

On the right to social housing

Case No. 7/2013

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 STATE ASSISTANCE FOR THE ACQUISITION OR RENT OF RESIDENTIAL PROPERTIES AND FOR THE RENOVATION (MODERNISATION) OF BLOCS OF FLATS AND THE PROVISIONS OF THE RESOLUTION OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA (NO. 670) "ON THE ESTABLISHMENT OF THE SIZES OF ANNUAL INCOME AND PROPERTY ACCORDING TO WHICH THE RIGHT TO MUNICIPAL SOCIAL HOUSING OR TO THE IMPROVEMENT OF THE EXISTING SOCIAL HOUSING CONDITIONS IS ESTABLISHED" OF 28 MAY 2003 WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

26 May 2015, No. KT16-N10/2015
Vilnius

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

The court reporter—Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1 and 53¹ of the Law on the Constitutional Court of the Republic of Lithuania, at the Court's hearing, on 30 April 2015, considered, under written procedure, constitutional justice case No. 7/2013 subsequent to the petition (No. 1B-12/2013) of the Klaipėda City Local Court, the petitioner, requesting an investigation into whether:

– the provision “the right to municipal social housing shall be enjoyed by the families and persons specified in Article 1 of this Law, whose property declared under procedure established in the Law on the Declaration of Property of Residents or income received within one year (over the last 12 months) are, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing, lower than the income and property the maximum sizes whereof are established by the Government” of Paragraph 1 (wording of 12 October 2010) of Article 8 of the Republic of Lithuania's Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats, as well as the compliance of the provision “the lease agreement must also contain the stipulation that provided that the declared property possessed or income received by the tenant (his/her family) exceed the sizes determined on the grounds of Paragraph 1 of Article 8 of the Law, the lease agreement is terminated under procedure established in the lease agreement” of Paragraph 4 of Article 11 (wording of 12 October 2010) of the same law, insofar as the said provisions provide that the property held in the possession of families or individuals entitled to social housing and the income received by them are established without paying any regard to their needs, individual character, and other significant circumstances, are in conflict with Article 52 of the Constitution of the Republic of Lithuania and the constitutional principles of justice, reasonableness, proportionality, and the protection of legitimate expectations;

– Item 2.1 (wording of 17 February 2011) of the Resolution of the Government of the Republic of Lithuania (No. 670) “On the Establishment of the Sizes of Annual Income and Property According to Which the Right to Municipal Social Housing or to the Improvement of the Existing Social Housing Conditions Is Established” of 28 May 2003 is not in conflict with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution of the Republic of Lithuania.

The Constitutional Court

has established:

I

The Klaipėda City Local Court, the petitioner, was investigating a civil case subsequent to the lawsuit filed by the Klaipėda City Municipality against A. J. regarding the eviction of the latter from the dwelling premises belonging to the municipality and subsequent to the counterclaim of the respondent on the obligation to conclude a social housing lease agreement.

In 2011, a social housing lease agreement was concluded with the respondent. In 2012, when filing a request to renew the term of leasing the dwelling premises of available social housing, the claimant also submitted the annual declaration of a resident (family) regarding property and income. The annual income of the respondent as specified in the said declaration exceeded by two thousand litas the limit of the 13,200 litas net income for an individual person pointed out in Item 2.1.1 of the Government Resolution (No. 670) “On the Establishment of the Sizes of Annual Income and Property According to Which the Right to Municipal Social Housing or to the Improvement of the Existing Social Housing Conditions Is Established” of 28 May 2003 (hereinafter also referred to as government resolution No. 670 of 28 May 2003), therefore, under Paragraph 4 of Article 11 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats (hereinafter also referred to as the Law), the respondent lost the right to renew the term of leasing the dwelling premises of available municipal social housing and, upon the expiry of the lease agreement, was supposed to leave the rental property. After the respondent had refused to do so, the Klaipėda City Municipality applied to a court, requesting her eviction from the rental property without granting her any access to other dwelling premises. The respondent A. J. disagreed with the claim and requested the court not to grant it. She also filed a counterclaim requesting the court to obligate the municipality to conclude a social housing lease agreement with her. She pointed out that she had nowhere to live and, if evicted from the said rental property, due to her disability (established 10 percent capacity of work) and state of health, she would not be able to obtain access to any other housing meeting her health needs.

By its ruling, the Klaipėda City Local Court, the petitioner, suspended the consideration of the civil case and applied to the Constitutional Court.

II

The petition of the Klaipėda City Local Court, the petitioner, is substantiated by the following arguments.

1. While invoking the official constitutional doctrine, the petitioner noted that, under the Constitution, it is not allowed to established any such legal regulation by which a person, in implementing a certain constitutional right, would lose an opportunity to implement another constitutional right. The disability pension, the pension of widow(er)s and orphans, and the compensation for transport expenses received by the respondent (in the civil case considered by the petitioner) lead to the fact that she lost her right to social assistance, since, under the impugned provisions of the Law, when the income of a person reaches a certain size established in government resolution No. 670 of 28 May 2003 (the income of the respondent reached this size due to the benefits paid to her), the right to rent a social housing property is lost. Thus, in implementing a certain constitutional right, the respondent lost an opportunity to implement another constitutional right. In addition, in deciding on whether social assistance (leasing a social housing property) should be rendered to a person, no account is taken of the type of the income that a person receives, the individual properties (state) of the person, his/her needs, as well as other important circumstances, and there is no opportunity to decide, while invoking these criteria, that social assistance (leasing a social housing property) should be rendered, while this could be in conflict with the provision of Article 52 of the Constitution guaranteeing the right to social maintenance, as well as with the constitutional principles of justice, reasonableness, proportionality, and the protection of legitimate expectations.
2. According to the official constitutional doctrine disclosing the content of Article 52 of the Constitution, the persons to whom social assistance is granted, the grounds, conditions, and sizes of granting and

paying social assistance may be defined only by law. While invoking the impugned Law, by its resolution No. 670 of 28 May 2003, the Government established the sizes of income and property in the presence of which persons are rendered social assistance (leasing a social housing property). Consequently, upon the instruction given to it by the legislature, the Government established, by means of a substatutory act, a circle of persons entitled to seek state assistance for the acquisition or rent of a residential property, thus, it regulated the relations which, under the Constitution, must be regulated only by means of a law.

III

1. In the course of the preparation of the case for the Constitutional Court's hearing, written explanations were received from Algimantas Dumbrava, the member of the Seimas acting as the representative of the Seimas of the Republic of Lithuania, the party concerned, in which it is maintained that the impugned legal regulation is not in conflict with the Constitution. The position of A. Dumbrava is substantiated by the following arguments.

According to the Law, social housing is designated for accommodating persons and families with low income. Thus, the Law consolidates the main criterion—low income—following which the Government approves the maximum sizes of property held or income received by the respective persons or families. In view of the fact that the purpose of social housing is to provide persons and families receiving low income with dwelling premises, it is possible to suppose that the persons and families with the same low income should not be treated differently only on the grounds that the types of income received by them are different.

Assessing the petitioner's statements that the respective person, in implementing his/her certain constitutional right, loses an opportunity to implement his/her another constitutional right, the representative of the party concerned notes that it is wrong to assert that the person loses an opportunity to implement his/her another constitutional right, but rather s/he no longer meets the conditions for implementing this right—the size of the income received by the person exceeds the established sizes, i.e., on the grounds of the size of income received by the person, s/he is no longer regarded as a person who must be provided with social housing. A person may no longer reasonably expect that the rights acquired by him/her under valid laws or other legal acts that are not in conflict with the Constitution will be retained perpetually if at the time of the acquisition of the respective rights the grounds for the termination of such rights (improvement in the financial situation of the person) were provided for.

2. In the course of the preparation of the case for the Constitutional Court's hearing, written explanations were received from the representatives of the Government, the party concerned, who were Monika Kriaučiūnaitė (during the consideration of this constitutional justice case—Monika Mikelaitė), the chief specialist of the Law Division of the Ministry of Social Security and Labour of the Republic of Lithuania, Aloyzas Stapulionis, the Head of the Social Lodgement Division of the Social Inclusion Department of the same ministry, Ramūnas Šveikauskas, the Head of the Housing Division of the Construction and Housing Department of the Ministry of Environment of the Republic of Lithuania, and Eglė Izokaitytė, the then chief specialist of the Law Application Division of the Law and Personnel Department of the same ministry, who maintain that the impugned legal regulation is not in conflict with Constitution.

In the course of the preparation of the case, a letter was received from the representatives of the Government, the party concerned, who were Reda Skirkevičiūtė, the Head of Law Application Division of the Law and Personnel Department of the Ministry of Environment, and Eglė Leonavičiūtė, the chief specialist of the same department, consenting to the written explanations of M. Kriaučiūnaitė, A. Stapulionis, R. Šveikauskas, the representatives of the Government, the party concerned, as well as those of E. Izokaitytė, a former representative of the Government, the party concerned.

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

2.1. The fact that the right to social housing is granted only to the persons whose income or property does not exceed the maximum sizes of income and property is justified by the nature and purpose of the right to social housing, as well as by the financial possibilities of the state.

The petitioner's statement that, according to the impugned legal regulation, the respective person, in implementing his/her constitutional right to pensionary maintenance, loses an opportunity to implement the constitutional right to social assistance is groundless, since the right to social housing is lost only because the person no longer meets the requirements established by law so that s/he could receive this assistance (the income received by the person exceeds the established maximum amounts), in other words, the fact that the person implements his/her constitutional right to pensionary maintenance does not preclude the implementation of the right to social housing if the person meets the general conditions for the right to social housing.

