is ensured in Paragraph 1 of Article 31 of the Constitution. The Constitutional Court, when interpreting the presumption of innocence, has held that it is a fundamental principle of the administration of justice in criminal proceedings and one of the most important guarantees of human rights and freedoms (*inter alia*, the Constitutional Court's rulings of 12 April 2001 and 24 February 2017). However, according to the Constitutional Court, the provision of Paragraph 1 of Article 31 of the Constitution, when evaluated in the context of other provisions of the Constitution, has a broader content and, therefore, must not be linked with criminal legal relationships only (the Constitutional Court's rulings of 29 December 2004 and 24 February 2017). The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights (the Constitutional Court's ruling of 7 July 2011).

In the context of the constitutional justice case at issue, it needs to be noted that the presumption of innocence must also be ensured when transferring and/or using, for the purposes of investigation of misconduct in office, information collected secretly, in accordance with the procedure established in laws, by other authorised state institutions; in this context, it should be mentioned that the mere fact of transferring the said information cannot serve as a basis, in the absence of a proper and thorough investigation of the alleged misconduct in office, for considering the state servant/official to have committed the misconduct in office. Such transferred information either may serve as a basis for launching

an investigation into a particular instance of misconduct in office or may be used for investigating such misconduct, i.e. in order to establish (prove) the fact of the misconduct in office and the circumstances in which it was committed.

At the same time, it needs to be mentioned that, under the Constitution, in cases and under the conditions established by law, the possibility of using for the purposes of the investigation of misconduct in office the said declassified information collected by other authorised state institutions may not in itself be assessed as a violation of the principle of the presumption of innocence.

58. In the context of this constitutional justice case, it needs to be mentioned that the Constitutional Court has held that "the provision of Paragraph 2 of Article 118 of the Constitution, under which, in cases established by law, prosecutors defend the rights and legitimate interests of persons, society, and the state, gives rise to the duty of the legislature to establish the cases where a prosecutor must defend the rights and legitimate interests of persons, society, and the state" (*inter alia*, the Constitutional Court's rulings of 16 January 2006 and 15 June 2006). Thus, when the legislature establishes the duty of prosecutors to ensure lawfulness, *inter alia*, when a decision to use for the purposes of the investigation of misconduct in office information collected secretly by other authorised state institutions, Paragraph 2 of Article 118 of the Constitution also creates the duty of prosecutors to defend the rights and legitimate interests of persons, society, and the state in such a case as well.

V

The legal regulation laid down in the legal acts of the Council of Europe and the jurisprudence of the European Court of Human Rights

59. The documents of the Council of Europe, *inter alia*, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, and their interpretation and application in the jurisprudence of the ECtHR are relevant to this constitutional justice case. It should be mentioned that the Constitutional Court has held on more than one occasion that the jurisprudence of the ECtHR is also important for the interpretation and application of Lithuanian law (*inter alia*, the Constitutional Court's ruling of 11 January 2019).

59.1. Article 8, titled "Right to respect for private and family life", of the Convention prescribes:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

59.2. Paragraph 1 of Article 6, titled “Right to a fair trial”, of the Convention guarantees everyone the right to apply to a court and the right to a fair trial when deciding an issue of his/her civil rights and obligations or that of any criminal charge against him/her. Such a person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law; the court judgment must be pronounced publicly.

59.3. Article 13, titled “Right to an effective remedy”, of the Convention obliges the High Contracting Parties in the Convention to ensure everyone whose rights are violated to have an effective remedy already before a national authority.

60. In the context of this constitutional justice case, mention should also be made of the Criminal Law Convention on Corruption, which was adopted by the Council of Europe in 1999. The preamble to this convention, *inter alia*, emphasised that corruption threatens the rule of law, democracy, and human rights, undermines good governance, endangers the stability of democratic institutions and the moral foundations of society. Article 23 of this convention provides that, in tackling corruption, each Party must adopt such measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with this convention and to identify, trace, freeze, and seize instrumentalities and proceeds of corruption.

As the Constitutional Court noted in its ruling of 8 May 2000, the explanatory report to this convention points out that special investigative techniques mean the use of undercover agents, wire-tapping, bugging, interception of telecommunications, access to computer systems, etc.

61. The ECtHR has explicitly emphasised in its case law that the concept of “private life”, protected under Article 8 of the Convention, is a broad term, covering, *inter alia*, the physical and psychological integrity of a person, multiple aspects of the person’s physical and social identity, the right to approach others in order to establish and develop relationships with them and the outside world, as well as the collection, accumulation, use, and retention of persons’ fingerprints, cellular samples, and DNA profiles for the purposes of criminal justice or for other legitimate purposes (the ECtHR, the judgment of 4 December 2008, *S. and Marper v the United Kingdom* [GC], nos 30562/04 and 30566/04, paragraph 66; the judgment of 5 September 2017, *Bărbulescu v Romania*, no 61496/08, paragraph 70). As far back as in its judgment of 2 August 1984, delivered in the case of *Malone v the United Kingdom* (no 8691/79), the ECtHR recognised that a person’s right to the protection of his/her private life and correspondence extends to telephone conversations or other means of communication; therefore, the tapping of telephone conversations or control of correspondence may result in a violation of, *inter alia*, Article 8 of the Convention (the same position of the ECtHR was stated in, *inter alia*, its judgment of 31 July 2012, delivered in the case of *Drakšas v Lithuania* (no 36662/04, paragraphs 52–54)). In its judgment of 10 February 2009, delivered in the case of *Iordachi and Others v Moldova* (no 25198/02), the ECtHR emphasised that telephone tapping is a very serious interference with a person’s rights and that only very serious reasons based on a reasonable suspicion that the person is involved in serious criminal activity should be taken as a basis for authorising it.

61.1. Under Paragraph 2 of Article 8 of the Convention, the exercise of the right to respect for private life and the secrecy of correspondence may be lawfully restricted if certain requirements are met (*Malone v the United Kingdom*, paragraph 65; *Drakšas v Lithuania*, paragraphs 54–62, etc.), i.e. such restrictions must be expressly provided for by law, they must be necessary in a democratic society to achieve certain legitimate objectives, such as national security, the protection of the public interests, or the prevention of crime or of violations of public order, and such restrictions must be proportionate to the legitimate aim pursued by the state. Safeguards for the protection of human rights must be established by law, *inter alia*, in order to protect persons against possible abuses by public authorities.

61.2. The ECtHR has also held that Paragraph 2 of Article 8 of the Convention is to be narrowly interpreted. Powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only insofar as strictly necessary for safeguarding the democratic institutions (*Drakšas v Lithuania*, paragraph 54).

62. At the same time, the ECtHR has recognised the right of the High Contracting Parties in the Convention to use various means of combating organised crime, international terrorism, or corruption, *inter alia*, various means of the surveillance of persons, as, for instance, to use undercover agents, informers, and other covert practices, which can, among other things, interfere with the privacy of persons or violate the secrecy of their correspondence in cases where legitimate purposes are pursued, i.e. to detect particularly serious criminal acts that pose a threat to the state, society, or its members, and to collect evidence regarding the commission of the said criminal acts (e.g. to use undercover agents in applying the mode of conduct simulating a criminal act (the ECtHR, the judgment of 5 February 2008, *Ramanauskas v Lithuania* [GC], no 74420/01, paragraphs 49–53)).

62.1. The ECtHR has also found that modern democratic societies are exposed to very sophisticated forms of corruption, which requires states to be able to carry out secret surveillance of persons (in this case, permitting 24-hour eavesdropping on state servants and on their phone calls) capable of committing such acts so that they could effectively combat them (the ECtHR, the judgment of 8 April 2014, *Blaj v Romania*, no 36259/04).

62.2. In its judgment in *Ramanauskas v Lithuania*, the ECtHR also drew attention to the Council of Europe's Criminal Law Convention on Corruption, which allows the states to use special investigative methods, such as undercover agents, while stressing that the rights of persons must not be violated in such a case. Even though the use of special investigative methods – in particular, undercover techniques – cannot in itself infringe the right to a fair trial, still, their use must be kept within clear limits by means of a law (*Ramanauskas v Lithuania*, paragraphs 50–51).

63. According to the established case law of the ECtHR, national laws must provide for appropriate minimum safeguards for the protection of individual rights in order to prevent possible abuses of public authorities and officials by means of the covert surveillance of persons. Such measures must be expressly provided for by law, i.e. the law must clearly define the conditions and circumstances in which the state officials are entitled to apply such secret surveillance measures (the ECtHR, the judgment of 16 February 2000, *Amann v Switzerland*, no 27798/95, paragraphs 56–58); the law must also indicate: the nature, scope, and duration of the secret surveillance measures; the grounds required for ordering them; the

authorities competent to permit, carry out, and supervise them; and the kind of remedy (the ECtHR, the judgment of 15 January 2015, *Dragojević v Croatia*, no 68955/11, paragraph 83; the judgment of 8 April 2014, *Blaj v Romania*, no 36259/04); compensation for allegedly unlawful restriction of the rights (the ECtHR, the judgment of 28 June 2007, *The Association for European Integration and Human Rights and Ekimdzhiev v Bulgaria*, no 62540/00, paragraph 92); notification to related persons of secret surveillance where this is possible without compromising the purpose of the surveillance (the ECtHR, the judgment of 6 September 1978, *Klass and Others v Germany*, no 5029/71, paragraphs 27 and 58; the decision on admissibility of 29 June 2006, *Weber and Saravia v Germany* (dec.), no 54934/00, paragraphs 135, 137–138) etc.

63.1. Although, as noted by the ECtHR, states have a certain margin of appreciation when deciding whether a particular measure is necessary in a democratic society, they must ensure that, among other things, control over the imposition of restriction measures and over the application thereof, as well as the procedure of the application thereof are such that they do not go beyond what is really necessary in a democratic society (the ECtHR, the judgment of 29 June 2017, *Terrazzoni v France*, no 33242/12). In the said judgment, delivered in the case of *Terrazzoni v France*, the ECtHR also emphasised that the law establishing the tapping of telephone conversations must be accessible (known) to the relevant person so that he/she could foresee the consequences arising from the law; in addition, the preconditions must be created for him/her to make use of "effecting control" that covers, among other things, a possibility of challenging the lawfulness of the transcript of his/her conversations.

63.2. In the context of the protection of human rights when using secret surveillance measures, the ECtHR judgment of 4 December 2015, delivered by the Grand Chamber in the case of *Roman Zakharov v Russia* is important (no 74143/06, paragraphs 228–234). In it, the ECtHR found a violation of Article 8 of the Convention, concluding that the provisions of the law governing the tapping of telephone conversations do not meet the requirements for legal quality (legitimacy) and necessity in a democratic society, and do not provide an individual with effective safeguards against the arbitrariness and abuse by state authorities, such as, for instance, the said law has no definition of the categories of people liable to have their telephones tapped; they do not provide precisely for the circumstances in which public authorities are empowered to resort to any such measures, thus the authorised institutions are granted an unfettered discretion in this area; persons liable to covert control are not afforded adequate remedies before the courts; notification of the collection of information transmitted via electronic communications networks is optional.

63.3. In this context, it should also be mentioned that in the above-mentioned judgment delivered in the case of *Drakšas v Lithuania*, in which a violation of Article 8 of the Convention was found, the ECtHR stated that, as regards the surveillance in the applicant's case, the Law on Operational Activities had not allowed for an examination of its legality and had not provided for sufficient protection against arbitrariness, although that law in theory provided for a possibility to appeal against the actions of the operational activities' entities (paragraph 68); the judgment delivered in the case of *Bykov v Russia* also found a violation of Article 8 of the Convention in relation to a violation of a person's private life, because the laws had not provided adequate procedural guarantees that the person would be protected from arbitrary conduct by government officials during a covert "operational experiment".

64. The ECtHR has justified the tapping of telephone conversations as a means of assisting in the discovery of the truth both in the initial criminal proceedings and in the subsequent disciplinary investigation against another person whose conversation was incidentally intercepted, and has also stated that conversations of persons tapped in the context of certain proceedings where those persons are unrelated to the person whose line is being tapped may be used in other proceedings (in this case, in disciplinary proceedings) if the said conversations reveal the commission of other violations of law (the ECtHR, the judgment of 29 June 2017, *Terrazzoni v France*, no 33242/12). It should also be mentioned that, in this particular case, the court had not authorised the interception of telephone conversations of the applicant, who herself was a judge – the sanction had been imposed on another person. The ECtHR did not find a violation of Article 8 of the Convention by stating that it had not been established that the French authorities had abused the covert surveillance/sanctioning procedure or that F. L. (the eavesdropping of whose conversations had been sanctioned) was being tapped for the purpose of indirectly intercepting the applicant's conversations.

