



WHETHER RULING OF CONSTITUTIONAL COURT PROVIDING INTERPRETATION OF LAW CAN BE APPLIED RETROACTIVELY?

Jurgita Grigienė¹

Paulius Čerka²

Vytautas Magnus university

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SUMMARY

Lithuania has chosen to have constitutional review of legal acts by the Constitutional Court of Republic of Lithuania. The Constitutional court can decide inter alia whether legal acts contradict to the provisions of Constitution. Constitutional Court also can provide interpretations of laws. This article analyses whether interpretation of law could be applied retroactively. Particularly the Ruling of Constitutional Court of 13 November 2006 providing interpretation of Law on Citizenship is analyzed in this Article. Authors emphasize that citizenship grants certainty right to persons. One of the rights is a right to restitution of property which was nationalized during soviet times. Only citizens of Lithuania have a right to restitution, therefore who are acknowledged citizens is important to other rights of persons. Article analyzes whether ruling of Constitutional Court narrowing list of persons who can be acknowledged as Lithuanian citizens could be applied retroactively i.e. to the status of persons which they have prior to a ruling of Constitutional Court.

KEYWORDS

Constitution, Constitutional review, Interpretation of Law, Citizenship, Restitution

INTRODUCTION

Lithuania has chosen to have Constitutional Court as institution of constitutional review. The Constitutional Court of Lithuania decides whether the laws and other legal acts are not in conflict with the Constitution. The legal act may not be applied from the day of official promulgation of the decision of the Constitutional Court that the act in question is

¹ Jurgita Grigienė – Associate Professor; Dr., Vytautas Magnus University Faculty of Law, Department of Private Law (Lithuania), Address: Ožeskiėnė 18, LT-44246 Kaunas, Lithuania, tel. (+370 37) 327 873; e-mail: j.grigiene@tf.vdu.lt

² Paulius Čerka – Lecture; Dr. Vytautas Magnus University Faculty of Law, Department of Private Law (Lithuania), Address: Ožeskiėnė 18, LT-44246 Kaunas, Lithuania, tel.: (+370 37) 327 873; e-mail: p.cerka@tf.vdu.lt

in conflict with the Constitution of the Republic of Lithuania³. Constitutional Court of Lithuania provides also interpretation of laws and other legal acts which are presented for constitutional review. The outcome of Constitutional Court's decision on unconstitutionality of a statute within the system of abstract constitutional review is invalidation of a statute in respect to all (*erga omnes*). It is apparent that the law declared to be unconstitutional ceases to exist. However, there are disputes on the moment when a statute ceases to exist. Neither the Constitution of Lithuania nor any legal act gives answer whether these interpretations can have retroactive effect or shall be applied only from the moment they are promulgated. Most countries recognize that the annulment of act by the Supreme Court or the Constitutional Court becomes effective at the moment the court decision is made or the date specified. Thus, generally these decisions are not retroactive they are only valid for the future. The prevailing doctrine of the Constitutional law states that the consequences of Constitutional Court's rulings are *erga omnes* and *ex nunc*. The only exception is when the court makes petition to Constitutional Court with a request to investigate whether the applicable legislation is constitutional: in this case before the Constitutional Court ruling parties will be affected by the effects of such decision (*ex tunc*). As an illustration can be taken the case in Hungary where the petitioners sought constitutional review and annulment of s. 43 of Act XXXII/ 1989 in the Constitutional Court. Section 43(1) of this law provided that a legal rule declared null and void by the Constitutional Court may not be applied commencing from the date the Court decision is published in the *Hungarian Official Gazette* (i.e., it is effective prospectively *ex nunc*). *Court did not overrule this principle*. Court stated that (I) Legal certainty, as part of the rule of law under Art. 2(1) was not violated by *ex nunc* invalidation of an unconstitutional legal rule which thereby left intact those legal relationships which had come into existence on a (now) unconstitutional basis, Considerations of legal certainty were separate from those of the nullity of a legal rule especially concerning legal relationships created on the basis of unconstitutional legal rule. The individual legal relationships and legal facts became independent of underlying norms: thus they did not *share* automatically the fate of those norms; otherwise every change in a legal rule would involve the review of all relevant legal relationships⁴.

As a specific problem in this case is application of the interpretations of the law retroactively. This problem has received scholarly attention belongs to the nature of the interpretative decisions of the constitutional court. For example Bulgarian Constitution Court after a robust debate in the academia has accepted the position that all of its decisions including those on constitutional interpretation have prospective effect⁵. But Supreme Administrative Court of Lithuania stated that “*interpretations of law can be applied even to*

³ *Constitution of the Republic of Lithuania*, Official Gazette Valstybės Žinios (1992, No. 33-1014).