2.2. The petitioner's arguments that, in deciding whether the respective person still has the right to social housing, no heed is paid to the type of income received by that person, the individual properties (state) of the person, the needs of his/her family, or other circumstances, are groundless since the impugned law divides the persons eligible to social housing into six groups (young families; families raising three or more children (adopted children); former orphans or former persons who lost the care of their parents; disabled persons and families with disabled family members; general list; tenants of social housing properties entitled to the improvement of the conditions of housing). Should a certain group of persons be singled out without any grounds, such a group would become a privileged one in comparison with other persons.

2.3. The maximum income sizes related to the right to social housing are laid down in government resolution No. 670 of 28 May 2003. Under the said resolution, the net annual income of single persons residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, and Neringa, as well as in the municipalities of the districts of Vilnius, Kaunas, and Klaipėda, could not exceed 13,200 litas, i.e. 1,100 litas per month. According to the data of the Statistics Lithuania, in 2012, the poverty risk threshold was a person's income of 749 litas per month. In 2012, 18.6 percent of the residents of Lithuania lived below the poverty level, while the depth of poverty risk, which shows how much on average the income of the poor is below the poverty risk threshold, was 22.6 percent in 2012. The average disposable income in cash and in kind for one household in Lithuania was 1,016 litas per month in 2011 (in counties, this number was different, e.g., in 2011, in the Vilnius County, this income was 1,136 litas, in the Kaunas County—1,085 litas, in the Klaipėda County—1,056 litas, etc.). Thus, the established maximum sizes applicable to the right to social housing essentially corresponded to the average disposable monthly income for an individual member of a household and even slightly exceeded such income; such sizes exceeded the minimum monthly salary, which was 1,000 litas. Thus, on the grounds of these statistical data, it is possible to assume that the requirement that 13,200 litas must not be exceeded was established reasonably in view of the financial capabilities of the state.

2.4. According to the data submitted by the Statistics Lithuania, in 2012, in Lithuania, there were 69,330 persons (from among them—8,061 disabled persons and families with disabled family members) entitled to social housing. In 2012, 31,584 persons were entered on the lists of the persons (families) entitled to social housing, i.e., by 1,100 persons (families) more if compared with 2011. Due to the limited possibilities of the State Budget, the expansion of social housing cannot meet the demand and the persons (families) with low income may be given an opportunity to rent a municipal social housing property only within 20–30 years from the moment of filing a request to rent such a property. The number of persons (families) lacking access to housing and not receiving assistance has been increasing by three percent every year since 2008, thus, due to any increase of the permissible sizes of property or income laid down by the Government in order to establish the right to social housing, where such increase is incompatible with the financial possibilities of the State Budget, the circle of persons (families) entitled to rent a social housing property would be enlarged even more and the time period until getting the real opportunity to rent a social housing property would become longer.

In 2012, there were 2,465 persons (families) were on the lists of the Klaipėda City Municipality for renting social housing properties. From among the said persons (families), there were 663 young families, 317 orphans and persons who lost the care of their parents, 414 disabled persons (families), 926 persons entered on the general list, 14 tenants of social housing properties entitled to the improvement of the conditions of housing, and 122 families raising three or more children (adopted children). In 2012, from among the persons (families) entered on the said lists, social housing properties were leased to 37 persons (families) (respectively, in 2011—to 31 persons (families), in 2010—to 30 persons (families), and in 2009—to 20 persons (families)) who met the criteria according to the groups as established in the Law.

2.5. The impugned legal regulation is in compliance with the provision that social assistance rendered to a person should not create any preconditions for a person not to seek to receive a higher income, or not to make efforts to search for possibilities of ensuring the living conditions that are in line with human dignity, both to oneself and to

one's family by means of one's own effort. The impugned legal regulation motivates persons to take care of their own welfare. It is possible to assume that heed is also paid to needs of persons in applying other state assistance measures, including the assistance rendered without taking into consideration the property or income received by persons, as well as the assistance rendered to needy residents upon assessing their property and income.

2.6. It is not allowed to establish, by means of substatory regulation governing the relations of the social security and social assistance specified Article 52 of the Constitution, the conditions for the emergence of the right of persons to social assistance and, by means of the same regulation, to limit the scope of this right, however, it is allowed to establish, by means of substatory legal acts (thus, by way of government resolutions as well), the procedure for implementing the laws regulating such relations. Substatory legal acts may establish both the respective procedures and the law-based legal regulation objectively determined by the necessity in law-making to draw on special knowledge or special (professional) competence in a certain sphere.

Government resolution No. 670 of 28 May 2003 concretised the provision established in the Law that the right to social housing arises when the property or income of a person (family) does not exceed the permissible maximum limits and this person (family) does not possess by right of ownership any residential property in Lithuania (or his/her residential property does not exceed its floor area sizes as specified in the Law). The impugned government resolution consolidates concrete sizes of property and income (differentiated according to the number of persons in a family and according to municipalities) and the procedure of the revision thereof. It is possible to assume that the consolidation of this legal regulation in a substatory legal act could also be explained by the fact that the income sizes with which the right to social housing is related depend on changes in the economic situation of the state and individual groups of residents, therefore, they have to be revised all the time and, if necessary, corrected.

The Constitutional Court

holds that:

I

1. The Klaipėda City Local Court, the petitioner, requests an investigation into whether, to the specified extent, the provisions of Paragraph 1 (wording of 12 October 2010) of Article 8 and Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law are not in conflict with, *inter alia*, the constitutional principles of justice, reasonableness, proportionality, and the protection of legitimate expectations.

The Constitutional Court has held that the constitutional principle of justice is an inseparable element of the content of the constitutional principle of a state under the rule of law (*inter alia*, the Constitutional Court's rulings of 25 September 2012, 24 October 2012, and 30 April 2013), and that the constitutional principle of a state under the rule of law includes the obligation to pay heed to legitimate expectations, to ensure their protection, and not to violate the requirements of proportionality, reasonableness, or justice (the Constitutional Court's ruling of 14 March 2006).

Therefore, the petitioner's petition requesting an investigation into the compliance of the impugned legal regulation with the constitutional principles of justice, reasonableness, proportionality, and the protection of legitimate expectations should be treated as a petition requesting an investigation into the compliance of the impugned legal regulation with the constitutional principle of a state under the rule of law.

2. Thus, the petition of the petitioner should be regarded as the petition requesting an investigation into:

– the compliance of the provision “the right to municipal social housing shall be enjoyed by the families and persons specified in Article 1 of this Law, whose property declared under procedure established in the Law on the Declaration of Property of Residents or income received within one year (over the last 12 months) are, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing, lower than the income and property the maximum sizes whereof are established by the Government” of Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, as well as the compliance of the provision “the lease agreement must also contain the stipulation that provided that the declared property possessed or income received by the tenant (his/her family) exceed the sizes determined on

the grounds of Paragraph 1 of Article 8 of the Law, the lease agreement is terminated under procedure established in the lease agreement” of Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, insofar as the said provisions provide that the property held in the possession of families or individuals entitled to social housing and the income received by them are established without paying any regard to their needs, individual character, and other significant circumstances, with Article 52 of the Constitution and the constitutional principle of a state under the rule of law;

– the compliance of Item 2.1 (wordings of 8 October 2008 and 17 February 2011) of government resolution No. 670 of 28 May 2003 with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution.

II

1. On 7 April 1992, the Supreme Council-Reconstituent Seimas of the Republic of Lithuania adopted the Republic of Lithuania’s Law on the Guidelines for Residents Related to Obtaining Dwelling Premises which, under Item 1 of the Resolution of the Supreme Council-Reconstituent Seimas “On the Entry Into Force of the Law on the Guidelines for Residents Related to Obtaining Dwelling Premises” of 9 April 1992, came into force on 1 June 1992.

This law has been amended and/or supplemented on more than one occasion; the title thereof has also been amended more than once, *inter alia*, by Article 1 of the Republic of Lithuania’s Law Amending and Supplementing the Title, Articles 1 and 2, and the Fifth Chapter of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Modernisation of Blocs of Flats that was adopted by the Seimas on 17 July 2009, by which the said law was named as the Republic of Lithuania’s Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats.

Article 1 “The Purpose and Application of This Law” of the Law prescribed:

– “This Law shall establish the conditions and procedure for rendering state assistance to natural persons and families with a permanent place of residence in the Republic of Lithuania for purchasing, building (restructuring) (hereinafter—acquiring) or renting residential properties, and shall establish the conditions and procedure for leasing municipal social housing properties. In addition, this Law shall establish the conditions and procedure for rendering state assistance to owners of flats and other premises, to municipalities and holders (administrators) of objects of common use for the renovation (modernisation) of blocks of flats” (Paragraph 1 (wording of 12 October 2010));

– “The state assistance for purchasing or renting a residential property shall also be rendered, under this Law, to persons who have obtained full civil legal capacity. A family shall be represented by one of the spouses (parents) or a person authorised by them” (Paragraph 2 (wording of 29 September 2008).

According to Paragraph 7 of Article 2 of the Law (wording of 12 November 2002), social housing is dwelling premises that are leased by municipalities on a non-commercial basis and under the government-established procedure for calculating the rental payment and which are meant for accommodating persons and families with low income under the conditions established in this Law.

