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**The Principle of Legal
Certainty in the
Judicial Practice of
the Constitutional
Court of Lithuania**

Principle of Legal Certainty: Origin

- Not expressly foreseen in the Constitution
- Implied by the principle of the State under the rule of law (Preamble of the Constitution)
 - the constitutional principle of a state under the rule of law is a universal principle on which the entire legal system of Lithuania and the Constitution of the Republic of Lithuania itself are based;
 - the essence of the constitutional principle of a state under the rule of law is the rule of law. The constitutional imperative of the rule of law means that freedom of state power is limited by means of law, which must be obeyed by all subjects of legal relationships, including law-making subjects;
 - the constitutional principle of a state under the rule of law is an especially broad constitutional principle and comprises a wide range of various interrelated imperatives. The content of the constitutional principle of a state under the rule of law should be revealed by taking account of various provisions of the Constitution and by assessing all values consolidated, defended, and protected by the Constitution, and by having regard to the content of various other constitutional principles;

- since the content of the constitutional principle of a state under the rule of law should be interpreted without denying any single provision of the Constitution, none of the provisions of the Constitution – not a single constitutional principle or constitutional norm – may be interpreted in such a way that would deviate from the requirements of a state under the rule of law that arise from the Constitution, since the content of the constitutional principle of a state under the rule of law and, thus, also the constitutional concept of a state under the rule of law would be distorted or even denied. All provisions of the Constitution should be interpreted in the context of the constitutional principle of a state under the rule of law and the constitutionally consolidated concept of a state under the rule of law.
- **Legal certainty (security) and legal clarity are among the essential elements of the principle of a state under the rule of law, which is consolidated in the Constitution (rulings of 30 May 2003, 13 December 2004)**
 - para. 2 of Art. 5 of the Constitution provides that the scope of powers is limited by the Constitution: the Seimas, as the legislative institution that passes laws and other legal acts, is autonomous inasmuch as its powers and its wide discretion are not limited by the Constitution, including the constitutional principles of a state under the rule of law, the separation of powers, responsible governance, the protection of legitimate expectations, legal clarity, as well as by other principles (ruling of 1 July 2013).

Principle of Legal Certainty: Meaning

- Obligatory requirement for any legal regulation – clarity (rulings of 30 May 2003, 24 December 2008, 14 April 2014):
 - clear, comprehensible, coherent and harmonious legal regulation; the consistency and internal harmony of the legal system must be ensured;
 - legal norms must be formulated precisely and they may not contain ambiguities; legal acts may not contain provisions simultaneously regulating the same social relationships in a different manner
 - certainty and stability of a legal regulation, in order to protect the rights of the subjects of legal relationships, including acquired rights, as well as to respect legitimate interests and legitimate expectations (if legal certainty, legal security, and the protection of legitimate expectations are not ensured, the trust of persons in the state and law will not be ensured);
 - law must be public - the constitutional requirements that only published legal acts are effective and that they must be prospective are an important precondition for legal certainty;
 - in order to ensure that the subjects of legal relationships are aware of the requirements set with respect to them by law, legal norms must be established in advance, legal acts must be published officially, and such acts must be public and accessible

- Clarity – in professional rather than ordinary meaning:
 - not any absence of clarity is the reason to declare the legal regulation as unconstitutional: only linguistic interpretation is not sufficient, since the precise meaning of the legal regulation can be established also by employing other methods, including the systemic interpretation, in order to identify the purpose and aims of the legal regulation, its scope and particularities (ruling of 7 December 2016);
 - the requirement of clarity is satisfied where the individual can know from the wording of the relevant provision, if need be with the assistance of the courts' interpretation of it and after taking appropriate legal advice, what acts and omissions will make him/her criminally liable and what penalty he/she faces on that account; however clearly drafted a legal provision may be, in any system of law, including criminal law, there is an inevitable element of judicial interpretation - the role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain (based on the ECtHR standard, ruling of 15 March 2017)

Legal certainty as an autonomous criterion for determining (un)constitutionality

- As the main argument – rare cases:
 - ruling of 15 March 2017 regarding illicit enrichment: there is no ground for stating that the established and related legal regulation (definition of a respective offence) is contradictory, unclear, ambiguous, since by means of interpretation the main elements of an offence (the subject, the type of guilt, the notion of illicit enrichment and the sum of significant enrichment that do not match the known income) are clear;

- ruling of 7 December 2016 regarding the tariff of land tax for local municipalities: the regulation without the express provision on the powers of local municipalities to establish this tariff for the fiscal year of 2013 was recognised contradictory and ambiguous, as not for all interested subjects those powers could be clear from an overall regulation;

- ruling of 3 June 2020: the regulation on the calculation of pensions for scholars was recognised as contradictory, incoherent and unclear, as it had not been harmonised with the respective amendments to the law (regulation of the situation that could not be possible anymore).

Legal certainty as a subsidiary criterion for determining (un)constitutionality

- More often applied with other arguments:
 - together with non bis in idem – ruling of 24 July 2020: contradictory and unclear legal regulation that provided for the second sanction of deprivation of a driving licence (for 10 years) for a second drunk driving or a third serious violation (senseless administrative sanction with max. of 5 years)
 - legislative omission: absence of a clear procedure for declaration of private interests (ruling of 19 December 2019).

Vacatio legis doctrine

(tax and budgetary regulation in particular)

- Rulings of 15 February 2013, 3 November 2020 – legal certainty in conjunction with the principles of legitimate expectations and publicity of law results in the requirement of a reasonable time for entering into force of tax laws:
 - sufficient time to prepare for substantial changes (not a few days or months);
 - may be assessed according to the concrete circumstances of a case;
 - exceptions only in grave economic situation;
 - not applied when tax burden reduced.

Administration of constitutional justice

- Determining effects of rulings – additional argument in support of real rather than nominal constitutional justice:
 - postponing of entry into force (official publication) – necessity to avoid legal gaps or irregularities in state administration;
 - presumption of constitutionality – denying the ground for disputing the already executed administrative and judicial decisions;
 - exceptional retroactive application of rulings (impossibility to implement the impugned legal regulation)
 - clarification of legal effects (positive legislator)