The ECtHR also stated in *Terrazzoni v France* that the impugned tapping had been sanctioned by a judge and was under his control. The same position of the ECtHR is set out in its judgment of 16 June 2016, delivered in the case of *Versini-Campinchi and Crasnianski v France* (no 49176/11). In this judgment, the ECtHR did not find a violation of Article 8 of the Convention as well in connection with an incidentally overheard conversation between a lawyer and his client when a sanction had been issued to tap the client's telephone conversations, but, on the grounds of the recorded conversation, disciplinary proceedings had been instituted against the lawyer.

In addition, the applicant, Terrazzoni, had been informed of the former eavesdropping on her conversation following the clarification of her status as a judge, she was given the opportunity to explain to the first President of the Court of Appeal, and subsequently to the criminal investigator, and during her disciplinary proceedings she was granted access to a copy of the recording medium and a transcript of the telephone call in question. The applicant was thus able to challenge the actions taken, the veracity of the conversation, and the content of the transcript, and demand that this evidence not be used in the case in question. Therefore, as the ECtHR found, the applicant had had access to effective control which ensured that the restriction at issue did not go beyond what is necessary in a democratic society.

65. In the context of this constitutional justice case, the right of a person to apply to a court and the right to a fair trial is also important in, *inter alia*, contesting the use of declassified criminal intelligence information in the case of misconduct in office by a state servant/official. The ECtHR has noted in its jurisprudence that, *inter alia*, Article 6 of the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective (among many others, the judgment of 23 March 2010, *Cudak v Lithuania* [GC], no 15869/02, paragraph 58). Thus, while the right of access to justice may be restricted and the states enjoy a certain margin of appreciation in this area, the very essence of that right cannot in any event be denied. A person who considers that his/her rights under, *inter alia*, Article 8 of the Convention have been violated has the right of access to a

court and the right to a fair hearing based on adversarial argument, *inter alia*, to access the information and data that are used as evidence in his/her case (the ECtHR, the judgment of 6 July 2010, *Pocius v Lithuania*, no 35601/04).

65.1. In the context of the right to a court and the principle of a fair trial, mention should be made of the ECtHR judgment of 19 September 2017, delivered by its Grand Chamber in the case of *Regner v the Czech Republic* (no 35289/11), in which the applicant had been issued with security clearance giving him access to secret information in accordance with the duties to be carried out by him, but later his security clearance was revoked solely on the basis of classified information, and that information and the grounds for the administrative decision were not disclosed to the applicant and his lawyer even during the judicial proceedings. The ECtHR did not find a violation of Article 6 of the Convention in this case and stressed that the national courts could, *inter alia*, analyse thoroughly the reasons for the revocation of the security clearance and the applicant had had the opportunity to present his arguments in writing and was heard in the proceedings before a court.

65.2. The ECtHR has also noted that Article 6 of the Convention guarantees the right of access to justice and the right to a fair trial, but does not lay down any rules on the admissibility of evidence; it is primarily a matter of domestic law (the ECtHR, the judgment of 9 June 1998, *Teixeira de Castro v Portugal*, no 25829/94). The ECtHR examines the lawfulness and fairness of the proceedings as a whole and of the taking of evidence, *inter alia*, with regard to the effective protection of the person's rights (the above-mentioned judgment in *S. and Marper v the United Kingdom*, paragraph 99).

66. Still, the jurisprudence of the ECtHR shows that evidence obtained, *inter alia*, by means of covert surveillance, even if in violation of Article 8 of the Convention, may be used in judicial proceedings and, in such cases, the principle of a fair trial under Article 6 of the Convention will not always be violated (the ECtHR, the judgment of 12 May 2000, *Khan v the United Kingdom*, no 35394/97; the above-mentioned judgment in *The Association for European Integration and Human Rights and Ekimdzhiev v Bulgaria*).

67. In the context of the constitutional justice case at issue, it should be noted that, having summarised the jurisprudence of the ECtHR, the conclusion should be drawn that that states have a certain margin of appreciation under the Convention in choosing and applying, *inter alia*, covert surveillance measures used in investigating criminal or other acts that are dangerous to society, for instance, the tapping of telephone conversations or control of a person's correspondence. The application of such measures to achieve certain legitimate objectives or the use of evidence obtained through the application of such measures *per se* does not constitute a contravention of Articles 6 and/or 8 of the Convention provided that persons subjected to such measures have effective safeguards to protect their rights and the application of such measures is provided for by law and regulated in detail, i.e. the person is provided effective protection against possible arbitrariness of public authorities. Such a person must have access to effective judicial remedies when he/she challenges the application of such measures (*inter alia*, he/she must have the right to access to justice and the right to a fair trial as a whole), as well as when he/she challenges, *inter alia*, the lawfulness, necessity, and proportionality of evidence obtained through secret surveillance measures, the authenticity of such evidence, or raises the question of its inadmissibility, whereas national courts have the duty to assess in each case the proportionality of the

measure used, for instance, the proportionality of the application of the measure of telephone tapping or of monitoring personal correspondence, or whether the legitimate objectives sought could be achieved by other, less restrictive measures.

In this context, it should also be noted that, as it was mentioned in the case of *Terrazzoni v France*, the applicant's telephone conversation tapped and secretly recorded during lawfully authorised secret surveillance of another person had been used, *inter alia*, in her disciplinary proceedings, which led to her dismissal. The ECtHR emphasised that the evidence obtained by surveilling another person for the purposes of criminal justice and used in the disciplinary proceedings in which the applicant (who herself was a judge) was involved had not violated her right to the protection of her private life under Article 8 of the of the Convention (a violation of Article 6 of the Convention had not been raised). In that judgment, the ECtHR also found that conversations of unrelated persons tapped during a certain process may be used in another process against the relevant person (in this case, in the disciplinary proceedings against the judge) if the said conversations reveal other committed violations of law. The same conclusion was reached in the other above-mentioned judgment, delivered in the case of *Versini-Campinchi and Crasnianski v France*, in which disciplinary proceedings had been instituted against a lawyer on the basis of a covertly recorded telephone conversation after the authorisation of the tapping of the telephone conversations of his client, i.e. another person.

VI

The legal regulation laid down in European Union legal acts and the legal regulation implementing it

68. Regulation (EU) 2016/679 was adopted in order to strengthen the right of individuals to protection of their personal data in the European Union and to ensure a uniform and high level of protection of natural persons with regard to the processing of their personal data. This is a directly applicable legal act of the European Union, which, in Lithuania, as in other Member States of the European Union, started to apply on 25 May 2018.

68.1. Regulation (EU) 2016/679, as provided for in Article 2(2)(d) thereof, does not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Recital 19 of Regulation (EU) 2016/679 states that the protection of natural persons when processing personal data for those purposes and the free movement of such data are governed by Directive (EU) 2016/680.

68.2. It should be mentioned that Directive (EU) 2016/680, which lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security (Article 1(1)), *inter alia*, stipulates that the processing of personal data must be lawful, fair, and transparent with respect to the natural persons concerned and may only be processed for specific purposes laid down in legal acts; this does not in itself preclude law enforcement authorities from

carrying out activities such as covert investigations or video surveillance, as long as they are laid down by law and constitute a necessary and proportionate measure in a democratic society (Recital 26).

The provisions of this Directive guarantee the rights of the data subject, including the right to information, the right of access to the personal data collected (regarding the purposes for which the data are processed, the period during which the data are processed, and the recipients of the data), the right to request erasure of the data and to verify their lawfulness (Recital 43, Articles 13, 14, and 16) and the obligation of the data processor to determine the period of the data storage for which the personal data are stored (Articles 4(1)(e), 5, 20(2), and 24(1)(h)).

At the same time, it is worth mentioning that Directive (EU) 2016/680 sets out the legitimate grounds for limiting the rights (provided for in Articles 13–14, 16) of data subjects, *inter alia*:

– Member States should be able to adopt legislative measures delaying, restricting, or omitting the information to data subjects or restricting, wholly or partly, the access to their personal data (on the basis of a case-by-case examination) to the extent that and as long as such a measure constitutes a necessary and proportionate measure in a democratic society with due regard for the fundamental rights and the legitimate interests of the natural person concerned, to avoid obstructing official or legal inquiries, investigations or procedures, to avoid prejudicing the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, to protect public security or national security, or to protect the rights and freedoms of others (Recital 44);

– any restriction on the rights of data subjects must comply with the Charter of Fundamental Rights of the European Union and the Convention, as interpreted in the case law of the Court of Justice of the European Union and by the ECtHR respectively, and in particular respect the essence of those rights and freedoms (Recital 46);

– where the data controller denies a data subject his/her right to information, access to or rectification or erasure of personal data or restriction of processing, the data subject should be informed of his/her the right to request that the national supervisory authority verify the lawfulness of the processing, the data subject should be informed that all necessary verifications or reviews have taken place, and he/she should be informed of his/her right to seek a judicial remedy (Recital 48).

It should also be mentioned that Directive (EU) 2016/680 also provides that personal data collected by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as set out in Article 1(1) of this Directive, must not be processed for other purposes unless such processing is authorised by Union or Member State law; where personal data are processed for such other purposes, Regulation (EU) 2016/679 applies unless the processing is carried out in an activity that falls outside the scope of Union law (Paragraph 1 of Article 9). Similarly, the processing of personal data for purposes other than those for which they were collected is also possible under this Directive if the purpose of such processing is provided for by law and is necessary for and proportionate to that purpose (Recital 29, Article 4(2)).

68.3. Directive (EU) 2016/680 is implemented by the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence (wording of 30 June 2018), which, as provided for in Paragraph 2 of Article 1 thereof, applies to the processing of personal data by the competent authorities of the Republic of Lithuania when personal data are processed for the purposes of the prevention, investigation, or detection of criminal offences, or for prosecution of criminal offences or the execution of penalties, as well as for the purposes of national security or defence, to the extent not otherwise provided in other laws.

Paragraph 1 of Article 3 of the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence, *inter alia*, prescribes that personal data must be: 1) processed lawfully and in good faith; 2) collected for specified, explicitly defined, and legitimate purposes and not processed in a way incompatible with those purposes; 3) adequate, relevant, and not excessive in relation to the purposes for which they are processed; 4) accurate and, where necessary, kept up to date; 5) kept in a form that permits the identification of data subjects for no longer than is necessary for the purposes for which they are processed; 6) processed in a manner that ensures appropriate security of personal data by appropriate technical or organisational measures. It should also be noted that, under Paragraph 1 of Article 7 of this law, the processing of data is lawful only where it is necessary and to the extent that is necessary for the competent authority to carry out the functions mentioned in Paragraph 2 of Article 1 of this law, and if it is based on the legislation of the European Union or of the Republic of Lithuania; the legislation of the Republic of Lithuania regulating the processing of personal data must specify the objectives of data processing, the personal data to be processed, the purposes of data processing, and other data processing requirements aimed at ensuring the lawful processing of personal data.

Paragraph 2 of Article 7 of the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence provides, *inter alia*, that Regulation (EU) 2016/679 and the Law on the Legal Protection of Personal Data apply to the processing of personal data for purposes other than those provided for in Paragraph 2 of Article 1 of Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence.

68.4. Regulation (EU) 2016/679 applies, as provided for in Recital 19 thereof, to the processing of personal data carried out by competent authorities in the framework of the tasks entrusted to a Member State for the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, and for other purposes.

However, according to Recital 50 of Regulation (EU) 2016/679, the processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal

data were initially collected (first paragraph); also, where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the data controller should be allowed to further process the personal data irrespective of the compatibility of the purposes (second paragraph).

68.5. It should be mentioned that Article 5(1) of Regulation (EU) 2016/679 stipulates that personal data must, *inter alia*, be: processed lawfully, fairly, and in a transparent manner in relation to the data subject ("lawfulness, fairness, and transparency"); collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes with the exception of further processing for archival purposes in the public interest, scientific or historical research purposes, or statistical purposes ("purpose limitation"); adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation"); accurate ("accuracy"); kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ("storage limitation"); processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing ("integrity and confidentiality").

Under Article 6(1) of Regulation (EU) 2016/679, processing is lawful only if at least one of the conditions set out therein applies, *inter alia*, processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller, and only to the extent that the said condition applies. Regulation (EU) 2016/679 also lays down the obligation for the data controller to determine the period for which the personal data is stored (Recital 39, Article 13(2)(a)), establishes the duty of the data controller to provide the data subject with certain information on the processing of personal data (Article 14(1)), enshrines the rights of the data subject, *inter alia*, the right of access to the personal data processed, including the recipients of the data and the period for which the data are stored (Chapter III, *inter alia*, Article 15).