2. Paragraph 1 (wording of 12 October 2010) of Article 8 “The Right to Municipal Social Housing or to the Improvement Thereof” of the Law, which is impugned in the constitutional justice case at issue, prescribed:

“The right to municipal social housing shall be enjoyed by the families and persons specified in Article 1 of this Law, whose property declared under procedure established in the Law on the Declaration of Property of Residents or income received within one year (over the last 12 months) are, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing, lower than the income and property the maximum sizes whereof are established by the Government, provided that they do not possess a residential property by right of ownership in the territory of the Republic of Lithuania or the usable floor area of the possessed residential property is less than 10 square metres for one family member, or is less than 14 square metres for one family member if there is a family member with respect to whom, under procedure laid down in the Law on the Social Integration of the Disabled, severe or

average disability is established or who is regarded as incapable of work (with 75–100 percent of lost capacity of work) or as partially capable of work (with 60–70 percent of capacity of work), or who has reached the pensionable age and with respect to whom the necessity of meeting special needs is established, or a family member with a severe chronic illness entered on the list approved by the Government or an institution authorised by it.”

Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, if construed in the light of the legal regulation laid down in Article 1 (wording of 12 October 2010) of the Law, established the conditions for families or persons with a permanent place of residence in the Republic of Lithuania for the acquisition of the right to municipal social housing: 1) the property held by families or persons, or income received by them within one year did not exceed the established maximum sizes; 2) families or persons did not possess by right of ownership any residential property in the territory of the Republic of Lithuania, or the usable floor area of the possessed residential property for one person did not exceed the size established in the Law.

Under the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, the Government had to establish the maximum sizes of property or income which could not be exceeded by the property possessed or income received by families, or persons seeking municipal social housing.

3. Article 11 (Paragraph 4 whereof is impugned in the constitutional justice case at issue) titled “The Procedure and Conditions for Leasing Social Housing Properties” (wording of 12 October 2010) of the Law prescribed:

“1. Families and persons entitled to municipal social housing or to improving the conditions of such housing under Article 8 of the Law, upon filing a written request, are registered at the municipal executive institution according to the place of residence of the persons (in cases of families—according to the place of residence of one of the spouses) declared under procedure established by means of laws, whereas in case they have no place of residence they are registered according to the municipality where they live. The documents proving the right to social housing or to improving social housing conditions are attached to the request. The procedure for the registration is established by the municipal executive institution.

2. The lists of the families and persons entitled to social housing are drawn up according to the date of the registration of the request at the municipal executive institution. The following individual lists are drawn up:

- 1) the list of young families;
- 2) the list of families raising three or more children (adopted children);
- 3) the list of former orphans or former persons who lost the care of their parents. Former orphans or former persons who lost the care of their parents (or their families) who, upon the expiry of the term of their care or deprivation of liberty are not older than 35, are entered on this list.
- 4) the list of disabled persons and families with disabled family members. This list includes the persons with respect to whom, under procedure laid down in the Law on the Social Integration of the Disabled, severe or average disability is established or who are regarded as incapable of work (with 75–100 percent of lost capacity of work) or as partially capable of work (with 60–70 percent of capacity of work), or who have reached the pensionable age and with respect to whom the necessity of meeting special needs is established. This list also includes the families with a family member with respect to whom, under procedure laid down in the Law on the Social Integration of the Disabled, severe or average disability is established or who is regarded as incapable of work (with 75–100 percent of lost capacity of work) or as partially capable of work (with 60–70 percent of capacity of work), or who has reached the pensionable age and with respect of whom the necessity of meeting special needs is established, also the persons with severe chronic illnesses entered on the list approved by the Government or an institution authorised by it as well as the families with family members with such illnesses;
- 5) the general list. This list includes all the families and persons not entered on the lists specified in Items 1, 2, 3, and 4;

6) the list of tenants of social housing properties entitled to the improvement of the conditions of housing.

3. Municipal social housing properties are leased according to the succession subsequent to the lists specified in Paragraph 2 of this Article with the exception of the situations pointed out in Paragraph 6 of this Article. If a family or a person entered on a list for renting municipal social housing properties acquire the right to be entered on another list, provided that the family or the person wishes so, they may be moved to the other respective list by including the years of being on the former list. The importance of the lists are determined by the municipal council by giving priority to the list of former orphans or former persons who lost the care of their parents. The decision to lease social housing properties is adopted by the municipal executive institution. Dwelling premises lease agreements with tenants of municipal social housing properties are concluded by invoking the Civil Code. By the agreement of the parties, a lease agreement may provide for the conditions for moving the tenant to a residential property of smaller floor area. If either a family or a person acquire a residential property by right of ownership, the social housing property lease agreement is terminated under procedure established in the lease agreement.
4. A social housing property lease agreement must contain the stipulation that, once in every three years, the tenant of a social housing property must declare the property possessed and income received by him/her within one year (last 12 months) in accordance with the procedure established by the Law on the Declaration of the Property of Residents. The lease agreement must also contain the stipulation that provided that the declared property possessed or income received by the tenant (his/her family) exceeds the sizes determined on the grounds of Paragraph 1 of Article 8 of the Law, the lease agreement is terminated under procedure established in the lease agreement. The data about the declared possessed property and received income within a month from the term specified in this paragraph are submitted to the municipal executive institution.
5. A social housing property lease agreement is not terminated if the income received by the tenant (his/her family) within one year (last 12 months) does not exceed by more than five percent the sizes of property or income established by the Government on the grounds of the conditions specified in Paragraph 1 of Article 8 of the Law and if the tenant or a member of his/her family, at the time of submitting data to the municipal executive institution about the held property and received income as established in Paragraph 4 of this Article is registered at the territorial labour exchange as unemployed, or if the tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled.
6. Municipal dwelling premises are also leased under procedure established by the municipal council to families or persons not entered on the lists specified in Paragraph 2 of this Article, where such families or persons lost their residential property due to fire, flood, strong winds or other circumstances beyond one's control, and who, in the territory of the Republic of Lithuania, do not possess by right of ownership any other residential property adequate for living in, also to families raising five or more children and to single persons with moving disability. Under procedure established by the municipal council, the information about dwelling premises leased in cases specified in this Paragraph is published on the website of the respective municipality."

Thus, *inter alia*, certain conditions for municipal social housing property lease agreements were established in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law: 1) the duty of tenants of social housing properties to declare, once in every three years, the property possessed and income received by them within one year (last 12 months); 2) the situation where the declared property held or income received by the tenant (his/her family) exceeds the maximum sizes of property or income as established by the Government is deemed a condition for terminating a social housing property lease agreement.

Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law laid down an exception to the condition, specified in Paragraph 4 of this Article, for terminating a social housing property lease agreement—the declared property held or income received by the tenant (his/her family) exceeds the maximum sizes of property or income as established by the Government. Under the legal regulation laid down in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement is not terminated under the following conditions: 1) the income received by the tenant (his/her family) within one year (last 12 months) does not exceed by more than five percent the sizes of property or income established by the Government; 2) either a tenant or a

member of his/her family is registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled.

According to the exception to the condition of terminating a social housing property lease agreement as established in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, in a situation where either a tenant or a member of his/her family was registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family was deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled, the social housing property lease agreement had to be terminated if the income received by the tenant (his/her family) within one year (last 12 months) exceeded by more than five percent the sizes of property or income established by the Government. In all other cases, under the legal regulation laid down in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement had to be terminated if the income received by the tenant (his/her family) within one year (last 12 months) exceeded the maximum sizes of property or income established by the Government.

It should be noted that, under Paragraph 2 of Article 11 (wording of 12 October 2010) of the Law, individual lists of families and persons entitled to social housing used to be drawn up with respect to young families, families raising three or more children (adopted children), former orphans or former persons who lost the care of their parents, disabled persons (and families with disabled family members), tenants of social housing properties entitled to the improvement of the conditions of housing, and all other persons meeting the conditions for acquiring the right of families and persons to municipal social housing as established in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law.

4. On 17 July 2014, the Seimas adopted the Republic of Lithuania's Law Amending the Law (No. I-2455) on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats by which the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats was amended and set forth in its new wording. This law was named as the Republic of Lithuania's Law on State Assistance for the Renovation (Modernisation) of Blocs of Flats and it came into force on 1 January 2015 (save the exception specified therein). This law does not regulate the relations of state assistance for the acquisition or rent of a residential property.
5. On 9 October 2014, the Seimas adopted the Republic of Lithuania's Law on Assistance for the Acquisition or Rent of Residential Properties that came into force on 1 January 2015 (save the exception specified therein).

5.1. Paragraph 1 of Article 9 "The Right to Rent a Social Housing Property" of the Law on Assistance for the Acquisition or Rent of Residential Properties prescribes:

"The persons and families who meet all the requirements specified in this Article shall have the right to rent a social housing property. Such requirements are as follows:

- 1) the data about the place of residence of such persons and families in the Republic of Lithuania, and in case they have no place of residence—the data about the municipality on the territory of which they reside, are entered on the register of the residents of the Republic of Lithuania;
- 2) the property (including income received) declared for a calendar year under procedure laid down in the Law on the Declaration of the Property of Residents does not exceed the sizes of income and property laid down in Paragraph 2 of Article 11 of this Law prior to the day of filing a request to render assistance for renting a residential property;
- 3) they do not possess by right of ownership (common ownership) any residential property in the territory of the Republic of Lithuania or if the property possessed by them by right of ownership (common ownership), according to the data of the Immovable Property Cadastre, has physically deteriorated more than 60 percent, or the usable floor area of the residential property possessed by right of ownership (common ownership) for one person or a family member is less than 10 square metres, or is less than 14 square metres if there is a disabled member in the

family or a family member with a severe chronic illness entered on the list approved by the Government or an institution authorised by it.”