⁴ LÁSZLÓ SÓLYOM, GEORG BRUNNER, *Constitutional judiciary in a new democracy: the Hungarian Constitutional Court* (University of Michigan Press, 2000) p.417.

⁵ EVGENI TANCHEV, “*Constitutional Control In Comparative And Bulgarian Prospective*” // [accessed 2010.10.10] <http://www.venice.coe.int/Wccj/Papers/Bul_Tanchev_E.Pdf>

legal relationships which occurred prior to the Ruling of the Constitutional Court ⁶. The interpretation of law can be broadening or narrowing and even impose new right and obligations for persons. The applications of law retroactively generally are not recognized. Art. 6 part 1 of the European Convention on Human Rights provides that *“in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”* ⁷. Article 6, Part 1, fixes the principle of a fair trial. A principle of a fair trial includes principles of legal certainty, non retroactivity and protection of persons' legitimate expectations. The European Court of Human Rights stated that the principle of non retroactivity is included in principle of a fair trial. ⁸ This article shall analyze whether ruling of Constitutional Court which provided narrowing interpretation of Law on Citizenship can be applied retroactively and whether this application does not infringes principle of fair trial established in the Convention. Particular attention shall be given to the right of Lithuanian citizens to restitution of nationalized property. The constitutional review of legal acts, the problems of citizenship and restitution is broadly analyzed in Lithuanian jurisprudence and court practice but the issue raised in this article i.e. legality to apply interpretations retroactively is not yet revealed by Lithuanian scholars.

LEGAL FRAMEWORK AND REGULATION OF CITIZENSHIP IN LITHUANIA

Law on Citizenship defines who citizens of Republic of Lithuania are. The Law on Citizenship underwent changes on a frequent basis as well. Law on Citizenship ⁹ Article 1 provided that *persons who were citizens of the Republic of Lithuania prior to 15 June 1940, including their children and grandchildren, provided they have not acquired citizenship of another state shall be citizens of the Republic of Lithuania*. Article 17, Part 1, Paragraph 2 provided *“that the right to the citizenship of the Republic of Lithuania shall be retained for an indefinite period for children of persons who held Lithuanian citizenship until 15 June 1940, who were born in Lithuania but are at the present time residing in other states.”* Pursuant to Article 18 persons specified in Article 17, Part 1, Paragraphs 2 of this Law shall implement their right to the citizenship of the Republic of Lithuania upon refusing the one of another state, and moving to Lithuania for permanent residence as well as taking the oath to the Republic of Lithuania.

In 1995 The Law on Citizenship ¹⁰ was amended. Article 1, Part 1 provided that *persons who were citizens of the Republic of Lithuania prior to 15 June 1940, and their children..... shall be citizens of the Republic of Lithuania*. The main change in the 1995

⁶ *J.A.K v. Klaipėdos apskrities viršininko administracija*, The Supreme Administrative Court of Lithuania (2009, No. P (261)-39).

⁷ *European Convention on Human Rights*, Rome, (1950).

⁸ *Draon v. France.*, The European Court of Human Rights (2006, No. 1513/03).

⁹ *Law on Citizenship of the Republic of Lithuania*, Official Gazette Valstybės Žinios (1991, No. 36-977).

¹⁰ *Law on Citizenship of the Republic of Lithuania*, Official Gazette Valstybės Žinios (1995, No. 86-1940).

Law on Citizenship was that the requirement not to be a citizen of another country was abandoned and persons, who were children of Lithuanian citizens prior to the 15th of June 1940, could be citizens of Lithuania, as well as of another country. Under these exceptional circumstances double citizenship was allowed. The Law on Citizenship have not included any additional requirements and persons recognized as Lithuanian citizens pursuant to the Law on Citizenship as amended 1995. In 1997 there were adopted amendments to Law on Citizenship but by this amendments Article 1 defining citizenship have remained unchanged.

The Constitutional Court of Republic of Lithuania received petitions to investigate provisions in the Law on Citizenship allowing double citizenship and granting Lithuanian citizenship only to persons who have not repatriated. The Constitutional Court *inter alia* ruled that:

- Provisions in Law on Citizenship providing Lithuanian citizenship to persons who have not repatriated from Lithuania was in conflict with Constitution of the Republic of Lithuania and with the constitutional principle of a state under the rule of law.
- Article 18 of the Republic of Lithuania Law on Citizenship, to the extent that it did not establish the requirement to renounce the held citizenship of another state when citizenship of the Republic of Lithuania is restored, was in conflict with the Constitution of the Republic of Lithuania¹¹.