Article 23 of Regulation (EU) 2016/679 provides that Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of their obligations and rights when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard, *inter alia*, national security, defence, public security, the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, and the prevention, investigation, detection, and prosecution of breaches of ethics for regulated professions.

68.6. Since 16 July 2018, together with Regulation (EU) 2016/679 and its implementing legislation, the Law on the Legal Protection of Personal Data (wording of 30 June 2018) (implementing Regulation (EU) 2016/679), which defines the particularities of the processing of personal data in Paragraph 2 of Article 1 thereof, as well as the powers of the authorities supervising the application of this law and Regulation (EU) 2016/679, including investigating infringements, has been applicable.

68.7. In the context of the constitutional justice case at issue, it needs to be noted that the collection of criminal intelligence information on the basis of the Law on Criminal Intelligence, *inter alia*, about acts with the characteristics of corruption criminal acts, is attributable to the processing of personal data for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties. Thus, as regards the protection of personal data when collecting such information, *inter alia*, in accordance with the Law on Criminal Intelligence and declassifying it in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, not the provisions of Regulation (EU) 2016/679, but those of Directive (EU) 2016/680 apply. In contrast, the use of declassified criminal intelligence information transmitted under Paragraph 3 of Article 19 of the Law on Criminal Intelligence about acts with the characteristics of corruption criminal acts, unlike its collection, declassification, and transfer, would fall within the scope of Regulation (EU) 2016/679.

VII

The case law of constitutional courts of foreign states

69. In the context of this constitutional justice case, mention should be made of the judgment rendered on 20 April 2016 by the First Senate of the Federal Constitutional Court of Germany declaring a certain legal provision to be in contravention of the Basic Law of the Federal Republic of Germany, since that legal provision, in violation of the constitutional requirement to limit the change of the purpose of the use of data, allowed the use of data covertly collected by a state authority (the Federal Criminal Police Office) for the purpose of protecting against the danger (threats) of international terrorism:

– when carrying out the other duties of that authority for the same purpose, which was the protection against international terrorism, irrespective of whether there was an imminent (real, direct) or, in the individual case, a rather specific danger;

– when carrying out the other functions of this authority – conducting further investigations and seeking to prevent other criminal offences in connection with international terrorism – where such data could also be collected secretly for such a purpose, including intervening surveillance;

– when transferring such data to other state authorities entitled to receive and use such data, *inter alia*, by changing the purpose for which the data were to be used, not for the purpose of prosecuting the criminal offences for which the collection was authorised, but of investigating, on an individual basis, any criminal offence, including minor (trivial) criminal offences.

This judgment noted that the transfer of data collected by a state authority for the purpose of protection against the danger (threats) of international terrorism may be permitted if it is intended to ensure the protection against imminent (real, direct) danger to public security or a certain sufficiently important legal interests, including a threat to life, health, freedom, or the existence of the state. It also noted that data collected for the purpose of preventing criminal offences may be used as a basis for further investigations for this purpose; information obtained in the investigation and prevention of specific criminal offences

posing a danger to society as a whole may, without further restrictions, be used by other public authorities to carry out further general investigations when they are aimed at protecting not necessarily against the same specific danger to public security, but are aimed at protecting the same legal interests (i.e. those of the same value) for whose protection such data were collected, despite the fact that they were collected by means of intervening measures (including the surveillance of private homes and remote searches); however, it is the duty of the legislature to specify such legal interests for which the said data are collected and used, in which case the same conditions of intervention (limitation of rights) apply to the collection of data. The transfer of collected data for the purpose of mutual communication for the purpose of coordinating protection against said dangers (threats) does not of itself imply a change of purpose, but must be based on lawful use of data and only for internal coordination of tasks between federal and *Laender* authorities. It is also noted in this judgment that the said collected information can only be transferred for use as a concrete evidential basis for further investigations aimed at revealing the dangers to high level (significant) legal interests. In addition, this judgment mentions that data collected under measures of a highly interventionist nature may only be transferred for the purpose of protecting sufficiently important legal interests; the law must require the deletion of the recorded data once the purposes of their collection have been achieved; in addition, effective control over the transfer of the data must be ensured.

70. In this context, mention should also be made of the judgment rendered by the Constitutional Tribunal of the Republic of Poland on 23 May 2018 in case SK 8/14. It stated that the restriction of the right of access of a person whose authorisation to handle or access classified information had been revoked to the reasoning of the judgment of the first instance court and of the right of effective appeal against the said judgment is necessary and proportionate insofar as it is related to classified information protected by law when ensuring the constitutional value – state security – where the said classified information influenced the decision to revoke this authorisation; however, the legislature, when ensuring the protection of classified information, must provide for measures that less restrict the constitutional rights of persons, and the protection of classified information cannot be based on non-disclosure to the complainant of such parts of the reasoning of the judgment rendered by the first instance court in his/her case that do not contain classified information, but only factual and legal arguments for the court judgment.

VIII

The assessment of the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence with Article 22 and Paragraph 1 of Article 33 of the Constitution and the principle of a state under the rule of law

71. In the constitutional justice case at issue, the Constitutional Court investigates, *inter alia*, the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence with Article 22 of the Constitution, the provision “Citizens shall have […] the right to enter on equal terms the State Service of the Republic of Lithuania” of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, insofar as Paragraph 3 of Article 19 of the Law on Criminal Intelligence:

– establishes the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office;

– does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out).

Thus, the petitioners impugn the constitutionality of Paragraph 3 of Article 19 of the Law on Criminal Intelligence essentially from two aspects, i.e. insofar as the said paragraph provides for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using that information in investigating misconduct in office, as well as insofar as that paragraph does not establish a procedure for the use of the above-mentioned information in investigating misconduct in office. As regards the latter aspect, as mentioned above, the petitioners raise the issue of a legislative omission, i.e. they argue that Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not provide for the above-mentioned procedure, which, according to the petitioners, should be established in that paragraph under the Constitution.

72. The doubts of the petitioner – the Supreme Administrative Court of Lithuania – concerning the constitutionality of the impugned legal regulation entrenched in Paragraph 3 of Article 19 of the Law on Criminal Intelligence are essentially based on the fact that:

– criminal acts (for whose prevention or detection criminal intelligence information may be collected) and misconduct in office are not equally dangerous; therefore, the possibilities for using criminal intelligence in the criminal process and the process of the application of official liability should also be differentiated according to the purpose of these processes;

– the use of criminal intelligence information to bring persons to official liability is not a necessary and proportionate state measure to achieve the purpose of that liability; in this case, the balance among the values enshrined in the Constitution – the public interest in ensuring order in internal service and public confidence in the internal service system and in safeguarding the constitutional rights of persons to respect for private life and the right to enter state service – has not been maintained;

– the law does not lay down a procedure for the use of the said criminal intelligence information in applying official liability, although the petitioner claims that the use of such information in applying official liability must be regulated in the law in a very detailed and clear manner, i.e. that the entity applying official liability would have no opportunity to abuse the powers conferred on it, *inter alia*, to violate a person's right to respect for his/her private life and his/her right to enter state service on equal terms; in the opinion of the petitioner, such a legal regulation violates, *inter alia*, the imperatives arising from Article 22 and Paragraph 1 of Article 33 of the Constitution and the constitutional principle of a state under the rule of law.

73. The doubts of the petitioner – the Vilnius Regional Administrative Court – regarding the constitutionality of the impugned legal regulation are also based on the fact that the impugned legal regulation, which does not establish a procedure for declassifying criminal intelligence information and its transmission for use when dealing with an issue of official liability, created the possibilities of transmitting declassified criminal intelligence information for use also in cases where it has been collected in the course of criminal intelligence activities in respect of a person other than the person subject to the investigation of his/her misconduct in office. In the opinion of the petitioner, such a legal regulation does not comply with the conditions for the restriction of the right of persons to the inviolability of, and respect for, private life and violates the constitutional right of persons to enter state service on equal terms.

74. In deciding on the compliance of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as the said paragraph provides for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office, with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes a separate case of the use of criminal intelligence information about an act with the characteristics of a corruption criminal act, i.e. the use of this information only for the special purpose – an investigation into misconduct in office with the characteristics of a corruption criminal act.

74.1. It has been mentioned that the right of a person to privacy, enshrined in Article 22 of the Constitution, and the right of citizens to enter state service on equal terms, consolidated in Paragraph 1 of Article 33 thereof, are not absolute; a state servant/official, when committing criminal or other acts that are contrary to law, for instance, misconduct in office, must be aware that, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, the constitutional concept of state service, the constitutional principle of a state under the rule of law, such his/her actions will trigger an appropriate reaction from authorised state institutions, meaning that a violation of the law (whether being committed or already committed) may lead to coercive measures lawfully and reasonably enforced by the state, *inter alia*, such measures may include official liability for misconduct in office, and that one of the sanctions established by law for such misconduct may be dismissal from office. These measures may, *inter alia*, interfere with his/her private life or restrict his/her right to enter state service.

It has also been mentioned that, under the Constitution, the exercise of the rights and freedoms of a person may be limited only under the following conditions: it is done by law; the limitations are necessary in a democratic society in order to protect, *inter alia*, the rights and freedoms of other persons, the values consolidated in the Constitution, as well as the constitutionally important objectives; the limitations do not deny the nature and essence of the rights or freedoms; and the constitutional principle of proportionality is observed.

In addition, it has been mentioned that, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and according to the constitutional concept of state service and the constitutional principle of a state under the rule of law, information about persons secretly collected by other state institutions may also be used, in the cases and according to the procedure established by law, for criminal justice or other lawful purposes when seeking to achieve the constitutionally important objectives, i.e. ensuring the proper functioning of state service as well as its transparency and publicity, preventing, *inter alia*, the abuse of power and corruption in state service, detecting criminal and other unlawful acts, *inter alia*, misconduct in office, including that of a corrupt nature, that are allegedly being committed or have been committed by a state servant/official, which are incompatible with the said requirements, arising from the Constitution, for state service as a system and state servants/officials, and creating the preconditions for the proper application of official liability to persons who commit violations in state service where that liability serves as a public form of control over servants/officials of a democratic state and of their accountability to society.

Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature has the duty to regulate the relationships of state service so that not only liability for violations committed in state service would be established, but also the persons who commit such violations would actually be brought to responsibility.

74.2. It has also been mentioned that, in cases where criminal intelligence information collected on the basis of the Law on Criminal Intelligence reveals the existence of characteristics of misconduct in office or identifies state servants/officials who have possibly committed such misconduct, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, as well as the constitutional rule of law, state institutions and officials have the duty to properly investigate such violations of law and to bring the said state servants/officials to respective legal liability where there is a basis to do so.

Otherwise, without introducing the possibility of applying official liability to a state servant/official, *inter alia*, by using information collected about him/her by other authorised state institutions in cases and according to the procedure established by law, a situation would be created that would not be tolerated under the Constitution – it would not be ensured that persons who have committed misconduct in office would actually be brought to official liability, i.e. the preconditions would be created for such persons to work in state service who do not meet the requirements arising from the Constitution, such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, the adoption of transparent and reasoned decisions, avoidance of a conflict between public and private interests, and non-abuse of office.

74.3. In this context, it needs to be noted that, as mentioned before, the prevention of the manifestations of corruption or acts of a corrupt nature in state service is, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, one of the constitutionally important objectives of the state; corruption as a social phenomenon has negative material and moral effect on the political and economic system of the state, damages the reputation of, *inter alia*, state servants/officials, undermines the authority of the institutions in which they work and the

authority of all of state service, encourages disrespect for laws and creates the preconditions for violating human rights, undermines the trust of the public in the state, its institutions, democratic government of the state, and law; thus, corruption destroys the constitutional foundations of a democratic state under the rule of law.

74.4. Thus, the legal regulation consolidated in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which provides for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using such information in investigating misconduct in office of a corrupt nature for which the most severe official penalty – dismissal of a state servant/official from office – may be applied, is constitutionally justified in order to effectively implement the duty, which the state has under the Constitution, to properly investigate misconduct in office, including that of a corrupt nature, and to actually apply official liability.

Such a legal regulation pursues, as mentioned above, the constitutionally important objectives of the protection of the public interest, *inter alia*, ensuring the proper functioning of state service as well as its transparency and publicity, preventing the abuse of power and corruption in state service, preventing manifestations of corruption and acts of a corrupt nature in state service, among other things, detecting misconduct in office possibly being committed or committed by a state servant/official, which is incompatible with the aforementioned requirements arising from the Constitution for state service as a system and for state servants/officials.

Thus, the impugned legal regulation consolidated in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which provides for the possibility of declassifying the aforementioned criminal intelligence information and using such information in investigating misconduct in office with the characteristics of a corruption criminal act, should be assessed as a measure, which is necessary in a democratic society, which is proportionate, and which is established by law, to achieve the objective of official liability, i.e. to create the preconditions for actually applying official liability, as a public form of control over servants/officials of a democratic state and of their accountability to society, to persons who have committed in state service violations of a corrupt nature, which are incompatible with the requirements arising for them from the Constitution.