Thus, as established in Paragraph 1 of Article 9 of the Law on Assistance for the Acquisition or Rent of Residential Properties, the conditions for persons or families to acquire the right to rent a social housing property were, *inter alia*, as follows: 1) the property (including the income received) held by persons or families for a calendar year does not exceed the sizes of income and property established in this law; 2) families or persons do not possess by right of ownership any residential property in the territory of the Republic of Lithuania, or their residential property has physically deteriorated, or the usable floor area of the residential property for one person does not exceed the size established in the Law.

5.2. Paragraph 2 of Article 11 “Annual Sizes of Assessed Income and Property of Persons or Families Enabling the Determination of the Right to Assistance for the Acquisition or Rent of Residential Properties” of the Law on Assistance for the Acquisition or Rent of Residential Properties provides:

“Persons or families shall have right to assistance for the rent of a residential property if their property (including the income received) declared for a calendar year under procedure laid down in the Law on the Declaration of the Property of Residents does not exceed the sizes of income and property established in this law:

1) regarding single persons living in the municipality of either the town or district of Vilnius, either the town or district of Kaunas, either the town or district of Klaipėda, or in either the municipality of the town of Palanga or the municipality of Neringa, if their net annual income does not exceed 38 sizes of SSI [state-supported income] and their property does not exceed 93 sizes of SSI; regarding single persons living in other municipalities if their net annual income does not exceed 32 sizes of SSI and their property does not exceed 56 sizes of SSI;

2) regarding families with either two or three family members living in the municipality of either the town or district of Vilnius, either the town or district of Kaunas, either the town or district of Klaipėda, or in either the municipality of the town of Palanga or the municipality of Neringa, if their net annual income does not exceed 76 sizes of SSI and their property does not exceed 168 sizes of SSI; regarding families with either two or three family members living in other municipalities if their net annual income does not exceed 63 sizes of SSI and their property does not exceed 112 sizes of SSI;

3) regarding families with either four or more family members living in the municipality of either the town or district of Vilnius, either the town or district of Kaunas, either the town or district of Klaipėda, or in either the municipality of the town of Palanga or the municipality of Neringa, if their net annual income for one person does not exceed 22 sizes of SSI and their property for one person does not exceed 75 sizes of SSI; regarding families with either four or more family members in other municipalities if their net annual income for one person does not exceed 19 sizes of SSI and their property for one person does not exceed 56 sizes of SSI.”

It should be mentioned that by its Resolution (No. 923) “On Approving the State-Supported Income” of 10 September 2014, which came into force on 1 January 2015, the Government approved the size of the state-supported income—102 euros.

5.3. Paragraph 5 of Article 20 “Concluding, Amending or Terminating a Social Housing Lease Agreement” of the Law on Assistance for the Acquisition or Rent of Residential Properties, *inter alia*, provides:

“A social housing lease agreement is terminated:

<...>

2) when the property (including income received) of the respective person or family declared for a calendar year under procedure laid down in the Law on the Declaration of the Property of Residents exceeds by more than 20 percent the annual sizes of income and property laid down in Paragraph 2 of Article 11 of this Law <...>”.

The comparison of the legal regulation established in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats with the legal regulation laid down in Item 2 of Paragraph 5 of Article 20 of the

Law on Assistance for the Acquisition or Rent of Residential Properties (wording of 9 October 2014) makes it clear that the established legal regulation changed in the aspect that, under Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties, the grounds for terminating a social housing lease agreement arise only in the event that the property (including the income received) declared by the respective person or family exceeds by more than 20 percent the annual sizes of income and property on the grounds of which the right to assistance for the acquisition or rent of a residential property is determined, while, according to in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats, the grounds for terminating a social housing lease agreement was the fact that the declared property held or income received by the tenant (his/her family) exceeded, no matter how much, the maximum sizes of property or income established by the Government.

The legal regulation established in Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties (wording of 9 October 2014) also differs from the legal regulation laid down in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats which, as mentioned before, established an exception to the condition of the termination of a social housing lease agreement—the declared property held or income received by the tenant (his/her family) exceeds the maximum sizes established by the Government: under the legal regulation laid down in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement is not terminated in case both the following conditions are present: 1) the income received by the tenant (his/her family) within one year (last 12 months) does not exceed by more than five percent the sizes of property or income established by the Government; 2) either a tenant or a member of his/her family is registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled. Under the legal regulation laid down in Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties, if the property (including income received) of a certain person or family declared for a calendar year exceeds, by not more than 20 percent, the annual sizes of income and property laid down in Paragraph 2 of Article 11 of this law, the respective social housing property lease agreement is not terminated if there are not any other conditions.

Thus, the legal regulation of terminating a social housing property lease agreement as laid down in Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties is substantially different from the legal regulation established in Paragraphs 4 and 5 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats.

5.4. Paragraph 6 of Article 20 “Concluding, Amending or Terminating a Social Housing Lease Agreement” of the Law on Assistance for the Acquisition or Rent of Residential Properties provides:

“If the property (including income received) declared for a calendar year by either a person or a family renting a social housing property exceeds by more than 20 percent the annual sizes of income and property as established in Paragraph 2 of Article 11 of this Law, upon the request of either the said person or family, the municipal council, upon assessing the demand of social housing in the municipality, may adopt the decision to lease this residential property as a municipal residential property for a market price by applying the methods of calculating the size of rental to be paid for municipal residential properties or social housing properties, and of calculating the size of compensation for a part of paid rentals for residential properties or a part of paid instalments for residential properties under finance leases if the said person or family does not possess by right of ownership any other adequate residential property. Municipal housing lease agreements are concluded, amended or terminated by invoking the Civil Code.”

Thus, *inter alia*, the conditions established in Paragraph 6 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties in the presence of which the municipal council may adopt the decision to lease a social housing property as a municipal residential property for a market price are as follows: 1) the property (including income received) of the respective person or family renting a social housing property declared for a calendar year exceeds by more than 20 percent the annual sizes of income or property laid down in Paragraph 2 of Article 11 of the Law on Assistance for the Acquisition or Rent of Residential Properties; 2) the

respective request filed by the person or family renting a social housing property; 3) an assessment of the demand for social housing in the respective municipality.

6. It has been mentioned that the petitioner requests an investigation into whether Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 is in conflict with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution.

It has also been mentioned that, under the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, one of the conditions that families or persons with a permanent place of residence in the Republic of Lithuania could acquire the right to municipal social housing was the fact that the property held or income received by them might not exceed the annual maximum sizes established by the Government.

6.1. On 28 May 2003, the Government adopted the Resolution (No. 670) “On the Procedure for Rendering State Assistance for the Acquisition or Rent of Residential Properties” that came into force on 31 May 2003.

This resolution has been amended and/or supplemented on more than one occasion; the title thereof has also been amended more than once, *inter alia*, by the Government Resolution (No. 194) “On Amending the Resolution of the Government of the Republic of Lithuania (No. 670) ‘On Approving the Description of the Procedure for Calculating the Annual Income and Property of Persons (Families) in Rendering State Assistance for Acquiring Residential Properties, Renting Municipal Social Housing Properties or Improving the Conditions Thereof’ of 28 May 2003” of 17 February 2011 that came into force on 25 February 2011.

The preamble (wording of 17 February 2011) to government resolution No. 670 of 28 May 2003 points out that the Government adopted this resolution by invoking Paragraphs 1 and 2 of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats.

6.2. The impugned Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 prescribed:

“2.1. The property held by the families or persons specified in Paragraphs 1 and 2 of Article 8 of the Republic of Lithuania’s Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats or the income received by such families or persons within one year (last 12 months) that have been declared in accordance with the procedure established by the Republic of Lithuania’s Law on the Declaration of the Property of Residents <...>, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing or improving the respective municipal social housing property, must not exceed the following maximum sizes:

2.1.1. the net annual income of a single person residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 13,200 litas, and the property must not exceed 32,500 litas; the net annual income of single persons residing in other areas must not exceed 11,000 litas, and the property must not exceed 19,500 litas;

2.1.2. the net annual income of families with either two or three family members residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 26,400 litas, and the property must not exceed 58,500 litas; the net annual income of families with either two or three family members residing in other areas must not exceed 22,000 litas, and the property must not exceed 39,000 litas;

2.1.3. the net annual income of either four or more family members residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 7,700 litas for one person, and the property must not exceed 26,000 litas for one person; the net annual income of families with either four or more family members residing in other areas must not exceed 6,600 litas for one person, and the property must not exceed 19,500 litas for one person.”

Thus, Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 laid down the maximum sizes of the property held and income received within one year (last 12 months) by families or persons entitled to municipal social housing which could not be exceeded prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing or improving the respective municipal social housing property. These sizes were differentiated according to the place of residence of a person (family). In addition, different sizes of income and property for single persons and families were established by taking account of the number of family members.

7. On 18 February 2015, the Government adopted the Resolution (No. 172) “On Recognising the Resolution of the Government of the Republic of Lithuania (No. 670) ‘On the Establishment of the Sizes of Annual Income and Property According to Which the Right to Municipal Social Housing or to the Improvement of the Existing Social Housing Conditions Is Established’ of 28 May 2003 as No Longer Valid” whereby government resolution No. 670 of 28 May 2003 was recognised as no longer valid together with all its amendments and supplements. This resolution came into force on 25 February 2015.