By adopting this ruling The Constitutional Court of the Republic of Lithuania presented also interpretations of the Law on Citizenship. Court stated that:

*“The persons specified in Item 1 of Paragraph 1 of Article 1¹² of the Law on Citizenship **are persons who permanently reside in Lithuania**”*

“persons residing abroad have the right to the retention of citizenship of the Republic of Lithuania, in itself they are not citizens of the Republic of Lithuania ex lege—in order to become citizens of the Republic of Lithuania, they must express the corresponding intention and to implement the requirements established in the Law on Citizenship”¹³.

The Constitutional Court presented narrowing interpretation of the Law on Citizenship. The interpretation of the law created a new rule that Article 1, Part 1, Item 1 shall be applied only to persons residing in Lithuania and that only persons residing in Lithuania are acknowledged as Lithuanian citizens *ex lege*. The narrowing interpretation of the Law on Citizenship narrows the group of persons who can be acknowledged as Lithuanian citizens *ex lege*. The new rule withdraws persons right to be acknowledged as a

¹¹ *The Ruling On The Compliance Of The Provisions Of Legal Acts Regulating The Citizenship Relations With The Constitution Of The Republic Of Lithuania.*, Constitutional Court Of The Republic Of Lithuania (2006 No. 45/03-36/04).

¹² Article 1, Part 1 provided “persons who were citizens of the Republic of Lithuania prior to 15 June 1940, and their children shall be citizens of the Republic of Lithuania”.

¹³ *The Ruling On The Compliance Of The Provisions Of Legal Acts Regulating The Citizenship Relations With The Constitution Of The Republic Of Lithuania.*, Constitutional Court Of The Republic Of Lithuania (2006 No. 45/03-36/04).

Lithuanian citizen *ex lege* because they resided abroad. As only persons who are acknowledged as Lithuanians citizens *ex lege* have certain rights (for example the right to restitution), pursuant to the new rule created by the Constitutional Court the persons residing abroad are not acknowledged as a Lithuanian citizens and, therefore, are not subject to restitution. The Constitutional Court has the right to present the narrowing and broadening interpretation of the law but the legal problems occurs whether this interpretation could be applied retroactively to the status which occurred prior to that ruling. The interpretation of the Law on Citizenship in the ruling of the Constitutional Court withdraws the right to restitution from persons residing abroad. Prior to that ruling a person could have been acknowledged as a Lithuanian citizen pursuant to Article 1, Part 1, Item 1 of the Law on Citizenship and, therefore, could have had the right to restitution.

RESTITUTION RIGHTS GRANTED TO CITIZENS OF LITHUANIA

After Lithuania regained its independence, the First Law on Restitution (Dėl piliečių nuosavybės teisių į išlikusį nekilnojamąjį turtą atstatymo tvarkos ir sąlygų) was passed in 1991¹⁴. It is Article 2, Part 2, provided that the right of ownership to the existing real property shall be restored:

*“to the children (or adopted children), parents (or foster parents), or spouse of the former owner, in the event that he is no longer living Upon the death of a child of the former owner ,the right of ownership to his/her portion of the existing real property shall be restored to his/herchildren, provided they are certified citizens of the Republic of Lithuania, and are permanent residents of the Republic of Lithuania”*¹⁵.

In 1997 the first Law on Restitution was replaced by the Second Law on Restitution (įstatymas Dėl piliečių nuosavybės teisių į išlikusį nekilnojamą turtą atkūrimo)¹⁶. Article 2 of this law provided that:

“Ownership rights to the real property specified in Article 3 of this Law shall be restored to the following citizens of Lithuania:

*- children of the property owner share the existing real property the deceased is entitled to”*¹⁷.

¹⁴ Law on the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property of the Republic of Lithuania, Official Gazette Valstybės Žinios (1991, No.21-545).

¹⁵ Law on the Procedure and Conditions of the Restoration of the Rights of Ownership to the Existing Real Property of the Republic of Lithuania, Official Gazette Valstybės Žinios (1991, No.21-545).

¹⁶ Law On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property of the Republic of Lithuania, Official Gazette Valstybės Žinios (1997, No. 65-1558).