74.5. It has also been mentioned that, according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information may be declassified and used only for the investigation of misconduct in office that is of corrupt nature and has the characteristics of a criminal act; for the purpose of investigating other types of misconduct in office (without the characteristics of a corruption criminal act), the information gathered on the basis of the Law on Criminal Intelligence may not be used. As mentioned above, this criminal intelligence information can only be used in the investigation of misconduct in office for which a state servant/official can be punished with the most severe official penalty – dismissal from the respective position in state service. In view of this, it needs to be noted that the legal regulation entrenched in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which establishes the possibility of declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating exclusively misconduct in office of a corrupt nature, is to be assessed as a

proportionate measure for the legitimate purpose pursued by the state in accordance with the Constitution – the proper application of official liability and the prevention of corruption in state service.

74.6. Consequently, the legal regulation established in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which provides for the possibility of declassifying the said criminal intelligence information and using it in investigating misconduct in office that is of a corrupt nature and has the characteristics of a corruption criminal act, is justified by constitutionally important state objectives; this is a necessary and proportionate measure to achieve, under the Constitution, the objective of official liability, *inter alia*, to create the preconditions for the proper application of official liability as a public form of control over servants/officials of a democratic state and of their accountability to society, and, at the same time, to ensure transparency and publicity of state service, as well as to prevent corruption and acts of a corrupt nature in state service.

74.7. At the same time, it should be noted that as such the possibility, consolidated in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, to declassify criminal intelligence information about an act with the characteristics of a corruption criminal act and to use it in investigating misconduct in office of the said nature, under the Constitution, may not be assessed as restricting the right to the protection of private life, enshrined in Article 22 of the Constitution, or the right to enter state service, enshrined in Paragraph 1 of Article 33 thereof, to the extent that the substance of those rights is denied.

75. Taking into account the arguments set forth, it should be held that the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which establishes the possibility of declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, does not violate the requirements arising from Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

76. In deciding on the compliance of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as, according to the petitioners, that paragraph does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act for the investigation of misconduct in office of a corrupt nature, including the possibility of using such information collected with respect to another person (but not the person under investigation as a result of misconduct in office), with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, as well as with the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the petitioners raise from this aspect the question of a legislative omission, i.e. they argue that Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not establish the said procedure, which, however, according to the petitioners, should be established in that paragraph.

In this context, it should be mentioned that, as the Constitutional Court has repeatedly pointed out, a legal gap, *inter alia*, a legislative omission, always means that the legal regulation of certain social relationships is established neither explicitly nor implicitly, neither in a particular legal act (part thereof) nor in any other legal acts, even though there exists a need for a legal regulation of these social relationships, whereas, in the case of a legislative omission, the said legal regulation must be established precisely in the particular legal act (particular part thereof), since this is required by a certain higher-ranking legal act, *inter alia*, the Constitution itself. The fact that, if a concrete law (part thereof) does not contain a special legal regulation designed for governing certain relationships, it does not necessarily mean that there is a legal gap, *inter alia*, a legislative omission, in that area, since such relationships might be regulated by means of general explicit norms or by means of implicitly established norms that supplement and extend the explicit legal regulation (the Constitutional Court's rulings of 25 January 2016 and 8 March 2018).

76.1. It has been mentioned that the legislature, having established the powers of state institutions to secretly collect information in the cases and according to the procedure established by law about persons for the purposes of criminal justice or other lawful purposes, under the Constitution, *inter alia*, Article 22 and Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, also has the duty to lay down in the law the conditions for the use of this information, *inter alia*, to consolidate the possibility of transmitting this information to other state authorities for the investigation of misconduct in office of a corrupt nature.

It has also been mentioned that, under the Constitution, when the relations linked with state secrets (or other classified information) and their protection are regulated by means of laws, it must be established in what cases, under what procedure and conditions information constituting a state secret (or other classified information) may be declassified.

76.2. It has been mentioned that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes not only the possibility of declassifying criminal intelligence information collected on the basis of the said law and using such information in investigating misconduct in office, but also consolidates the conditions for such use:

– not all criminal intelligence information can be used for the investigation of misconduct in office, but only information about an act with the characteristics of a corruption criminal act;

– such criminal intelligence may be declassified and used only by decision of the head of the principal criminal intelligence institution;

– before taking such a decision, the head of the principal criminal intelligence institution must obtain the consent of the prosecutor for declassifying the above-mentioned information and using it for investigating misconduct in office;

– in the investigation of misconduct in office, it is allowed to use only declassified criminal intelligence information about an act with the characteristics of a corruption criminal act.

76.3. In this context, it should be noted that, as mentioned above, the impugned legal regulation established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, when interpreted in a systemic manner in conjunction with the legal regulation consolidated in the other provisions of this law, of the Law on the Prevention of Corruption, of the Law on the Prosecution Service (wording of 22 April 2003), of the Code of Criminal Procedure, and of the Law on State Secrets and Official Secrets means that the criminal intelligence information that is understood under Paragraph 7 of Article 2 of the Law on Criminal Intelligence as data collected and recorded in accordance with the procedure established in legal acts during the activities of criminal intelligence entities when carrying out criminal intelligence tasks must be about an act with the characteristics of a corruption criminal act; this information may be declassified and used in investigating misconduct in office only under all of the mentioned conditions referred to in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which also imply the following stages of the respective procedure:

1) when, under Article 8 (as amended on 30 June 2016 and 20 December 2018) of the Law on Criminal Intelligence, in the course of carrying out, or after completing, a criminal intelligence investigation, it becomes clear that an act with the characteristics of a corruption criminal act may have been committed, the head of the criminal intelligence entity informs about this fact the head of the relevant principal criminal intelligence institution (which is provided for in Paragraph 11 (wording of 23 December 2013) of Article 2 of the Law on Criminal Intelligence), who, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, has the right to decide on the declassification of criminal intelligence information and its use for the investigation of misconduct in office;

2) the head of the principal criminal intelligence institution, having determined, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, that the criminal intelligence information available to him/her shows that misconduct in office of a corrupt nature and with the characteristics of a criminal act, specified in Paragraph 2 (wording of 21 June 2011) of Article 2 of the Law on the Prevention of Corruption, has been possibly committed, applies to a specially authorised prosecutor, as pointed out in Paragraph 16 of Article 2 of the Law on Criminal Intelligence, so as to obtain his/her consent to the declassification of that information and its use for the investigation of such misconduct;

3) the authorised prosecutor, seeking to ensure the lawfulness requirement in accordance with Paragraphs 1 and 2 of Article 2 of the Law on the Prosecution Service (wording of 22 April 2003), must, before giving such consent, fully assess the received criminal intelligence information and the possibilities of its use in criminal proceedings in accordance with Paragraph 3 of Article 8 of the Law on Criminal Intelligence and Paragraph 1 of Article 166 (wording of 28 June 2007) of the Code of Criminal Procedure; in addition, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence gives rise to the prosecutor's duty to assess, on the basis of available criminal intelligence information, whether that information is sufficient to investigate misconduct in office and may be regarded as information about an act with the characteristics of a corruption criminal act that could be declassified and used for the investigation of misconduct in office; seeking to ensure the lawfulness requirement, the authorised prosecutor must also assess in each particular case and to the extent necessary, justified, and proportional the use of that information in each particular case for the purpose of investigating misconduct in office, and he/she has the right to decide whether to give such consent;

4) having obtained the prosecutor's consent to the declassification of information about an act with the characteristics of a corruption criminal act and its use for the investigation of misconduct in office, the head of the principal criminal intelligence institution, before taking a decision pursuant to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, applies to a formed special commission of experts or to a person responsible for the protection of classified information and asks for a conclusion on the declassification of that criminal intelligence information (Paragraph 10 of Article 2 and Article 14 of the Law on State Secrets and Official Secrets);

5) although the head of the principal criminal intelligence institution has the duty to obtain a conclusion from the said special commission of experts or from the person responsible for the protection of classified information, this conclusion is not binding on the head of the principal criminal intelligence institution; according to the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, the said head has the right, after obtaining the consent from the prosecutor, to take a final decision on the declassification of the said classified criminal intelligence information and its use for the investigation of misconduct in office.

76.4. In the context of the constitutional justice case at issue, it should be noted that, as mentioned above, when the legislature establishes the duty of prosecutors to ensure lawfulness, *inter alia*, when taking the decision to use, in the cases and in accordance with the procedure established in laws, for the purposes of the investigation of misconduct in office information collected secretly by other authorised state institutions, Paragraph 2 of Article 118 of the Constitution also gives rise to the duty of prosecutors to defend the rights and legitimate interests of a person, society, and the state in such a case as well.

In this context, it should be noted that the duty of the prosecutor, laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, to decide, on a case-by-case basis, whether to give his/her consent to declassify criminal intelligence information about an act with the characteristics of a corruption criminal act and to use it in investigating misconduct in office, if interpreted in conjunction with his/her duty to ensure lawfulness, which is established in Paragraph 1 of Article 2 of the Law on the Prosecution Service (wording of 22 April 2003), should be assessed as creating the preconditions for implementing these constitutional duties of the prosecutor, i.e., as creating the preconditions for protecting the rights and legitimate interests of persons, society, and the state also in the said case.

76.5. Consequently, as mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence not only consolidates the possibility of declassifying criminal intelligence information gathered on the basis of the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act and using such information in investigating misconduct in office of the said nature (which is a separate case of the use of such information provided for in the said law), but also establishes the conditions for such use; when applied together, those conditions presuppose a procedure for deciding on the declassification of such criminal intelligence information and its use for the purposes of investigating misconduct in office.

76.6. It has also been mentioned that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not state that, in the course of carrying out a criminal intelligence investigation under the Law on Criminal Intelligence, criminal intelligence information collected only with respect to a particular person may be declassified and used for investigating misconduct in office of a corrupt nature allegedly committed namely by that person. Thus, where, in the course of carrying out a criminal intelligence investigation with respect to a certain person, information is collected about another person and that information shows that that other person has possibly committed misconduct in office with the characteristics of a corruption criminal act, such information may also be declassified under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence and be used to investigate the misconduct in office of a corrupt nature committed by that other person.

It should be noted that, otherwise, without introducing the possibility of applying properly official liability to any state servant/official, *inter alia*, by using information secretly collected about him/her by other authorised state institutions in the cases and according to the procedure established by law, a situation would be created that would not be tolerated under the Constitution – it would not be ensured that persons, *inter alia*, the other mentioned person, who have committed misconduct in office would actually be brought to official liability, i.e. the preconditions would be created for such persons to work in state service who do not meet the requirements arising from the Constitution, such as the proper performance of their duties in compliance with the Constitution and law, loyalty to the State of Lithuania and its constitutional order, avoidance of a conflict between public and private interests, non-abuse of office, and the adoption of transparent and reasoned decisions.

76.7. Thus, the conclusion should be drawn that, contrary to what the petitioners claim, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes the procedure for deciding on the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use for the purposes of the investigation of misconduct in office.

At the same time, it should also be noted that, as mentioned above, the Law on Criminal Intelligence is not specifically aimed to regulate the use of declassified criminal intelligence information in investigating misconduct in office; therefore, contrary to what the petitioners claim, even from this aspect the said law need not establish a specific procedure for the use of criminal intelligence information, declassified in the manner prescribed in legal acts (*inter alia*, in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence and with the provisions of the Law on State Secrets and Official Secrets) in investigating misconduct in office.

Consequently, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not contain the legislative omission pointed out by the petitioners.

76.8. Taking into account the arguments set forth, it should be held that the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which establishes the conditions for declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, where those conditions, when applied together, presuppose a procedure

for deciding on the declassification of such criminal intelligence information and its use for the purposes of investigating misconduct in office, does not violate the requirements arising from Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

77. Consequently, the provision "Criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into [...] misconduct in office" of Paragraph 3 of Article 19 of the Law on Criminal Intelligence is not in conflict with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

IX

The assessment of the compliance of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 (wording of 27 June 2013) of Article 26, and Paragraph 1 (wording of 25 June 2015) of Article 33 of the Statute of Internal Service with Article 22 and Paragraph 1 of Article 33 of the Constitution, as well as with the constitutional principle of a state under the rule of law

78. In the constitutional justice case at issue, the Constitutional Court investigates, *inter alia*, whether Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) were in conflict with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, insofar as those paragraphs:

– establish the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using it in investigating misconduct in office;

– do not establish a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence.