8. To sum up the legal regulation impugned in the constitutional justice case at issue, as well as the related legal regulation, it should be noted that:

– Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats established the conditions for families or persons with a permanent place of residence in the Republic of Lithuania for the acquisition of the right to municipal social housing, such conditions being as follows: 1) the property held by families or persons, or income received by them within one year did not exceed the established maximum sizes; 2) families or persons did not possess by right of ownership any residential property in the territory of the Republic of Lithuania, or the usable floor area of the possessed residential property for one person did not exceed the size established in the Law;

– under the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, the Government had to establish the maximum sizes of property or income which could not be exceeded by the property possessed and income received by families and persons seeking municipal social housing;

– *inter alia*, certain conditions for municipal social housing property lease agreements were established in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, such conditions being as follows: 1) the duty of tenants of social housing properties to declare, once in every three years, the property possessed and income received by them within one year (last 12 months); 2) the situation where the declared property held or income received by the tenant (his/her family) exceeds the maximum sizes of property or income as established by the Government is deemed a condition for terminating a social housing property lease agreement;

– Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law laid down an exception to the condition, specified in Paragraph 4 of this Article, for terminating a social housing property lease agreement—the declared property held or income received by the tenant (his/her family) exceeds the maximum sizes established by the Government; under the legal regulation laid down in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement is not terminated in case both the following conditions are present: 1) the income received by the tenant (his/her family) within one year (last 12 months) does not exceed by more than five percent the sizes of property or income established by the Government; 2) either a tenant or a member of his/her family is registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled;

– the legal regulation of terminating a social housing property lease agreement as laid down in Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties is substantially different from the legal regulation established in Paragraphs 4 and 5 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats; under Item 2 of Paragraph 5 of Article 20 of the Law on Assistance for the Acquisition or Rent of Residential Properties, the grounds for terminating a social housing lease agreement arises only in the event that the property (including the income received) declared by the respective person or

family exceeds by more than 20 percent the annual sizes of income and property on the grounds of which the right to assistance for the acquisition or rent of a residential property is determined;

– Item 2.1 (wordings of 8 October 2008 and 17 February 2011) of government resolution No. 670 of 28 May 2003 established the maximum sizes of property or income not to be exceeded by the persons or families enjoying the right either to municipal social housing or to the improvement of the existing conditions of social housing; these sizes were differentiated by taking account of the number of family members and their place of residence.

III

1. In the constitutional justice case at issue, the Constitutional Court investigates the compliance of the impugned provisions with Article 52 of the Constitution wherein the grounds for pensionary maintenance and social assistance are established, with Paragraphs 1 and 2 of Article 5 of the Constitution wherein the constitutional principle of the separation of powers is consolidated, as well as with the constitutional principle of a state under the rule of law.
2. The Constitutional Court has held that, under the Constitution, the State of Lithuania is socially oriented. The social orientation of the state is reflected in various provisions of the Constitution which consolidate human economic, social and cultural rights, as well as civil and political rights, the relations between the society and the state, the bases of social assistance and social security, the principles of organisation and regulation of the national economy, the bases of organisation and activity of state institutions, etc. (*inter alia*, the Constitutional Court's rulings of 5 March 2004 and 6 February 2012).

A socially oriented state is under a constitutional obligation to assume (and it must assume) the burden of the fulfilling of certain obligations. The social solidarity principle entrenched in the Constitution implies that the burden of the fulfilment of certain obligations should also be distributed to a certain extent among members of society, however, such distribution should be constitutionally reasoned, it cannot be disproportionate, it cannot deny the social orientation of the state and the obligations to the state that arise from the Constitution (*inter alia*, the Constitutional Court's rulings of 7 June 2007 and 1 July 2013).

3. Article 52 of the Constitution prescribes: "The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law."

The Constitutional Court has formulated in its acts an extensive official constitutional doctrine of social security, *inter alia*, social assistance, and has revealed the constitutional imperatives that should be heeded in regulating the respective relations by means of legal acts.

3.1. The Constitutional Court has held on more than one occasion that the provisions of Article 52 of the Constitution express the social orientation (social character) of the state and recognise that social maintenance, i.e., the contribution of society to the maintenance of those its members who, due to important reasons specified by law, are unable to support themselves through work or other income or are insufficiently provided for, has the status of a constitutional value; the measures of social security express the idea of social solidarity and help persons to protect themselves from possible social risks (*inter alia*, the Constitutional Court's rulings of 14 December 2010 and 14 April 2014).

The Constitutional Court has noted that the principle of solidarity in a civil society does not negate personal responsibility for one's own fate, therefore, the legal regulation of the social security should be such so as to create preconditions and incentives for every member of the society to take care of one's own welfare, but not to rely solely on the social security guaranteed by the state (*inter alia*, the Constitutional Court's rulings of 25 November 2002, 2 September 2009, and 3 July 2014); social assistance should not create any preconditions for a person not to seek a higher income and not to search, by one's own efforts, for possibilities of ensuring for oneself and one's own family the living conditions that are in line with human dignity; social assistance must not become a privilege (*inter alia*, the Constitutional Court's rulings of 2 September 2009 and 3 July 2014); the recognition of mutual responsibility of a person and the society is important in ensuring social harmony, guaranteeing freedom of a person and possibility of protecting oneself from difficulties which could not be overcome by one person alone (*inter alia*, the Constitutional Court's rulings of 12 March 1997, 6 February 2012, and 27 February 2012). Thus,

under the Constitution, a duty arises for the legislature to establish by law such bases or conditions of rendering social assistance, as well as kinds and amount of social assistance, so as to create preconditions and incentives to encourage each person's attempts to take care of one's own or one's family welfare by one's own efforts first of all and to contribute to the welfare of the entire society (the Constitutional Court's ruling of 7 February 2013).

Alongside, it needs to be noted that the jurisprudence of the Constitutional Court defends the legal position that the social orientation of the state implies the discretion of the legislature to establish the exceptions based on social solidarity to the general legal regulation to be applied to certain groups of socially most sensitive persons who need a specific social assistance (the Constitutional Court's rulings of 6 February 2012 and 16 May 2013).

3.2. The Constitutional Court has noted on more than one occasion that the legislature, while heeding the Constitution, in regulating the relations of social security and social assistance, enjoys broad discretion (*inter alia*, the Constitutional Court's rulings of 29 June 2012 and 15 February 2013), and that, under the Constitution, the law may also provide for other pensions and social assistance in addition to those *expressis verbis* indicated in Article 52 of the Constitution (*inter alia*, the Constitutional Court's rulings of 4 July 2003 and 6 February 2012).

Article 52 of the Constitution, the striving for an open, just, and harmonious civil society and a state under the rule of law as established in the Preamble to the Constitution, and the constitutional principles of the social orientation and social solidarity of the state imply that the content of the legal regulation of the social assistance relations may be determined by various factors, *inter alia*, by the resources of the state and society, material and financial possibilities, the need to ensure the financial stability of the state, economic sustainability and development; the legislature, taking account of these factors and respectively regulating the said relations, has broad discretion to choose and consolidate by law the types of social assistance; in the situations where a person, according to laws, meets the requirements in order to receive the social assistance of several types, the legislature, taking account, *inter alia*, of the purpose of the social assistance and the financial possibilities of the state and society, may establish the conditions under which this assistance will be rendered (the Constitutional Court's ruling of 7 February 2013). In itself, the constitutional status of social rights does not deny the right of the legislature to establish certain conditions for or limitations on the emergence of the aforesaid rights (the Constitutional Court's rulings of 6 May 1998 and 7 February 2013).

3.3. The Constitutional Court has noted that the state must create such a system of social maintenance that would enable one to maintain the living conditions in line with the dignity of a person, and, in case of need, it would render the necessary social assistance for the person (*inter alia*, the Constitutional Court's rulings of 26 September 2007 and 3 July 2014). While construing the provisions of Article 21 of the Constitution that consolidate the protection and defence of human dignity, the Constitutional Court has held that dignity is an integral characteristic of a human being as the greatest social value; every member of society enjoys innate dignity; the fact that the legislature, while regulating relations linked with the implementation of human rights and freedoms, must guarantee their proper protection constitutes one of the conditions for the ensuring of human dignity as a constitutional value (the Constitutional Court's rulings of 29 December 2004 and 2 September 2009).

Thus, it is impossible to construe the duty of the state to render the social assistance provided for in laws as consolidated in Article 52 of the Constitution separately from, *inter alia*, the obligation of the state to protect and defend human dignity as consolidated in Article 21 of the Constitution. In the context of the constitutional justice case at issue, it should be noted that the imperative of the protection and defence of human dignity as a special constitutional value as entrenched in Article 21 of the Constitution and the social orientation of the state give rise to the duty of the state, by taking account to the capabilities of the state and society, to help the persons lacking access to housing, who are unable to obtain such access through work and/or other income, to obtain access to a home meeting at least socially acceptable minimum needs. While regulating the relations of the social assistance for such persons in obtaining access to housing, the legislature enjoys broad discretion in choosing the forms of rendering such assistance, *inter alia*, it can provide for financial assistance for either acquiring or renting a residential property, it can provide for granting access to either state-owned or state-leased housing, etc. It needs to be emphasised that the social orientation of the state also implies the duty of the legislature, when it regulates these relations, to create the preconditions for taking into consideration the needs of certain groups of socially most sensitive persons who need a specific social assistance.

In the context of the constitutional justice case at issue, it should be noted that, under the Constitution, the legislature, while regulating the relations of the social assistance in helping persons lacking access to housing to obtain such access, must define the persons who are unable to obtain access to housing through work and/or other

income and who, due to this reason, are rendered state assistance in obtaining access to housing. The legislature must also define the grounds and conditions for rendering such assistance and amounts thereof. After the legislature has related the rendering of state assistance in obtaining access to housing with the sizes of property or income of persons (families), such sizes may also be relative, i.e., they may be related to the sizes established by the Government or another competent institution by taking account of certain economic indicators.