¹⁷ Law On the Restoration of the Rights of Ownership of Citizens to the Existing Real Property of the Republic of Lithuania, Official Gazette Valstybės Žinios (1997, No. 65-1558)

The First Law on Restitution provided two requirements for subjects of restitution: Lithuanian citizenship and permanent residence in Lithuania. The Second Law on Restitution left only one requirement for subjects of restitution that only citizens of the Republic of Lithuania are entitled to it.

The Supreme Administrative Court of Lithuania stated that one of the prerequisites entitling to restitution is a citizenship of the Republic of Lithuania¹⁸. Lithuanian citizenship is a mandatory prerequisite for the person who can be subject to restitution. The person must be a qualified subject, i.e. he/she must be a Lithuanian citizen until the deadline for lodging restitution claims. Applicants had to be citizens of the Republic of Lithuania until the 31st of December 2001. The Supreme Administrative Court of Lithuania stated that in order to determine whether the Applicant was a Lithuanian citizen until the 31st of December 2001, it is necessary to apply the Law on Lithuanian Citizenship adopted on 2 July 1997 and valid on that date. Pursuant to Law on Citizenship:

“The following persons shall be citizens of the Republic of Lithuania:

*1. persons who were citizens of the Republic of Lithuania prior to 15 June 1940, their children and grandchildren ...”*¹⁹.

Item 1 of Paragraph 1 of Article 1 on Law on Citizenship was interpreted by Ruling of Constitutional Court:

“The persons specified in Item 1 of Paragraph 1 of Article 1 of the Law on Citizenship are persons who permanently reside in Lithuania”

*“persons residing abroad have the right to the retention of citizenship of the Republic of Lithuania, in itself they are not citizens of the Republic of Lithuania ex lege—in order to become citizens of the Republic of Lithuania, they must express the corresponding intention and to implement the requirements established in the Law on Citizenship”*²⁰

The Supreme Administrative Court of Lithuania in case No. A 556-234/2008 applied the ruling of the Constitutional Court, which provided interpretation to the Law on Citizenship. In case No. A 556-234/2008 the Supreme Administrative Court of Lithuania stated that the Applicant was not Lithuanian citizen and, therefore, was not subject to restitution until the final term for presenting restitution claims, i.e. until the 31st of December 2001²¹. The Applicant was acknowledged as a Lithuanian citizen by the 2006 decision of the Migration Department. The Applicant was not subject to restitution because he was not a Lithuanian citizen until the 31st December 2001 and the Applicant's petition to restitution and renewal of the term was dismissed. The Applicant presented a petition to the Supreme Administrative Court of Lithuania for renewing the process in the Applicant's

¹⁸ *J.A.K. v. Klaipėdos apskrities viršininko administracija*, The Supreme Administrative Court of Lithuania (2008, No. A-556-234).

¹⁹ *Law on Citizenship of the Republic of Lithuania*, Official Gazette Valstybės žinios (1995, No. 86-1940).

²⁰ *The Ruling On The Compliance Of The Provisions Of Legal Acts Regulating The Citizenship Relations With The Constitution Of The Republic Of Lithuania.*, Constitutional Court Of The Republic Of Lithuania (2006, No. 45/03-36/04).

²¹ *J.A.K. v. Klaipėdos apskrities viršininko administracija.*, The Supreme Administrative Court of Lithuania (2008, No. A-556-234/2008).

administrative case No. A 556-234/2008. One of the Applicant's arguments was that in the Administrative Case No. A 556-234/2008 the Supreme Administrative Court of Lithuania applied the interpretation of the Constitutional Court Decision retroactively. The interpretation of the Constitutional Court stating that *“only persons residing in Lithuania will be treated as Lithuanian citizens and persons residing abroad will have only the right to retention of citizenship”* was adopted on the 13th of November 2006. Until that interpretation of the Constitutional Court the Law on Citizenship (as of 1995) had regulated the acquisition of citizenship. The Migration Department took a decision that the Applicant was acknowledged as a Lithuanian citizen on the 13th of October 2006. The Applicant's claim for restitution had been lodged and the decision regarding his citizenship had been taken before the decision of the Constitutional Court with its interpretation of the Law on Citizenship. Prior to the interpretation of the Constitutional Court the Law on Citizenship clearly stated that:

“The following persons shall be citizens of the Republic of Lithuania:

*1. persons who were citizens of the Republic of Lithuania prior to 15 June 1940, their children and grandchildren ...”*²².