Thus, the petitioners impugn the constitutionality of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) essentially from two aspects, i.e. insofar as those paragraphs provided for the possibility of declassifying criminal intelligence information about an act with the characteristics of a corruption criminal act and using that information in investigating misconduct in office, as well as insofar as those paragraphs did not establish a procedure for using, when investigating misconduct in office, criminal intelligence

information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence. As regards the latter aspect, as mentioned above, the petitioners raise the question of a legislative omission, i.e., in this case, they argue that the above-mentioned impugned provisions did not establish either in the Law on State Service or in the Statute of Internal Service a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence; according to the petitioners, such a procedure should be established under the Constitution in the impugned provisions.

79. The doubts of the petitioners regarding the compliance of the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and with the constitutional principle of a state under the rule of law are virtually based on the same arguments as those regarding the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

80. When deciding on the compliance of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), insofar as those paragraphs had provided for the possibility of declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and with the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the impugned provisions of the Law on State Service and of the Statute of Internal Service stipulated that the official penalties for misconduct in office must be imposed on the state servants or officials respectively by taking into account the criteria specified therein for the imposition of official penalties, such as the reasons for, and the circumstances of, the misconduct in office, the guilt of the state servant or official who has committed the misconduct in office, his/her activity before that misconduct in office, as well as the circumstances mitigating or aggravating the official liability. These impugned provisions, as mentioned above, laid down at the same time the obligation, in imposing an official penalty, to take into account, *inter alia*, the information supplied in the cases and according to the procedure laid down in the Law on Criminal Intelligence.

80.1. As mentioned before, the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) provided for criteria for the imposition of official penalties on state servants and officials for misconduct in office.

It has also been mentioned that, as such, declassified criminal intelligence information transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence for the purposes of the investigation of misconduct in office of a

corrupt nature does not constitute an independent and/or additional criterion for the imposition of official penalties to be taken into account when imposing official penalties. As mentioned above, declassified criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act either could (or can) serve as a basis for (launching) an investigation into misconduct in office or could (or can) be used in investigating such misconduct, i.e. when seeking to establish (prove) the fact of the misconduct in office, the causes, circumstances, and consequences of the misconduct in office, the guilt of the state servant or official, his/her performance before the misconduct in office was committed, circumstances mitigating or aggravating official liability.

Consequently, as mentioned above, the impugned legal regulation entrenched in the Law on State Service and in the Statute of Internal Service should be understood only as establishing an obligation for the entity investigating misconduct in office and imposing an official penalty for such misconduct to assess the declassified criminal intelligence information transmitted on the basis of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence to the extent that such information could (or can) be used in investigating misconduct in office of a corrupt nature.

80.2. It has been mentioned that the doubts of the petitioners regarding the compliance of the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and with the constitutional principle of a state under the rule of law are virtually based on the same arguments as those regarding the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

80.3. It has been held in this ruling of the Constitutional Court that the impugned legal regulation laid down in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which establishes the possibility of declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, does not violate the requirements arising from Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

Thus, on the basis of the same arguments, it should also be held that the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which stipulates, *inter alia*, that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" and which, as mentioned above, should be understood only as establishing an obligation for the entity investigating the misconduct in office and imposing an official penalty for such misconduct to assess the declassified criminal intelligence information transmitted on the basis of the impugned Paragraph 3 of

Article 19 of the Law on Criminal Intelligence to the extent that such information could (or can) be used in investigating misconduct in office of a corrupt nature, is, just as the impugned legal regulation entrenched in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, justified by constitutionally important state objectives and should be assessed as a measure that is necessary in a democratic society, that is proportionate, and that is established by law, to achieve the objective of official liability, i.e. to create the preconditions for actually applying official liability, as a public form of control over servants/officials of a democratic state and of their accountability to society, to persons who have committed in state service violations of a corrupt nature, which are incompatible with the requirements arising for them from the Constitution, and, at the same time, to ensure transparency and publicity of state service, as well as to prevent corruption and acts of a corrupt nature in state service.

Consequently, the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) did not violate the requirements arising from Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

81. In this context, it needs to be noted that, by the legal regulation laid down in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which provides, *inter alia*, that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" and having established the duty for a person imposing an official penalty to take into account in all cases when imposing the said penalty, *inter alia*, the information supplied in the cases and manner prescribed in the Law on Criminal Intelligence, which, as mentioned above, should not in itself be considered an independent and/or additional criterion for imposing official penalties, the legislature has established an excessive legal regulation.

Thus, taking into account, *inter alia*, the constitutional principles of a state under the rule of law, legal certainty, and legal clarity applicable to law-making entities, the legislature should properly regulate the issues of the application of official liability, *inter alia*, by removing the aforementioned excess legal regulation.

82. When deciding on the compliance of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), insofar as those paragraphs do not establish a procedure for the use, when investigating misconduct in office, of criminal intelligence information provided in the cases and according to the procedure referred to in the Law on Criminal Intelligence with Article 22 of the Constitution, the provision "Citizens shall have [...] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the petitioners raise, *inter alia*, the issue of a legislative omission, i.e. they

argue that neither the impugned provisions entrenched in the Law on State Service nor those consolidated in the Statute of Internal Service established the said procedure, which, according to the petitioners, should be established under the Constitution in the impugned provisions.

As mentioned above, a legal gap, *inter alia*, a legislative omission, always means that the legal regulation of certain social relationships is established neither explicitly nor implicitly, neither in a particular legal act (part thereof) nor in any other legal acts, whereas, in the case of a legislative omission, the said legal regulation must be established precisely in the particular legal act (particular part thereof), since this is required by a certain higher-ranking legal act, *inter alia*, the Constitution itself.

82.1. The Constitutional Court has stated in this ruling that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence consolidates the conditions for declassifying and using criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, where those conditions, when applied together, presuppose a procedure for deciding on the declassification of such criminal intelligence information and its use for the purposes of investigating misconduct in office.

82.2. It has also been mentioned that the declassified criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence about committed misconduct in office with the characteristics of a corruption criminal act becomes public after its declassification and, as any other public information, material, or data contained in the file of the investigation of the misconduct in office, it could (or can) be used in investigating instances of misconduct in office in accordance with the general procedure. In this context, it should be noted that, as mentioned above, the basis for the investigation (or official investigation) of misconduct could be, *inter alia*, official information (or data) about misconduct in office allegedly committed by a state servant/official (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service; Paragraph 7 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 7 of Article 33 of the Statute of Internal Service (wording of 25 June 2015)); the state servant/official who was being brought to official liability was entitled to receive all such information available (Item 7 of the Rules; Items 9 and 23 of the Description) and, upon the completion of the investigation (or official investigation) of the misconduct in office, to access all the material used during this investigation (or official investigation) (Item 9 of the Rules; Item 22.2 of the Description), *inter alia*, all declassified criminal intelligence information transmitted and used in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

It was also mentioned that neither the Law on State Service nor the Statute of Internal Service needed to establish a specific procedure for declassified criminal intelligence information transmitted for the purposes of investigating misconduct in office with the characteristics of a corruption criminal act, where after its declassification it became public information as any other public information, material, or data contained in the file of the investigation of the misconduct in office.

82.3. Consequently, there was no legislative omission, specified by the petitioners, either in the impugned provisions laid down in the Law on State Service or in those established in the Statute of Internal Service.

82.4. In the light of the foregoing arguments, it should be held that the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which, according to the petitioners, had not established a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, did not violate the requirements arising from Article 22 of the Constitution, the provision "Citizens shall have […] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

83. Consequently, the provision "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in […] the Law on Criminal Intelligence […]" of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) was not in conflict with Article 22 of the Constitution, the provision "Citizens shall have […] the right to enter on equal terms the State Service of the Republic of Lithuania" of Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law.

X

The assessment of the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 (wording of 27 June 2013) of Article 26, and Paragraph 1 (wording of 25 June 2015) of Article 33 of the Statute of Internal Service with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law

84. In this constitutional justice case, the Constitutional Court is examining, *inter alia*, whether:

– Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as that paragraph does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out), is in conflict with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law;

– Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), insofar

as those paragraphs had not established a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, were in conflict with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

Thus, the petitioners impugn the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence, Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) with, *inter alia*, Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law by raising the above-mentioned issue of a legislative omission, i.e. they argue that Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out), and that the said impugned provisions consolidated in the Law on State Service and the Statute of Internal Service did not establish a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence; however, according to the petitioners, the impugned provisions should establish such a procedure under the Constitution.

85. The doubts of the Supreme Administrative Court, a petitioner, regarding the compliance of the legal regulation impugned by it with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law are basically substantiated by the fact that, after the legal acts have failed to establish in detail a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act when dealing with an issue of official liability, a person who is being brought to official liability cannot effectively defend himself/herself against possibly arbitrary actions of the authorities, since he/she loses the ability to properly defend before a court his/her violated right to the inviolability of, and respect for, private life, which is protected under Article 22 of the Constitution, and his right to enter state service on equal terms.

86. Deciding on the compliance of the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, insofar as that paragraph does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out), with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned above, the petitioners raise, *inter alia*, the issue of a legislative omission, i.e. they argue that Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not establish the said procedure, while the failure to establish it, according to the petitioners, restricts a person's opportunities to properly use effective judicial protection in defending, under Paragraph 1 of Article 30 of the Constitution, his/her allegedly violated constitutional rights and freedoms.

86.1. As mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for the possibility of using criminal intelligence information about an act with the characteristics of a corruption criminal act collected on the basis of the Law on Criminal Intelligence for the purposes of investigating misconduct in office of a corrupt nature, and establishes the conditions for using this information in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out); the said conditions, when applied together, presuppose the procedure for declassifying and using such criminal intelligence information for the purposes of investigating misconduct in office.

86.2. It has been mentioned that, according to the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, as well as the constitutional principle of a state under the rule of law:

– each person who believes that his/her rights or freedoms are violated has the right to the judicial protection of his/her violated constitutional rights and freedoms; the right of a person to apply to a court implies the right of a person to the due court process, which is a necessary condition for resolving a case in a fair manner;

– it is not allowed to establish any such restrictions that would deny the powers of a judge and a court to administer justice properly, *inter alia*, would hinder the adoption of a fair and reasoned decisions in a case;

– the violated rights and legitimate interests of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions;

– when complying with the constitutional principle of a state under the rule of law, the legislature has the discretion to establish with what court and under what procedure persons may lodge their applications regarding the defence of their violated rights and freedoms;

– legal acts can also establish a prelitigation procedure for settling disputes; however, it is not permitted to establish any such legal regulation that would deny the right of a person who believes that his/her rights or freedoms are violated to defend his/her rights or freedoms before a court.

86.3. In the context of the constitutional justice case at issue, it should be noted that the right of a public servant/official, which arises from the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, and the constitutional principle of a state under the rule of law, to apply to a court regarding the protection of his/her rights violated as a result of the application of official liability must be real, i.e. the person in question must have real opportunities to effectively defend under the judicial procedure his/her violated rights against, in his/her opinion, the unlawful actions of the state/municipal institutions and/or against the abuse of the powers granted to them in the course of the application of the state coercive measures, *inter alia*, in secretly collecting information/data about the person and by using that

information for the purposes of the investigation of misconduct in office; such a person has the right to defend his/her violated rights and legitimate interests effectively, irrespective of whether or not they are directly enshrined in the Constitution.

It should also be noted that, as mentioned above, the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, the constitutional principle of a state under the rule of law, give rise to the requirement, when considering before a court a dispute on, *inter alia*, the imposition of an official penalty, to ensure the right of a state servant/official to the due court process, where this right includes, *inter alia*, his/her right to full access to any material, data, or information used in the investigation of his/her misconduct in office, *inter alia*, to full access of declassified information about him/her, which was collected through the use of coercive measures and which in the cases and under the conditions established by law was transmitted for use for the purposes of the investigation of misconduct in office; in addition, a state servant/official has the right to access to the evidence used in his/her case, the right to provide explanations, to challenge the admissibility, legality, authenticity, necessity, and proportionality of the evidence used or of other material of the investigation of the misconduct in office; a state servant/official must have the right to an effective defence in court proceedings, *inter alia*, to have sufficient time to access the material of the investigation of the misconduct in office and to prepare his/her defence, as well as to have a representative.

86.3.1. It has also been mentioned that, under the Constitution, *inter alia*, Article 109 thereof, a court (judge), when administering justice and settling a dispute on the imposition of an official penalty, must, on a case-by-case basis, fully assess all the material, data, or information used in investigating misconduct in office, and must decide whether, *inter alia*, information about a person that has been collected secretly in the manner established in laws, declassified in accordance with the procedure laid down in legal acts, and transmitted for use for the purposes of the investigation of the misconduct in office committed by the said person, can be considered evidence in a concrete case, whether such information complies with requirements for the lawfulness and credibility of evidence, and whether such use is necessary in a democratic society when the state seeks to attain certain legitimate aims, such as to ensure transparency and publicity of state service, as well as to prevent corruption and acts of a corrupt nature in state service; the court (judge) must also assess, in each case, whether the use of the said information for the purposes of investigating misconduct in office of a corrupt nature is in line with the principle of proportionality and whether the said legitimate aims could be achieved in a particular case by other less restrictive means.