Having related the rendering of state assistance in obtaining access to housing with the sizes of property or income of persons (families), the legislature must define the level of property or income of persons (families) upon reaching which the rendering of such assistance is discontinued. When defining such a level, heed should be paid to the norms and principles of the Constitution, *inter alia*, to the state obligation to protect and defend human dignity as consolidated in Article 21 thereof and the constitutional principle of a state under the rule of law (*inter alia*, heed should be paid to the constitutional requirements for justice and proportionality) that determine the fact that the rendering of such assistance may not be discontinued if the respective persons (families) are unable to obtain access to a home meeting at least socially acceptable minimum needs.

3.4. While construing Article 52 of the Constitution, the Constitutional Court has held that the regulation of the relations of social assistance by means of a law is one of the most important guarantees of the constitutional right to social assistance (the Constitutional Court's rulings of 5 March 2004 and 7 February 2005). The formula "the State shall guarantee" of Article 52 of the Constitution means, *inter alia*, that various types of social assistance are guaranteed for the persons on the bases and by the amounts that are established in laws (*inter alia*, the Constitutional Court's rulings of 23 April 2002 and 6 February 2012). Separate types of social assistance, the persons who are granted social assistance, the grounds and conditions for granting and paying social assistance and the amounts thereof may be established solely by law (*inter alia*, the Constitutional Court's rulings of 5 March 2004 and 14 April 2014).

A statutory legal regulation of the relations of social security and social assistance may comprise the establishment of relevant procedures, as well as such a legal regulation where, based on a law, the need to provide more details about and particularise in statutory legal acts a certain legal regulation established by law is objectively caused by the necessity in the law-making process to draw on special knowledge of a certain area or special (professional) competence (*inter alia*, the Constitutional Court's rulings of 7 February 2005, 14 December 2010, 31 October 2012, and 14 February 2014). No statutory legal regulation may establish any conditions for the appearance of the right of an individual to social assistance, nor may it limit the extent of that right (*inter alia*, the Constitutional Court's rulings of 7 February 2005, 2 September 2009, 14 December 2010, and 14 February 2012).

4. The Constitutional Court has noted that the constitutional principle of a state under the rule of law, which is a universal principle upon which the entire legal system of Lithuania and the Constitution itself are based, is very capacious and includes various interrelated imperatives; the constitutional principle of justice is an inseparable element of the content of the constitutional principle of a state under the rule of law; this principle may be implemented by ensuring a certain balance of interests.

The Constitutional Court has also held that the constitutional principle of a state under the rule of law implies the hierarchy of all legal acts and does not permit that statutory legal acts regulate the relations which can be regulated only by law, nor does it permit that statutory legal acts establish any such legal regulation which would compete with that established in the law or that such legal regulation would not be based upon laws, because, otherwise, the constitutionally established supremacy of laws in respect to statutory acts would be violated (*inter alia*, the Constitutional Court's rulings 22 June 2009 and 6 November 2013).

The constitutional principle of a state under the rule of law is related to the constitutional principle of the separation of powers that is consolidated, *inter alia*, in Paragraph 2 of Article 5 of the Constitution, therefore, the Seimas has no right to commission the Government or any other institution to exercise the competence of the Seimas (the Constitutional Court's rulings of 14 January 2002, 29 September 2010, and 3 March 2015).

5. Paragraphs 1 and 2 of Article 5 of the Constitution prescribe:

"In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary.

The scope of power shall be limited by the Constitution.”

These provisions of the Constitution express the principle of the separation of powers. The Constitutional Court has held on more than one occasion that the constitutional principle of the separation of powers means that the legislative, executive, and judicial powers must be separated and must be sufficiently independent but there must also be a balance among them; that every institution of power has the competence corresponding to its purpose whose concrete content depends on the branch of state power to which this institution belongs and on the place of the institution among other institutions of state power as well as the relation of the powers of such an institution with those of other institutions; that after the powers of a concrete institution of state power have been directly established in the Constitution, no institution of state power may take over, transfer, or waive such powers; and that such powers may neither be changed nor limited by means of a law (*inter alia*, the Constitutional Court’s rulings of 5 March 2002, 6 June 2006, and 13 May 2010).

The Constitutional Court has held that the provision “the scope of power shall be limited by the Constitution” of Paragraph 2 of Article 5 of the Constitution is violated if the legal regulation is established whereby the powers of the state institution specified in Paragraph 1 of Article 5 of the Constitution or those of any other state institution are broadened in a constitutionally unreasonable manner (*inter alia*, the Constitutional Court’s rulings of 13 December 2004, 23 August 2005, and 2 March 2009).

IV

In the context of the constitutional justice case at issue, a mention should be made of the international obligations of the Republic of Lithuania and the norms of EU law related to the social human rights, *inter alia*, to the right to social assistance and the right to housing.

1. Paragraph 1 of Article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (hereinafter—the Covenant), which came into force for the Republic of Lithuania on 20 February 1992, provides that “the States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

In the 2014 Concluding Observations on the Second Periodic Report of Lithuania, the Committee on Economic, Social and Cultural Rights that monitors the implementation of the Covenant by its States Parties expressed, *inter alia*, its concern at the acute shortage of social housing; Lithuania was urged to ensure that its national housing policy prioritises the needs of marginalised and vulnerable groups who lack access to adequate housing.

While construing the provisions of Paragraph 1 of Article 11 of the Covenant, the Committee on Economic, Social and Cultural Rights has noted that the human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights. Drawing attention to the fact that, as specified in the preamble to the Covenant, the rights entrenched in the Covenant derive from the inherent dignity of the human person, the said committee emphasised that the right to housing must be understood as the right not just to housing but to adequate housing (General Comment 4: The right to adequate housing (1991) (Paragraph 1 of Article 11 of the Covenant)).

2. The European Social Charter (Revised) (hereinafter—the Charter), which was adopted on 3 May 1996 and came into force (with reservations) for the Republic of Lithuania on 1 August 2001, consolidated the right to social and medical assistance (Article 13) and the right to housing (Article 31). Article 13 of the Charter, *inter alia*, prescribes:

“With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;

2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights <...>”.

Article 31 of the Charter, *inter alia*, prescribes:

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination <...>”.

The European Committee of Social Rights that monitors the implementation of the Charter by its States Parties, in its 2011 conclusions on the report on the implementation of the Charter submitted by the Republic of Lithuania, noted, *inter alia*, that the situation in Lithuania is not in conformity with Paragraph 1 of Article 31 of the Charter on the grounds that the right to adequate housing is not effectively guaranteed. The same conclusions noted, *inter alia*, that with a view to implementing the provisions of Paragraph 1 of Article 31 of the Charter, the State Parties must pay particular attention to the impact of their policy choices on each category of persons, especially on the most vulnerable groups.

3. Even though the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter—the Convention) does not consolidate the social and economic rights directly, however, in certain cases the social rights of persons (including the right to housing and social assistance) may be defended under the Convention. For example, due to an extremely low size of a pension or social benefit, a question could be raised as to the treatment degrading human dignity within Article 3 of the Convention (see the judgment of 18 June 2009 in the case of *Budina v. Russia*, application No. 45603/05). The European Court of Human Rights also notes that within the meaning of the Convention, the responsibility of the state may also arise in cases where the respective person is in a situation when s/he is completely dependent on state assistance and where such a situation is incompatible with respect for the dignity of the person (see the judgment of 26 June 2001 in the case of *O'Rourke v. the United Kingdom*, application No. 39022/97).

While construing Article 8 of the Convention, the European Court of Human Rights emphasises that this article cannot be interpreted as implying for States a direct positive obligation to provide every person with a home (see the judgment of 18 January 2001 in the case of *Chapman v. the United Kingdom*, application No. 27238/95), however, the duty of States to ensure housing for especially vulnerable persons may be derived from Article 8 of the Convention (see the judgment of 24 April 2012 in the case of *Yordanova and Others v. Bulgaria*, application No. 25446/06, the judgment of 17 October 2013 in the case of *Winterstein and Others v. France*, application No. 27013/07).

4. In this context, a mention should also be made of the Charter of Fundamental Rights of the European Union. Article 1 titled “Human Dignity” of the said charter prescribes: “Human dignity is inviolable. It must be respected and protected”, while Paragraph 3 of Article 34 “Social Security and Social Assistance” provides: “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.”

V

On the compliance of Paragraph 1 (wording of 12 October 2010) of Article 8 and Paragraphs 4 and 5 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats with the Constitution

1. It has been mentioned that the Klaipėda City Local Court, the petitioner, requests an investigation into whether the provision “the right to municipal social housing shall be enjoyed by the families and persons

specified in Article 1 of this Law, whose property declared under procedure established in the Law on the Declaration of Property of Residents or income received within one year (over the last 12 months) are, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing, lower than the income and property the maximum sizes whereof are established by the Government” of Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, and the provision “the lease agreement must also contain the stipulation that provided that the declared property possessed or income received by the tenant (his/her family) exceed the sizes determined on the grounds of Paragraph 1 of Article 8 of the Law, the lease agreement is terminated under procedure established in the lease agreement” of Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, insofar as the said provisions provide that the property held in the possession of families or individuals entitled to social housing and the income received by them are established without paying any regard to their needs, individual character, and other significant circumstances, are in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law.

2. It has been mentioned that Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law prescribed:

“The right to municipal social housing shall be enjoyed by the families and persons specified in Article 1 of this Law, whose property declared under procedure established in the Law on the Declaration of Property of Residents or income received within one year (over the last 12 months) are, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing, lower than the income and property the maximum sizes whereof are established by the Government, provided that they do not possess a residential property by right of ownership in the territory of the Republic of Lithuania or the usable floor area of the possessed residential property is less than 10 square metres for one family member, or is less than 14 square metres for one family member if there is a family member with respect to whom, under procedure laid down in the Law on the Social Integration of the Disabled, severe or average disability is established or who is regarded as incapable of work (with 75–100 percent of lost capacity of work) or as partially capable of work (with 60–70 percent of capacity of work), or who has reached the pensionable age and with respect to whom the necessity of meeting special needs is established, or a family member with a severe chronic illness entered on the list approved by the Government or an institution authorised by it.”