Applicant alleged that pursuant to the Law on Citizenship (dated 1995) the Applicant was acknowledged as a Lithuanian citizen. The Constitutional Court provided the interpretation of the Law on Citizenship that is constrictive and withdraws rights of persons who reside abroad to be acknowledged as Lithuanian citizens *ex lege* in comparison with persons residing in Lithuania; therefore, it cannot be applied retroactively. The Supreme Administrative Court of Lithuania dismissed the Applicant's petition to renew the process in the administrative case and in the final decision of the Supreme Administrative Court of Lithuania of 6 March 2009, No. P (261)-39/2009 it was stated that *“interpretations of law can be applied even to legal relationships which occurred prior to the ruling of the Constitutional Court”*.

CONCLUSIONS

The Constitutional Court has a right to present narrowing and broadening interpretations of law. In its 2006 ruling regarding citizenship Constitutional Court presented narrowing interpretation of the Law on Citizenship stating that only persons who reside in Lithuania shall be recognized as Lithuanian citizens *ex lege*. Persons who reside abroad retain only the right to Lithuanian citizenship. The Lithuanian citizenship provides rights to persons. One of the rights of Lithuanian citizens is the right to restitution of property which was nationalized. Only citizens of Lithuania have the right to restitution. If a person is recognized as Lithuanian citizen *ex lege* he has the right to restitution. If person is not recognized as Lithuanian citizen he has no right to restitution. Article analyzed one particular case when Applicant alleged that he satisfied criteria for restitution and was suitable subject for restitution until the ruling of Constitutional court. The Supreme

²² *Law on Citizenship of the Republic of Lithuania*, Official Gazette Valstybės Žinios (1995, No. 86-1940).

Administrative Court of Lithuania²³ stated that in determining whether Applicant was a citizen of Republic of Lithuania on the 31 of December 2001, the decision of Constitution Court adopted on the 13th of November 2006 shall be applied. Applicant alleged that application of ruling of the Constitutional Court to his status he has until 31 December 2001 is application of law retroactively. The Supreme Administrative Court of Lithuania stated²⁴ that the 2006 ruling of the Constitutional Court providing interpretation of the Law on Citizenship *can be applied to legal relationships which occurred prior to that ruling of the Constitutional Court.*

The application of the Ruling adopted by the Constitutional Court which presented interpretation of the Law on Citizenship, to the Applicant's legal status and legal relationships, which occurred prior to that ruling of the Constitutional Court, implies the retroactive application of law. The retroactive application of law is withdrawing Applicant's right to be recognized as Lithuanian citizen and the right to restitution. Retroactive application of the interpretation of the Law provided in 2006 ruling of the Constitutional Court infringed the Applicant's legal certainty, legitimate expectations. Legal norms withdrawing rights, when applied retroactively, infringe the principle of a fair trial fixed in Article 6 of the Convention. Legal certainty demands that the *ex tunc* power of the constitutional court ruling interpretation should be applied retroactively only in exceptional cases and only when persons are granted rights against state, not deprived of them.

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SANTRAUKA

AR KONSTITUCINIO TEISMO NUTARIMAS DĖL TEISĖS IŠAIŠKINIMO GALI BŪTI TAIKOMAS RETROAKTYVIAI?

Lietuvoje konstitucinę teisės aktų peržiūrą vykdo Lietuvos Respublikos Konstitucinis Teismas. Konstitucinis teismas gali nuspręsti (inter alia), ar teisės aktai prieštarauja Konstitucijos nuostatomis. Konstitucinis Teismas taip pat gali pateikti įstatymų interpretacijas. Šiame straipsnyje analizuojama, ar teisės aiškinimas galėtų būti taikomas atgaline data. Ypatingas dėmesys kreipiamas Konstitucinio Teismo 2006 m. lapkričio 13 nutarimui kuriame analizuojama pilietybės įstatymo interpretacija.

Taip pat dėmesys kreipiamas į asmens teisę į nuosavybės restituciją, kuri buvo nacionalizuota Sovietiniais laikais. Taip pat straipsnyje analizuojama, ar Konstitucinio Teismo nutarimas kuris susiaurina asmenų sąrašą, kurie gali būti pripažinti Lietuvos piliečiais, galėtų būti taikomas atgaline data, t. y. pagal asmenų statusą, kurį jie turėjo iki Konstitucinio Teismo nutarimo.

REIKŠMINIAI ŽODŽIAI

Konstitucija, Konstitucinė teisės aktų peržiūra, įstatymų interpretacija, pilietybė, restitucija.