86.3.2. Thus, the Constitution, *inter alia*, Paragraph 2 of Article 31 thereof, which enshrines the right to apply to a court, Paragraph 2 of Article 31 thereof, which enshrines the right of persons to a public and fair hearing of their case by an independent court, and the principles of a state under the rule of law and justice imply such a model of a court as an institution administering justice where a court, as mentioned above, may not be only a passive observer of court proceedings and where the administration of justice may not depend solely on the material submitted to a court; seeking to investigate all circumstances of a case objectively and comprehensively and to establish the truth in a case, a court has the powers either to perform procedural actions by itself, or to commission certain institutions/officials that they perform such actions; in addition, it has been mentioned that, under the Constitution, no

court decision may be entirely substantiated by, *inter alia*, information constituting a state secret (or other classified information), which is unknown to the parties, or one party, to the case.

86.4. As mentioned above, in declassifying, under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information about an act with the characteristics of a corruption criminal act for use in investigating misconduct in office, it is necessary to respect the human rights safeguards enshrined in the provisions of Paragraphs 1, 6, 8, 9 of Article 5 (as amended on 23 December 2013 and 27 September 2018) and Paragraph 1 of Article 7 of the Law on Criminal Intelligence, as well as to follow the rules of storage (keeping) and destruction of criminal intelligence information, which are established in Paragraph 7 of the latter article.

It has also been mentioned that, under Item 8 of Paragraph 1 of Article 7 of the Law on Criminal Intelligence, it must be ensured that all criminal intelligence information is collected for the sole purpose of carrying out specific criminal intelligence tasks and the information obtained is used only for its intended purpose in accordance with the procedure established by this law (Item 8). As mentioned above, the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence provides for a special case of the use of criminal intelligence information: when information gathered on the grounds and according to the procedure established by the Law on Criminal Intelligence in the course of the specific criminal intelligence tasks specified in this law shows that there may have been an act with the characteristics of a corruption criminal act, such information may be declassified and used, *inter alia*, in investigating misconduct in office of such a character.

86.5. It has been mentioned that criminal intelligence information that has been collected on the basis of the Law on Criminal Intelligence (Paragraph 7 of Article 2, Article 4, Article 8 (as amended on 30 June 2016 and 20 December 2018) of this law) about an act with the characteristics of a corruption criminal act must not be declassified and used for the investigation of misconduct in office under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence in cases where the investigation of the above-mentioned misconduct in office would not be possible, *inter alia*, where the term of bringing a person to official liability has expired. In this context, it should be noted that, as mentioned above, collected criminal intelligence information may be held, stored, and used in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence only until the expiry of the time period for bringing a person to official liability, as set respectively by the Law on State Service or the Statute of Internal Service, i.e. within three years after the day of committing misconduct in office (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service; Paragraph 4 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 4 of Article 33 of the Statute of Internal Service (wording of 25 June 2015)).

It must therefore be emphasised that, upon the expiry of that period, the said information can no longer be used for the purposes of investigating misconduct in office under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

86.6. It has been mentioned that, under the Constitution, violated rights and legitimate interests of a person must be defended regardless of whether they are directly consolidated in the Constitution; the rights of a person must be defended not formally, but in reality and effectively against unlawful actions of private persons, as well as against those of state institutions.

86.7. It has also been mentioned that a person who believes that his/her rights have been violated as a result of using, in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, criminal intelligence information collected against him/her about misconduct in office with the characteristics of a corruption criminal act allegedly committed by him/her has the right to file an appeal with the head of the principal criminal intelligence institution or the prosecutor against the actions of criminal intelligence entities, and has the right to file an appeal against their decisions with the president of the regional court or a judge authorised by him/her (Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence); the person who has been subjected to criminal intelligence actions has the right, when this information becomes public (i.e. after it is declassified), to require that the said data collected about him/her be provided to him/her (Paragraph 6 of Article 5 of the Law on Criminal Intelligence).

Thus, in the context of the constitutional justice case at issue, it should be held that a state servant/official about whom information has been collected secretly in accordance with the procedure established by the Law on Criminal Intelligence, after such information has been used in investigating misconduct in office of a corrupt nature committed by him/her, has the right, under Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence, to apply to the court (judge) referred to in this paragraph and raise the questions of the legitimacy, necessity, and proportionality of the use of such declassified information, as well as challenge the admissibility of such information as evidence. As mentioned above, under the Constitution, a person must be afforded effective protection against possible arbitrariness of public authorities, i.e. an opportunity to apply to a court and to file an appeal against the lawfulness, reasonableness, and proportionality of the collection of the said criminal intelligence about him/her and of the transmission of that information under Paragraph 3 of Article 19 of the Law on Criminal Intelligence for the purposes of investigating misconduct in office of a corrupt nature.

86.8. In this context, it should also be noted that, as mentioned before, the constitutional right of a person to apply to a court cannot be interpreted as meaning that, purportedly, the legislature may establish only such a legal regulation under which a person would be able to apply to a court only directly in all situations; under the Constitution, a prelitigation procedure for settling disputes may also be established in legal acts, and it is important that a person's right to defend his/her rights or freedoms before a court is not denied; when complying with the constitutional principle of a state under the rule of law, the legislature has the discretion to establish with what court and under what procedure persons may lodge their applications regarding the defence of their violated rights and freedoms.

In the context of this constitutional justice case, it needs to be noted that Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence lays down a legal regulation that establishes the right of any person to appeal against the actions of criminal intelligence entities if he/she believes that the performance

of these actions, *inter alia*, the use of declassified criminal intelligence information transmitted under Paragraph 3 of Article 19 of the Law on Criminal Intelligence for the purposes of investigating the misconduct in office, has violated his/her rights or freedoms (firstly, by filing an appeal under a prelitigation procedure, i.e. with the head of the principal criminal intelligence institution or with the prosecutor, and, subsequently, by filing an appeal against the decisions taken by them with the president of the regional court or a judge authorised by the latter) may not in itself be assessed as denying the constitutional right of a person to apply to a court by appealing against the said actions and to effective defence of his/her rights or freedoms before a court or as limiting the said right of a person to the extent that denies the essence of this right.

It needs to be noted that, under the Constitution, the legislature, having determined to which court (judge) a person may appeal against the actions of, *inter alia*, criminal intelligence entities, i.e. against the decision of the head of the principal criminal intelligence institution to declassify criminal intelligence information collected in accordance with the Law on Criminal Intelligence about an act with the characteristics of a corruption criminal act and to use it for the investigation of misconduct in office of a corrupt nature also did not deny the powers, arising from Article 109 of the Constitution, of the court (judge) established in this particular case to properly administer justice and render an objective and fair decision in the case when taking into account all relevant circumstances of the case and the imperatives of justice and reasonableness stemming from the Constitution. At the same time, it should be noted that the said legal regulation, which is enshrined in Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence and in the impugned Paragraph 3 of Article 19 of the same law and which establishes the procedure for appealing against the actions of criminal intelligence entities, *inter alia*, against the declassification of criminal intelligence information in accordance with the Law on Criminal Intelligence, does not imply that the designated court (judge) is merely a passive observer of the proceedings and that the justice administered by that court (judge) depends only on the material submitted to the court; under the Constitution, the said court (judge) has the same powers as any other court (judge) to carry out in each situation all necessary procedural steps in the case in order to establish the truth and pass a just and reasoned decision.

Thus, there are no grounds for stating that, having consolidated in Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence the said legal regulation establishing the procedure of the right of a person to appeal, *inter alia*, by judicial procedure, against the actions of criminal intelligence entities, the impugned legal regulation entrenched in Paragraph 3 of Article 19 of the Law on Criminal Intelligence violates the requirements arising from Paragraph 1 of Article 30 of the Constitution and from the constitutional principles of the rule of law and justice, and at the same time denies the duty (arising from the Constitution, *inter alia*, Article 109 thereof) of a particular court (judge) (specified in Paragraph 9 of Article 5 of the Law on Criminal Intelligence) to administer justice and pass a just decision in the case.

86.9. In this context, it needs to be noted that the collection of information about persons in the cases and manner and by the methods and technical means established in the Law on Criminal Intelligence, as well as the issues of the authorisation, application, and/or extension of such measures is not a matter for investigation in this constitutional justice

case. Still, in the context of the constitutional right of a person to apply to a court, it needs to be noted that, under the Constitution, as mentioned above, a legal situation where it is impossible to defend a certain right or freedom of persons (as well as to defend such a right before a court), even though those persons believe that such a right or freedom is violated, is impermissible.

Thus, if a state servant/official considers that his/her rights or freedoms, *inter alia*, the right to the protection of private life or of the secrecy of correspondence, or the right to enter state service on equal terms, have been violated as a result of the authorisation, extension, or application of the actions, established in the Law on Criminal Intelligence, in respect of any person, such a state servant/official also has the right to apply to a court under Paragraph 9 (wordings of 23 December 2013 and 27 September 2018) of Article 5 of the Law on Criminal Intelligence by filing appeals against the said actions (lawfulness, reasonableness, and proportionality thereof) and must have real opportunities to defend himself/herself effectively from possibly unlawful actions of public authorities, *inter alia*, committed through the secret collection and/or use of criminal intelligence information about him/her in the case and manner prescribed in the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

86.10. It has also been mentioned that the petitioners impugn the compliance of Paragraph 3 of Article 19 of the Law on Criminal Intelligence with, *inter alia*, Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law, by raising the above-mentioned issue of a legislative omission, i.e. they argue that Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out); however, according to the petitioners, such a procedure, under the Constitution, should be established in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, while the failure to establish it restricts a person's opportunities to properly use effective judicial protection under Paragraph 1 of Article 30 of the Constitution.

Having stated in this ruling that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes the procedure for deciding on the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use for the purposes of the investigation of misconduct in office and that the Law on Criminal Intelligence, which is not intended specifically to regulate the procedure for the use of declassified criminal intelligence information in investigating misconduct in office, contrary to the petitioners' statements, need not establish a specific procedure for the use of criminal intelligence information declassified in the manner prescribed in legal acts (*inter alia*, in accordance with Paragraph 3 of Article 19 of the Law on Criminal Intelligence and with the provisions of the Law on State Secrets and Official Secrets) in investigating misconduct in office, it should be held that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence does not contain the legislative omission referred to by the petitioners in this respect, either.

86.11. Taking into account the arguments set forth, it should be held that the impugned legal regulation entrenched in Paragraph 3 of Article 19 of the Law on Criminal Intelligence, which, as already stated in this ruling of the Constitutional Court, establishes the procedure for deciding on the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use for the purposes of the investigation of misconduct in office and which, according to the petitioners, does not establish a procedure for the use of criminal intelligence information about an act with the characteristics of a corruption criminal act in investigating misconduct in office, including the possibility of using such information where it has been gathered regarding another person (but not the person with respect to whom an investigation into misconduct in office is carried out), does not violate the requirements arising from Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

87. Consequently, the provision "Criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into [...] misconduct in office" of Paragraph 3 of Article 19 of the Law on Criminal Intelligence is not in conflict with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

88. When deciding on the compliance of the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which state, *inter alia*, that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]", insofar as, according to the petitioners, those paragraphs do not establish a procedure for the use, in investigating misconduct in office, of the criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, with Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law, it should be noted that the petitioners raise, *inter alia*, the aforementioned issue of a legislative omission, i.e. they argue that neither the impugned provisions of the Law on State Service nor those of the Statute of Internal Service established the said procedure, which, according to the petitioners, should be established therein under the Constitution, while the failure to establish it, according to the petitioners, restricts a person's opportunities to properly use effective judicial protection in defending, under Paragraph 1 of Article 30 of the Constitution, his/her allegedly violated constitutional rights and freedoms.

88.1. As mentioned above, the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, the impugned Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and the impugned Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) consolidated the criteria for imposing official penalties for misconduct in office, such as the causes, circumstances, and consequences of the commission of misconduct in office, the guilt of the state servant or official who has committed misconduct in office, his/her performance before the misconduct in office was committed, and circumstances mitigating or aggravating official liability; at the same time, the impugned provisions lay down the duty of the person applying the official liability and imposing the official penalty to take into account in all cases, *inter alia*, the information

submitted in the cases and manner prescribed by the Law on Criminal Intelligence, which should be understood only as a duty of the said person to assess whether this information could (or can) serve as grounds for starting an investigation into misconduct in office or be used in investigating such misconduct, where the said information in itself did not (or does not) constitute an independent and/or additional criterion for imposing official penalties. At the same time, it should be noted that the impugned provisions entrenched in the Law on State Service and the Statute of Internal Service did not concern the implementation of the constitutional right of a person to apply to a court; they consolidated, as mentioned above, the criteria for imposing official penalties for misconduct in office.