Paragraph 4 of Article 11 “The Procedure and Conditions for Leasing Social Housing Properties” (wording of 12 October 2010) of the Law prescribed:

“A social housing property lease agreement must contain the stipulation that, once in every three years, the tenant of a social housing property must declare the property possessed and income received by him/her within one year (last 12 months) in accordance with the procedure established by the Law on the Declaration of the Property of Residents. The lease agreement must also contain the stipulation that provided that the declared property possessed or income received by the tenant (his/her family) exceeds the sizes determined on the grounds of Paragraph 1 of Article 8 of the Law, the lease agreement is terminated under procedure established in the lease agreement. The data about the declared possessed property and received income within a month from the term specified in this paragraph are submitted to the municipal executive institution.”

3. As mentioned before, in the opinion of the petitioner, the impugned legal regulation created the preconditions for the emergence of the situations where, due to a pension or social assistance received by persons, they lose the right to receive other social assistance, since, under the impugned provisions of the Law, in case the income of such persons reach the respective size as established in government resolution No. 670 of 28 May 2003, the right to rent a social housing property is lost. In addition, in deciding on whether social assistance (social housing) should be rendered to a person, no account is taken of the type of the income that a person receives, of the individual properties (state) of the person, his/her needs, as well as of other important circumstances.
4. While deciding whether Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law to the specified extent was in conflict with the Constitution, it should be noted that, as mentioned before, under the Constitution, while regulating the relations of social security and social assistance, the legislature enjoys broad discretion; the legislature may relate the rendering of state assistance in accessing housing

with certain sizes of the property or income of persons (families); under the Constitution, the legislature, while regulating the relations of the social assistance in helping persons lacking access to housing to obtain such access, must define the persons who are unable obtain access to housing through work and/or other income and who, due to this reason, are rendered state assistance in obtaining access to housing; the legislature must also define the grounds and conditions for rendering such assistance and amounts thereof; the provision “the scope of power shall be limited by the Constitution” of Paragraph 2 of Article 5 of the Constitution is violated if the legal regulation is established whereby the powers of the state institution specified in Paragraph 1 of Article 5 of the Constitution or those of any other state institution are broadened in a constitutionally unreasonable manner; the Seimas has no right to commission the Government or any other institution to implement the constitutional competence of the Seimas.

4.1. It has been mentioned that Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law established the conditions for families or persons with a permanent place of residence in the Republic of Lithuania for the acquisition of the right to municipal social housing, such conditions being as follows: 1) the property held by families or persons, or income received by them within one year did not exceed the established maximum sizes; 2) families or persons did not possess by right of ownership any residential property in the territory of the Republic of Lithuania, or the usable floor area of the possessed residential property for one person did not exceed the size established in the Law.

It has also been mentioned that, under the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, the Government had to establish the maximum sizes of property or income which could not be exceeded by the property possessed and income received by families or persons seeking municipal social housing.

4.2. It should be noted that, under the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law, the maximum sizes of property held or income received by families or persons as established by the Government were a constituent part of the condition for acquiring the right to municipal social housing, therefore, under the Constitution, such sizes should have been established by means of a law.

Thus, it should be held that, by the legal regulation laid down in Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats, the Seimas delegated its constitutional competence to the Government to establish the conditions of social assistance insofar as the Government was granted the powers to establish the maximum sizes of property or income not to be exceeded by the persons or families enjoying the right either to municipal social housing or to the improvement of the existing conditions of social housing. Consequently, the legislature commissioned the Government to regulate by means of substatutory acts the relations that should have been regulated only by means of a law and thus broadened the powers of the Government in a constitutionally unreasonable manner.

4.3. In the light of the foregoing arguments, the conclusion should be drawn that Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats was in conflict with Paragraph 2 of Article 5 and Article 52 of the Constitution as well as with the constitutional principle of a state under the rule of law insofar as the Government was granted the powers to establish the maximum sizes of property or income not to be exceeded by the persons or families enjoying the right either to municipal social housing or to the improvement of the existing conditions of social housing.

5. In deciding whether Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law to the specified extent was in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law, it should be noted that, as mentioned before, under the Constitution, the state must create such a system of social maintenance that would enable one to maintain the living conditions in line with the dignity of a person, and, in case of need, it would render the necessary social assistance for the person; a socially oriented state is under a constitutional obligation to assume (and it must assume) the burden of the fulfilling of certain obligations; the legal regulation of the social security should be such so as to create preconditions and incentives for every member of the society to take care of one's own welfare, but not to rely solely on the social security guaranteed by the state; in order to implement the constitutional principle of justice, a certain balance of interests must be ensured; when defining the level

of property or income of persons (families) upon reaching which the rendering of state assistance in providing access to housing is discontinued, heed should be paid to the norms and principles of the Constitution, *inter alia*, to the state obligation to protect and defend human dignity as consolidated in Article 21 thereof and the constitutional principle of a state under the rule of law (*inter alia*, heed should be paid to the constitutional requirements for justice and proportionality); the social orientation of the state also implies the duty of the legislature, when it regulates the social assistance in helping persons lacking access to housing to obtain such access, to create the preconditions for taking into consideration the needs of certain groups of socially most sensitive persons who need a specific social assistance.

5.1. As mentioned before, Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law laid down the condition for terminating a social housing property lease agreement—the declared property held or income received by the tenant (his/her family) exceeded the maximum sizes of property or income as established by the Government.

Thus, under the legal regulation laid down in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, should the property held or income received by the tenant (his/her family) within one year (last 12 months) exceed the maximum sizes of property or income established by the Government, the respective social housing property lease agreement would have to be terminated without taking into account how much such sizes have been exceeded and whether this is enough for the person (family) in order to rent a home meeting at least socially acceptable minimum needs of the person (family).

5.2. It has been mentioned that, under Paragraph 7 of Article 2 of the Law (wording of 12 November 2002), social housing is dwelling premises that are leased by municipalities on a non-commercial basis and under the government-established procedure for calculating the rental payment and which are meant for accommodating persons and families with low income under the conditions established in this Law.

Thus, when a municipal social housing property is being leased, the financial expression of the social assistance rendered to a tenant (his/her family) is equal to the difference between the market value of the rental payment of the leased dwelling premises and the rental payment for dwelling premises calculated according to the procedure for calculating such rental payment as established by the Government.

The legal regulation, whereby a social housing property lease agreement had to be terminated even though the income received by the tenant (his/her family) within one year (last 12 months) exceeded only by a small amount the maximum sizes of property or income established by the Government, created the preconditions for significant deterioration of the situation of the tenant (his/her family) of a social housing property, and for bringing back the tenant (his/her family) to the position that is essentially the same to the one where s/he (his/her family) had been before getting access to social housing.

Consequently, such legal regulation did not create any preconditions for proper fulfilment of the state duty to help the persons lacking access to housing, who are unable to obtain such access through work and/or other income, to obtain access to a home meeting at least socially acceptable minimum needs. In addition, such legal regulation disregarded the state social orientation implying the constitutional obligation of the state to assume the burden of the fulfilling of certain obligations. Such legal regulation is disproportionate for the objective sought for helping persons to obtain access to housing who are unable to do so themselves.

Nor does such a legal regulation ensure a proper balance between the interest of society to contribute to helping the persons to obtain access to housing who are lacking such access and who are unable to obtain such access through work and/or other income on the one hand, and, on the other hand, the interest of a person lacking access to housing to take care of his/her own welfare, but not to rely solely on the social security guaranteed by the state.

Thus, it should be held that the legal regulation consolidated in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats violated both the right to social assistance guaranteed in Article 52 of the Constitution and the constitutional imperatives of justice and proportionality insofar as the aforesaid paragraph prescribed that a social housing property lease agreement is also terminated in situations where, even though the property held or income received by the tenant (his/her family) exceeds the maximum sizes of property or income established by the Government, however, the level of exceeding the sizes of property or income established by the

Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family).

5.3. In the light of the foregoing arguments, the conclusion should be drawn that the provision of Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats that a social housing property lease agreement is terminated in case the declared property held in the possession of a tenant (his/her family) of social housing or income received by him/her exceeds the maximum sizes of property or income established by the Government was in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law, insofar as the said paragraph prescribed that a social housing property lease agreement must be terminated even in situations where the level of exceeding the sizes established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family).

6. It has been mentioned that Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law established an exception to the termination of a social housing property lease agreement specified in Paragraph 4 of the same article; under the legal regulation laid down in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement is not terminated under the following conditions: 1) the income received by the tenant (his/her family) within one year (last 12 months) does not exceed by more than five percent the sizes of property or income established by the Government; 2) either a tenant or a member of his/her family is registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled.

It has also been mentioned that, according to the exception to the condition of terminating a social housing property lease agreement as established in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, in a situation where either a tenant or a member of his/her family is registered under procedure established by means of legal acts at the territorial labour exchange as unemployed, or either a tenant or a member of his/her family is deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled, the social housing property lease agreement must be terminated if the income received by the tenant (his/her family) within one year (last 12 months) exceeds by more than five percent the sizes of property or income established by the Government; in all other cases, under the legal regulation laid down in Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law, a social housing property lease agreement must be terminated if the income received by the tenant (his/her family) within one year (last 12 months) exceeds the maximum sizes of property or income established by the Government.

6.1. In this ruling, it has been held that the provision of Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law that a social housing property lease agreement is terminated in case the declared property held in the possession of a tenant (his/her family) of social housing or income received by him/her exceeds the maximum sizes of property or income established by the Government was in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law, insofar as the said provision prescribed that a social housing property lease agreement must be terminated even in situations where the level of exceeding the sizes established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family).

It should be noted that the increase of income (by no more than five percent of the maximum sizes of property or income) as established in Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law, in view of the peculiarities of the tenant or a member of his/her family (either unemployed or deemed incapable of work under procedure laid down in the Law on the Social Integration of the Disabled) as specified in this paragraph, may not be regarded as sufficient in order that the person (family) would be able to rent a home meeting socially acceptable minimum needs of the person (his/her family).

Thus, by invoking the same arguments on the grounds of which it has been held in this ruling that Paragraph 4 of Article 11 (wording of 12 October 2010) of the Law to the specified extent was in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law, it should be held that Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law was also in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law insofar as it prescribed that a social housing property

lease agreement must be terminated even in situations where the level of exceeding the sizes of the income of a tenant (his/her family) as established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (family).

6.2. In the light of the foregoing arguments, the conclusion should be drawn that the provision of Paragraph 5 of Article 11 (wording of 12 October 2010) of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats that a social housing property lease agreement is terminated in case the income of a tenant (his/her family) of social housing received within one year (last 12 months) exceeded by more than five percent the sizes of property or income established by the Government was in conflict with Article 52 of the Constitution and the constitutional principle of a state under the rule of law, insofar as the said paragraph prescribed that a social housing property lease agreement must be terminated even in situations where the level of exceeding the sizes established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family).

VI

On the compliance of Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 with the Constitution

1. It has been mentioned that the Klaipėda City Local Court, the petitioner, requests an investigation into the compliance of Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution.
2. It has also been mentioned that Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 prescribed:

“2.1. The property held by the families or persons specified in Paragraphs 1 and 2 of Article 8 of the Republic of Lithuania’s Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats or the income received by such families or persons within one year (last 12 months) that have been declared in accordance with the procedure established by the Republic of Lithuania’s Law on the Declaration of the Property of Residents <...>, prior to the day of filing a request to enter them on the respective list of families and persons entitled to social housing and prior to granting access to municipal social housing or improving the respective municipal social housing property, must not exceed the following maximum sizes:

2.1.1. the net annual income of a single person residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 13,200 litas, and the property must not exceed 32,500 litas; the net annual income of single persons residing in other areas must not exceed 11,000 litas, and the property must not exceed 19,500 litas;

2.1.2. the net annual income of families with either two or three family members residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 26,400 litas, and the property must not exceed 58,500 litas; the net annual income of families with either two or three family members residing in other areas must not exceed 22,000 litas, and the property must not exceed 39,000 litas;

2.1.3. the net annual income of either four or more family members residing in the towns of Vilnius, Kaunas, Klaipėda, Palanga, or Neringa, or in the municipalities of the districts of Vilnius, Kaunas, or Klaipėda, must not exceed 7,700 litas for one person, and the property must not exceed 26,000 litas for one person; the net annual income of families with either four or more family members residing in other areas must not exceed 6,600 litas for one person, and the property must not exceed 19,500 litas for one person.”

3. It has also been mentioned that, in the opinion of the petitioner, by laying down, by means of its resolution No. 670 of 28 May 2003, the maximum sizes of income and property (in case such sizes were not exceeded, the respective persons would be rendered social assistance (would be granted the right to rent a social housing property)), the Government established the circle of persons entitled to seek state assistance in acquiring or renting a residential property, however, under Article 52 of the Constitution, the

persons to whom social assistance is rendered may be defined only by means of a law; thus, by approving the aforesaid sizes of income and property, the Government had regulated the relations which, according to the Constitution, should have been regulated by means of a law.

4. As mentioned before, the preamble (wording of 17 February 2011) to government resolution No. 670 of 28 May 2003 points out that this resolution was adopted by invoking Paragraphs 1 and 2 of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats. Thus, government resolution No. 670 of 28 May 2003 was adopted in order to implement the provisions of the Law upon which the resolution itself was based.
5. It has been held in this ruling of the Constitutional Court that Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law was in conflict with Paragraph 2 of Article 5 and Article 52 of the Constitution as well as with the constitutional principle of a state under the rule of law insofar as the Government was granted the powers to establish the maximum sizes of property or income not to be exceeded by the persons or families enjoying the right either to municipal social housing or to the improvement of the existing conditions of social housing. In addition, this ruling of the Constitutional Court has also recognised that certain other provisions of the Law have also been in conflict with the Constitution.

5.1. The Constitutional Court has held that, while administering justice, the court must follow only the laws and other legal acts that are not in conflict with the Constitution, it may not apply any law which is in conflict with the Constitution (the Constitutional Court's rulings of 13 December 2004, 16 January 2006, 27 June 2007, 2 March 2009, 7 September 2010, and 16 December 2013). The Constitutional Court has also held that a virtually wrong presumption would be made that, purportedly, a substatutory legal act must be in line with an unconstitutional law; such a presumption would deny the concept (entrenched in the Constitution) of the hierarchy of legal acts, on top of which is the Constitution; thus, this would distort the essence of constitutional justice itself (the Constitutional Court's rulings of 16 January 2007, 27 June 2007, 17 December 2007, 22 June 2009, 9 February 2010, 7 September 2010, and 16 December 2013).

5.2. Thus, having held that Paragraph 1 (wording of 12 October 2010) of Article 8 of the Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats to the specified extent was in conflict with the Constitution, it should be held that an investigation into the compliance of Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution in the aspect impugned by the petitioner would be meaningless, therefore, in this part of the constitutional justice case at issue there is no longer any matter for investigation.

5.3. The fact that a matter for investigation is absent in the case regarding the petition of the petitioner means that the petition does not fall within the jurisdiction of the Constitutional Court (*inter alia*, the Constitutional Court's decisions of 6 May 2003 and 8 August 2006, and its rulings of 20 March 2008, 20 November 2013, 16 December 2013, and 3 July 2014).

Under Item 2 of Paragraph 1 of Article 69 of the Law on the Constitutional Court, by means of its decision, the Constitutional Court refuses to consider petitions requesting an investigation into the compliance of a legal act with the Constitution (other legal act of higher power) if the consideration of the petition does not fall under the jurisdiction of the Constitutional Court and, under Paragraph 3 of Article 69, if the grounds for the refusal to consider a petition have been established after the commencement of the consideration of the case during the hearing of the Constitutional Court, a decision to dismiss the case shall be adopted.

5.4. In the light of the foregoing arguments, the part of the constitutional justice case at issue must be dismissed regarding the petition of the Klaipėda City Local Court, the petitioner, requesting an investigation into the compliance of Item 2.1 (wording of 17 February 2011) of government resolution No. 670 of 28 May 2003 with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 53¹, 54, 55, 56, and 69 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 Paragraph 1 (wording of 12 October 2010; Official Gazette *Valstybės žinios*, 2010, No. 125-6376) of Article 8 of the Republic of Lithuania's Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats, insofar as the Government was granted the powers to establish the maximum sizes of property or income not to be exceeded by the persons or families enjoying the right either to municipal social housing or to the improvement of the existing conditions of social housing, was in conflict with Paragraph 2 of Article 5 and Article 52 of the Constitution of the Republic of Lithuania as well as with the constitutional principle of a state under the rule of law.
2. To recognise that the provision of Paragraph 4 of Article 11 (wording of 12 October 2010; Official Gazette *Valstybės žinios*, 2010, No. 125-6376) of the Republic of Lithuania's Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats that a social housing property lease agreement is terminated in case the declared property held in the possession of a tenant (his/her family) of social housing or income received by him/her exceeds the maximum sizes of property or income established by the Government, insofar as the said paragraph prescribed that a social housing property lease agreement must be terminated even in situations where the level of exceeding the sizes established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family), was in conflict with Article 52 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.
3. To recognise that the provision of Paragraph 5 of Article 11 (wording of 12 October 2010; Official Gazette *Valstybės žinios*, 2010, No. 125-6376) of the Republic of Lithuania's Law on State Assistance for the Acquisition or Rent of Residential Properties and for the Renovation (Modernisation) of Blocs of Flats that a social housing property lease agreement is terminated in case the income of a tenant (his/her family) of social housing received within one year (last 12 months) exceeds by more than five percent the sizes of property or income established by the Government, insofar as the said paragraph prescribed that a social housing property lease agreement must be terminated even in situations where the level of exceeding the sizes established by the Government does not make it possible to rent a home meeting socially acceptable minimum needs of the person (his/her family), was in conflict with Article 52 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.
4. To dismiss the part of the case subsequent to the petition of the Klaipėda City Local Court, the petitioner, requesting an investigation into the compliance of Item 2.1 (wording of 17 February 2011; Official Gazette *Valstybės žinios*, 2011, No. 23-1101) of the Resolution of the Government of the Republic of Lithuania (No. 670) "On the Establishment of the Sizes of Annual Income and Property According to Which the Right to Municipal Social Housing or the Improvement of its Conditions is Established" of 28 May 2003 with Paragraphs 1 and 2 of Article 5 and Article 52 of the Constitution of the Republic of Lithuania.

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

Justices of the Constitutional Court:

Elvyra Baltutytė

Vytautas Greičius

Danutė Jočienė

Pranas Kuconis

Gediminas Mesonis

Vytas Milius

Egidijus Šileikis

Algirdas Taminskas

Dainius Žalimas