It has also been mentioned that the Law on State Service and the Statute of Internal Service, as well as related legal acts mentioned above, establish the legal regulation governing the imposition of official penalties, *inter alia*, governing the procedure for investigating misconduct in office.

88.2. It has also been mentioned that, under the Constitution, *inter alia*, Paragraph 1 of Article 30 thereof, which consolidates the right of a person to apply to a court, as well as under the constitutional principle of a state under the rule of law and the constitutional concept of state service:

– every person who is being brought to official liability has the right to due process; a public servant/official must be given a real opportunity to defend himself/herself against alleged violations of his/her rights and freedoms when applying official liability to him/her, *inter alia*, when investigating his/her misconduct in office;

– when adjudicating on a dispute regarding the application of official liability, a court (judge) must decide on a case-by-case basis whether its application and the use of, *inter alia*, the information about a person collected secretly in the cases and manner established in laws, declassified in accordance with the procedure established in legal acts, and transmitted for the use in investigating misconduct in office of a corrupt nature for which the person may, *inter alia*, be dismissed from his/her position in state service, violated the constitutional rights of a state servant/official, *inter alia*, his/her right to the inviolability of private life, which is guaranteed in Article 22 of the Constitution, and his/her right to enter state service on equal terms, which is established in Paragraph 1 of Article 33 thereof;

– a state servant/official has the right to the due court process, which is a necessary condition for resolving a case in a fair manner; under Paragraph 1 of Article 109 of the Constitution, courts, when administering justice, must ensure the implementation of the law that is expressed in the Constitution, laws, and other legal acts, they must guarantee the supremacy of law and protect human rights and freedoms; Paragraph 1 of Article 109 of the Constitution gives rise to the duty of courts to consider cases in a fair and objective manner, and to adopt reasoned and well-founded decisions;

– the right of a public servant/official to apply to a court regarding the protection of his/her rights violated as a result of the application of official liability must be real, i.e. the person in question must have real opportunities to effectively defend under the judicial procedure his/her violated rights against, in his/her opinion, the unlawful actions of the state/municipal institutions and/or against the abuse of the powers granted to them, *inter*

alia, by applying official liability, among others, in using for the purposes of investigating misconduct in office the information secretly collected in the cases and manner by other authorised state institutions.

88.3. It has been mentioned that, under Paragraph 6 of Article 30 (wording of 5 June 2012) of the Law on State Service, decisions on the imposition of official penalties could be appealed against in accordance with the procedure established by the Law on Administrative Proceedings, while, under Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service, disputes regarding the dismissal of a state servant from office are resolved in accordance with the procedure established in the Law on Administrative Proceedings.

It has also been mentioned that, according to Paragraph 13 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003), Paragraph 13 of Article 33 and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), an official had the right to appeal against decisions on imposing an official penalty, *inter alia*, on dismissing him/her from internal service, in accordance with the procedure laid down in legal acts, i.e. to appeal to the service disputes commission or to the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings (Item 47 of the Description).

Thus, it should be held that the said provisions of the Law on State Service and of the Statute of Internal Service ensured the constitutional right of a state servant/official to apply to a court in challenging the imposition of official penalties, *inter alia*, dismissal from state (or internal) service, where these penalties could be imposed, as mentioned above, under the criteria for the imposition of official penalties for misconduct in office, as established in the impugned provisions of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), and/or by using declassified criminal intelligence information about an act with the characteristics of a corruption criminal act transferred under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence for the purposes of the investigation of misconduct in office.

88.4. In this context, it should be noted that, as mentioned above, according to the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, among others, the imperatives of justice and proportionality that arise from that principle, the constitutional right of a state servant/official to apply to a court does not deny the state duty, arising from the Constitution, to properly investigate instances of misconduct in office and to apply official liability to those state servants/officials who perform actions, *inter alia*, commit misconduct in office, as well as that of a corrupt nature, that are incompatible with the requirements arising from the Constitution for state service as a system and for persons working in state service.

It has also been mentioned that the use of declassified criminal intelligence information transmitted under Paragraph 3 of Article 19 of the Law on Criminal Intelligence in investigating misconduct in office is based on constitutionally important objectives of the protection of the public interest; such use aims to protect the interests of the state, of state service, and of all society, to ensure the transparency and publicity of state service, and to

guarantee that only such persons hold the positions of state servants (*inter alia*, statutory positions) who meet the high requirements established by law, who are loyal to the State of Lithuania, and who are of good repute.

88.5. Thus, under the Constitution, *inter alia*, Paragraph 1 of Article 30 and Article 109 thereof, and the constitutional principle of a state under the rule of law, in administering justice and adjudicating on a dispute regarding an imposed official penalty, *inter alia*, dismissal from state service, a court (judge) must, in each situation, consider cases in a fair and objective manner and adopt reasoned and well-founded decisions, i.e. fully assess the balance of interests involved in the proceedings: on the one hand, the court (judge) must assess the legitimate aim of the state to properly apply official liability to state servants/officials who have violated the constitutional requirements raised for state service, and, on the other hand, assess the lawfulness of the investigation into misconduct in office, *inter alia*, whether the pursued legitimate objectives could be reached in the particular case by other less restrictive means and whether the constitutional rights or freedoms of the person were violated during such a procedure, *inter alia*, his/her right to the protection of private life or his/her right to enter state service, among others, by using, in the manner prescribed by law, for the purpose of investigating misconduct in office committed by him/her, information about the person secretly collected by other authorised state authorities and declassified in the manner established in legal acts where the said information concerns an act with the characteristics of a corruption criminal act. In this context, it needs to be noted that, as mentioned above, under the Constitution, the court (judge) is not and cannot be merely a passive observer of the proceedings; he/she must, on a case-by-case basis, take all reasonable measures to establish the truth in the case, to reach a fair and objective decision, while ensuring the implementation of the law expressed in the Constitution, laws, and other legal acts, thus guaranteeing the supremacy of law and the protection of human rights and freedoms.

At the same time, it also needs to be noted that, under the Constitution, a state servant/official must be afforded effective protection against possible arbitrariness of state authorities in investigating his/her misconduct in office and a real opportunity to make use of the judicial protection of his/her constitutional rights and freedoms possibly violated during such investigation, *inter alia*, his/her right to the protection of private life and correspondence, which is guaranteed under Article 22 of the Constitution, and the right, enshrined in Paragraph 1 of Article 33 of the Constitution, to enter state service on equal terms, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of using as evidence, in the course of investigating misconduct in office of a corrupt nature committed by him/her, declassified criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

88.6. Taking into account the arguments set forth, it must be concluded that, after the provisions of the Law on State Service according to which decisions on the imposition of official penalties and on dismissal of a state servant from office could be appealed against in accordance with the procedure established in the Law on Administrative Proceedings (Paragraph 6 of Article 30 (wording of 5 June 2012) and Paragraph 8 (wording of 5 June 2012) of Article 44 of the Law on State Service), also the provisions of the Statute of Internal Service under which an official had the right to appeal against decisions on the imposition of an official penalty, *inter alia*, decisions on his/her dismissal from internal service in the manner prescribed in legal acts (Paragraph 13 of Article 26 (wording of 27 June 2013) of the

Statute of Internal Service, Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003), or Paragraph 13 of Article 33 and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015)), i.e. to appeal to the service disputes commission or to the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings (Item 47 of the Description), had guaranteed the constitutional right of a state servant and an official respectively to apply to a court, challenging the imposition of an official penalty against him/her, where that penalty was imposed, as mentioned above, in accordance with the criteria for imposing official penalties having used declassified criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, his/her right to the due court process was also ensured at the same time.

Thus, these provisions of the Law on State Service and of the Statute of Internal Service afforded effective protection to a state servant/official against possible arbitrariness of state authorities and real opportunities to make use of the judicial protection of his/her constitutional rights and freedoms possibly violated during an investigation into his/her misconduct in office, *inter alia*, his/her right to the protection of private life and correspondence, which is guaranteed under Article 22 of the Constitution, and the right, enshrined in Paragraph 1 of Article 33 of the Constitution, to enter state service on equal terms, when challenging, *inter alia*, the lawfulness, necessity, and proportionality of using as evidence, in the course of investigating misconduct in office of a corrupt nature committed by him/her, declassified criminal intelligence information transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

88.7. Consequently, after the above-mentioned provisions of the Law on State Service and of the Statute of Internal Service have guaranteed the right of a state servant and an official respectively to apply to a court and the right to the due court process, there are no grounds for stating that the impugned legal regulation enshrined in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which, as mentioned above, should be understood as creating an obligation for the entity that applies official liability and imposes official penalties to assess whether information submitted in the cases and manner prescribed in the Law on Criminal Intelligence could (or can) serve as a basis for launching an investigation into misconduct in office or be used in investigating such misconduct, the opportunities of a person to properly make use of effective judicial protection under Paragraph 1 of Article 30 of the Constitution were unreasonably restricted due to a possible violation of his/her constitutional rights and freedoms during an investigation of such misconduct.

88.8. It has also been mentioned that the petitioners impugn the compliance of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which provide, *inter alia*, that "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" with, *inter alia*, Paragraph 1 of Article 30 of the Constitution and the constitutional principle of a state under the rule of law, by raising the aforementioned issue of a legislative omission, i.e.

they argue that neither the impugned provisions entrenched in the Law on State Service nor those entrenched in the Statute of Internal Service established a procedure for transmitting, in the cases and manner prescribed in the Law on Criminal Intelligence, criminal intelligence information for use in investigating misconduct in office, which, according to the petitioners, should be established in those paragraphs under the Constitution, while the failure to establish it restricts a person's opportunities to properly use effective judicial protection under Paragraph 1 of Article 30 of the Constitution.

Having held in this ruling that the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence establishes the procedure for deciding on the declassification of criminal intelligence information about an act with the characteristics of a corruption criminal act and its use for the purposes of the investigation of misconduct in office and that a specific procedure for declassified criminal intelligence information that has been transmitted for the purposes of investigating misconduct in office with the characteristics of a corruption criminal act, where after its declassification it becomes public information, contrary to what the petitioners claim, did not need to be established either in the Law on State Service or in the Statute of Internal Service, it should be held that the impugned Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) did not contain the legislative omission referred to by the petitioners in this respect, either.

88.9. In the light of the foregoing arguments, it should be held that the impugned legal regulation entrenched in Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015), which, according to the petitioners, had not established a procedure for using, when investigating misconduct in office, criminal intelligence information transmitted in the cases and manner prescribed in the Law on Criminal Intelligence, did not violate the requirements arising from Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

89. Consequently, the provision "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" of Paragraph 2 (wording of 2 October 2012) of Article 29 of the Law on State Service, Paragraph 1 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, and Paragraph 1 of Article 33 of the Statute of Internal Service (wording of 25 June 2015) was not in conflict with Article 30 of the Constitution and the constitutional principle of a state under the rule of law.

XI

On some aspects related to the legal regulation relevant to this constitutional justice case

90. In the context of this constitutional justice case, it also needs to be noted that, as mentioned above, the Constitution, *inter alia*, Paragraph 1 of Article 30 and Paragraph 1 of Article 33 thereof, the constitutional concept of state service, the constitutional principle of a state under the rule of law, the constitutional imperatives of justice and reasonableness give

rise to the legislature's obligation to establish such a legal regulation whereby every person, who is being brought to legal liability, would be entitled not only to the due court process, but also to a fair legal process of the investigation of misconduct in office, i.e. whereby a state servant/official would be entitled to a fair (proper) investigation of misconduct in office.

It has also been mentioned that, according to the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature is also required to regulate the procedure for imposing official penalties, *inter alia*, the procedure of investigating misconduct in office committed by state servants/officials, in such a manner that would ensure due process, whose guarantees during the investigation of misconduct in office also include ensuring the constitutional rights of a state servant/official, *inter alia*, the right to protection of private life and correspondence, which is guaranteed under Article 22 of the Constitution, and the right to enter state service on equal terms, which is enshrined in Paragraph 1 of Article 33 thereof, and simultaneously create the preconditions for preventing unlawful actions of the state institutions and/or the abuse of the powers granted to them, *inter alia*, when they apply official liability, among others, in investigating misconduct in office of a corrupt nature where such investigation uses information secretly collected, in the cases and in accordance with the procedure established in laws, by other authorised state institutions.

90.1. In the context of this constitutional justice case, it needs to be noted that, as mentioned above, under the Constitution, the due process of the investigation of misconduct in office is when a state servant/official already during this process has real opportunities to defend himself/herself against allegations that he/she has committed misconduct in office; he/she has the right, *inter alia*, to have his/her representative, to be informed of the opening of the investigation of misconduct in office, together with the available information on the allegedly committed misconduct in office, as well as to submit his/her written explanation regarding the said misconduct in office, to participate in the on-the-spot verification of the factual data relating to the misconduct in office, and, upon the completion of the investigation of the misconduct in office, to access the reasoned conclusion regarding the investigation results and any other material used in the course of the investigation of the misconduct, including the right to have access to all declassified criminal intelligence information used in that investigation into an act with the characteristics of a corruption criminal act, where that information could (or can) be transmitted in accordance with the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence.

90.2. It has been mentioned that, under the Law on State Service and/or the above-mentioned Rules approved by the government resolution:

– an investigation into misconduct in office could be launched, *inter alia*, on the initiative of the person who recruited the state servant or upon the receipt of official information about misconduct in office committed by the state servant (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service);

– the official penalty had to be imposed within one month from the date on which the misconduct in office was discovered, but not later than six months from the date on which the misconduct was committed, except in cases where it could be imposed within three years from the date of the commission of the misconduct (Paragraph 1 of Article 30 (wording of 5 June 2012) of the Law on State Service);

– a person brought to official liability had the right to have a representative (an advocate or another legally qualified person could be such a representative) (Item 10 of the Rules), to be informed of the beginning of the investigation of misconduct in office, to be supplied with the information available on the misconduct (Item 7 of the Rules), as well as to submit his/her written explanation regarding the misconduct in office (Item 8 of the Rules), to participate in the on-the-spot verification of factual data relating to the misconduct and, after the investigation of the misconduct has been completed, to access the reasoned conclusion regarding the investigation results and other material used in the course of the investigation of the misconduct (Item 9 of the Rules); thus, after the investigation of the misconduct has been completed, he/she had the right to access all the declassified criminal intelligence information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, used in the course of the investigation of the misconduct in office.

It has also been mentioned that Paragraph 6 of Article 30 (wording of 5 June 2012) and Paragraph 8 of Article 44 (wording of 5 June 2012) of the Law on State Service established that a person recognised guilty of committing misconduct in office, *inter alia*, gross misconduct in office, and/or punished by an official penalty, *inter alia*, dismissal from the respective position in state service, had the right to file an appeal against such a decision with the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings.

However, neither those nor any other provisions of the Law on State Service stipulated that a public servant suspected of committing misconduct in office and brought to official liability under the same law has the right, *inter alia*, to participate in the on-the-spot verification of factual data relating to the misconduct, to have a representative, to provide explanations, as well as to access the reasoned conclusion regarding the investigation results and other material used in the course of the investigation of the misconduct. The listed safeguards for a person suspected of having committed misconduct in office were only consolidated in the mentioned Rules.

Thus, although, under the overall legal regulation, the rights of a state servant who was being brought to official liability were guaranteed during the procedure for the investigation of misconduct in office, however, these rights were not (and are not) established in a law. In this context, it needs to be noted that, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature should take appropriate measures to consolidate in a law the essential guarantees of the protection of human rights and freedoms in the process of investigating misconduct in office.

90.3. It has also been mentioned that, according to the Statute of Internal Service and/or the aforementioned Description approved by order of the Minister of the Interior:

– an official investigation could be carried out upon the receipt of information on alleged misconduct in office by an official (Paragraph 7 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 7 of Article 33 of the Statute of Internal Service (wording of 25 June 2015));

– an official penalty had to be imposed within 30 days from the discovery of the misconduct in office, but not later than one year from the date on which the misconduct was committed, except in cases where it could be imposed within three years from the date of the commission of the misconduct (Paragraph 4 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 4 of Article 33 of the Statute of Internal Service (wording of 25 June 2015));

– the official against whom an official investigation was started had the right to an advocate or another authorised representative (Item 22.3 of the Description), to be informed of an opened official investigation and to receive all available data on misconduct in office allegedly committed by him/her (Items 9 and 23 of the Description), to submit explanations, requests, or evidence (Items 9, 22.1, and 24 of the Description); upon the completion of an official investigation, he/she had the right to access the conclusion of the official investigation and all the material collected and used during the investigation, as well as to receive a copy thereof (Item 22.2 of the Description); thus, he/she, among other things, had the right to full access to all the declassified criminal intelligence information, transmitted under the impugned Paragraph 3 of Article 19 of the Law on Criminal Intelligence, used in the course of the official investigation.

It has also been mentioned that, according to Paragraph 13 of Article 26 (wording of 27 June 2013) of the Statute of Internal Service, Paragraph 3 of Article 53 of the Statute of Internal Service (wording of 29 April 2003), Paragraph 13 of Article 33 and Paragraph 4 of Article 62 of the Statute of Internal Service (wording of 25 June 2015), the official had the right to appeal against decisions on imposing an official penalty, *inter alia*, on dismissing him/her from internal service, in accordance with the procedure laid down in legal acts, i.e. to appeal to the service disputes commission or to the administrative court in accordance with the procedure laid down in the Law on Administrative Proceedings (Item 47 of the Description).

However, neither those nor other provisions of the Statute of Internal Service stipulated that an official suspected of committing misconduct in office and brought to official liability under the Statute of Internal Service had the right, *inter alia*, to have a representative, to receive all available information on misconduct in office allegedly committed by him/her, to submit explanations, as well as to access the conclusion of the official investigation and all the material collected and used during the investigation, as well as to receive a copy thereof. The guarantees listed for the person suspected of having committed misconduct in office are contained only in the said Description.

Thus, although, under the overall legal regulation, the rights of an official brought to official liability were guaranteed during the procedure for the investigation of misconduct in office, however, those rights were not (and are not) established in a law. In this context, it needs to be noted that, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the

constitutional principle of a state under the rule of law, the legislature should take appropriate measures to consolidate in a law the essential guarantees of the protection of human rights and freedoms in the process of investigating misconduct in office.

90.4. To sum up, it should be noted that the above-mentioned legal regulation established in the Law on State Service and the Statute of Internal Service, if interpreted in a systemic manner together with the respective provisions of the Rules approved by the government resolution and of the Description approved by the order of the Minister of the Interior, ensured the right of a state servant/official to the due process of an investigation of his/her misconduct in office by simultaneously ensuring the protection of his/her constitutional rights and freedoms during this process.

At the same time, it needs to be noted that, as mentioned above, under the Constitution, *inter alia*, Paragraph 1 of Article 33 thereof, and the constitutional principle of a state under the rule of law, the legislature should also take appropriate measures to consolidate in a law (i.e. in the Law on State Service and the Statute of Internal Service respectively) the essential guarantees of the protection of human rights and freedoms in the process of investigating misconduct in office.

91. In the context of this constitutional justice case, it should be noted that, as mentioned above, the presumption of innocence, which is guaranteed in Paragraph 1 of Article 31 of the Constitution, is a fundamental principle of the administration of justice in criminal proceedings and one of the most important safeguards of human rights and freedoms; however, this provision of Paragraph 1 of Article 31 of the Constitution must be seen in the context of other provisions of the Constitution; therefore, it has a broader content and cannot be confined to criminal legal relationships; the presumption of innocence is inseparably linked to respect for and the protection of other constitutional human rights and freedoms, as well as of acquired rights.

91.1. Thus, it should be noted that the presumption of innocence of a person must also be ensured by transmitting for use and/or using (for the purposes of investigating misconduct in office of the mentioned nature) criminal investigation information about an act with the characteristics of a corruption criminal act collected by authorised state institutions in the cases and manner prescribed by law; in this context, it should also be noted that the mere fact of transferring the said information cannot serve as a basis, in the absence of a proper and thorough investigation of the alleged misconduct in office, for considering the state servant/official to have committed the misconduct in office. Such transferred information, as mentioned above, either may serve as a basis for launching an investigation into a particular instance of misconduct in office or may be used for investigating such misconduct, i.e. in order to establish (prove) the fact of the misconduct in office and the circumstances in which it was committed.

91.2. In addition, the relevant state institutions, *inter alia*, entities authorised to carry out an investigation into misconduct in office and apply official penalties, having received the said information, must take all possible measures to protect the rights and legitimate interests of a person with respect to whom the information transferred for the purpose of investigating his/her misconduct in office was collected by criminal intelligence entities and must also ensure the protection of such declassified transmitted criminal intelligence information

against, *inter alia*, its unreasonable distribution (dissemination) and guarantee the use of such information only for the specific purpose set in the Law on Criminal Intelligence, namely for the investigation of misconduct in office with the characteristics of a corruption criminal act.

92. It should also be noted in the context of this constitutional justice case that Regulation (EU) 2016/679 was adopted in order to strengthen the right of individuals to protection of their personal data in the European Union and to ensure a uniform and high level of protection of natural persons with regard to the processing of their personal data. This is a directly applicable legal act of the European Union, which in Lithuania, as in other Member States of the European Union, started to apply on 25 May 2018.

It has also been mentioned that Regulation (EU) 2016/679, as provided for in Article 2(2)(d) thereof, does not apply to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Recital 19 of Regulation (EU) 2016/679 states that the protection of natural persons when processing personal data for those purposes and the free movement of such data are governed by Directive (EU) 2016/680.

It has also been mentioned that Directive (EU) 2016/680 is implemented by the Law on the Legal Protection of Personal Data Processed for the Purposes of the Prevention, Investigation, Detection, or Prosecution of Criminal Offences, or the Execution of Criminal Penalties, or for the Purposes of National Security or Defence (wording of 30 June 2018), which, as provided for in Paragraph 2 of Article 1 thereof, applies to the processing of personal data by the competent authorities of the Republic of Lithuania when personal data are processed for the purposes of the prevention, investigation, or detection of criminal offences, or for prosecution of criminal offences or the execution of penalties, as well as for the purposes of national security or defence, to the extent not otherwise provided in other laws.

In this context, attention should be drawn to the fact that the Constitutional Court has held on more than one occasion that full participation by the Republic of Lithuania, as a Member State, in the EU is a constitutional imperative based on the expression of the sovereign will of the People; full membership by the Republic of Lithuania in the EU is a constitutional value (the Constitutional Court's ruling of 24 January 2014, its decision of 16 May 2016, and its ruling of 14 December 2018); the constitutional imperative of full participation by the Republic of Lithuania in the EU also implies the constitutional obligation of the Republic of Lithuania to properly implement the requirements of EU law (the Constitutional Court's decision of 20 December 2017 and its rulings of 14 December 2018 and 11 January 2019).

Thus, in the context of the constitutional justice case at issue, in view of the requirements set out in the EU legislation for the collection, use, processing, or storage of personal data, it should be noted that authorised state institutions, *inter alia*, criminal intelligence entities, when collecting criminal intelligence information in the cases and according to the procedure established in the Law on Criminal Intelligence, when using this information, *inter alia*, under the impugned Paragraph 3 of Article 19 of the same law, as well as the relevant state institutions to which this information has been transferred, *inter alia*, for the purposes of the investigation of misconduct in office of a corrupt nature, must take all

possible measures to ensure the human rights standards laid down in the aforementioned EU legislation in the field of personal data protection and/or the legislation of the Republic of Lithuania implementing that EU legislation.

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

ruling:

1. To recognise that the provision "Criminal intelligence information about an act with the characteristics of a corruption criminal act may, with the consent of the prosecutor, be declassified by decision of the head of the principal criminal intelligence institution and be used in an investigation into [...] misconduct in office" of Paragraph 3 of Article 19 of the Republic of Lithuania's Law on Criminal Intelligence (Official Gazette *Valstybės žinios*, 2012, No 122-6093) is not in conflict with the Constitution of the Republic of Lithuania.

2. To recognise that the provision "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" of Paragraph 2 (wording of 2 October 2012; Official Gazette *Valstybės žinios*, 2012, No 122-6123) of Article 29 of the Republic of Lithuania's Law on State Service was not in conflict with the Constitution of the Republic of Lithuania.

3. To recognise that the provision "An official penalty shall be imposed taking into account the information provided in the cases and according to the procedure referred to in [...] the Law on Criminal Intelligence [...]" of Paragraph 1 of Article 26 (wording of 27 June 2013; Official Gazette *Valstybės žinios*, 2013, No 75-3761) of the Statute of Internal Service of the Republic of Lithuania and of Paragraph 1 of Article 33 of the Statute of Internal Service of the Republic of Lithuania (wording of 25 June 2015; Register of Legal Acts, 2015, No 2015-10814) was not in conflict with the Constitution of the Republic of Lithuania.

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

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