

INFLUENCE OF THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT ON THE CRIMINAL PROCEDURE

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Abstract. *The author of the paper considers the influence of the jurisprudence of the Constitutional Court as the only official entity entitled to interpret the Constitution on the criminal procedure. The paper contains the review the following three trends of impact of the constitutional jurisprudence: influence on the legislature in criminal procedure law, influence on the practice of implementation of criminal procedural law and on the science of criminal procedural law. The paper mostly relies on the works by professionals in the field of constitutional law, including publications by prof. dr. Juozas Žilys, the first Chairman of the Constitutional Court of the Republic of Lithuania and the former dean of the Law Faculty of Mykolas Romeris University, as the area of criminal procedure has so far included only several publications, the direct objective of which was to study issues on the constitutionalisation of criminal procedure.*

Keywords: *criminal procedure, constitutionalisation of criminal procedure, jurisprudence of the Constitutional Court.*

Introduction

At the end of the XX century researchers noticed that various branches of national law (criminal, civil, administrative, etc.), also the practice of using legal norms and even the science of law is more and more influenced by the constitution and its values. Constitution penetrates deeper and deeper into the entire legal life. We can call this phenomenon the constitutionalisation of law. Constitutional fixing of the main personal rights and freedoms, direct implementation of constitutions, appearance of the institutions of constitutional control and their active operation, possibility to defend one's rights by using the constitution makes the main law of the country the real centre of legal life.¹ Ordinary (first of all statutory) law must be based on constitution, it must be possible to verify its legitimacy and validity by appealing to the constitution². In Lithuania as well as in other countries that keep to the continental law tradition criminal procedure is usually attributed to the historically developed theoretical model of investigative procedure. However, within the recent centuries the almost indisputable position that the Constitution serves as the grounds for the legal system as well as for the law of criminal procedure is developed in the democratic states. The fundamentals are formed in the Constitution and in international treaties as well as in the European Union (hereinafter referred to as the EU) primary and secondary law, which consolidate human rights and the mechanisms of their protection; being ruled by those principles, the legislator models the definite rules of criminal procedure. The strive for an open, just, and harmonious civil society and law-governed state, as established in the Preamble to the Constitution, presupposes that every individual and society as a whole must be safe from unlawful conduct against them.³ The purpose of the state as a political organisation of the entire society is to ensure human rights and freedoms and to guarantee the public interest; therefore, while exercising its functions and acting in the interests of the entire society, the state has the obligation to efficiently ensure effective protection of human rights and freedoms as well as other values protected and defended by the Constitution of every individual and the whole society.⁴ Thus, the obligations of a state, which arise from the Constitution to ensure the security of each person and all society from criminal attempts

- 1 Jarašiūnas, E. The 1992 Constitution of the Republic of Lithuania in the wider context of constitutional development. *Jurisprudencija*. 2004, 50(42): 33.
- 2 Kūris, E. Konstitucija, konstitucinė doktrina ir Konstitucinio Teismo diskrecija [The Constitution, the constitutional doctrine and the discretion of the Constitutional Court]. In: *Konstitucijos aiškinimas ir tiesioginis taikymas. Baltijos ir Skandinavijos šalių konferencijos medžiaga*. Vilnius, 2002, p. 10.
- 3 The ruling of the Constitutional Court of the Republic of Lithuania of 8 May 2000. On the compliance of Part 12 of Article 2, Item 3 of Part 2 of Article 7, Part 1 of Article 11 of the Law of the Republic of Lithuania on Operational Activities and Parts 1 and 2 of Article 1981 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania. *Official Gazette*. 2000, No. 39-1105.
- 4 Ruling of the Constitutional Court of the Republic of Lithuania of 29 December 2004 On the compliance of Article 3 (version of 26 June 2001), Article 4 (version of 26 June 2001 and 3 April 2003), Paragraph 3 of Article 6 (version of 26 June 2001) and Paragraph 1 of Article 8 (version of 26 June 2001) of the Law of the Republic of Lithuania on the Restraint of Organised Crime with the Constitution of the Republic of Lithuania. *Official Gazette*. 2005, No. 1-7 [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2004/r041229.htm>>.

implies not only the right and duty of the legislator to define criminal deeds and establish criminal liability for them by means of laws, but also the right and duty to regulate relations regarding detection and investigation of criminal deeds and consideration of criminal cases, i.e. the relations of criminal procedure.⁵

However, prior to the preparation of the new code and its adoption in the doctrine of criminal procedure as well as in the judiciary practice, the purpose of criminal procedure and its separate norms used to be analysed by circumventing the analysis of the provisions of the Constitution as an integral act. The provision that the Constitution serves as the basis of the legal system is undisputable in legal literature; thus, other branches of law and other legal institutions must be analysed as the development of the principles and ideas fixed in the Constitution.⁶ The Constitution cannot be interpreted following the ordinary law;⁷ it means that it is exactly the interpretation of the ordinary law that must be substantiated by the provisions of the Constitution. However, some years ago it was possible to fully accept the opinion that the problems of separate branches of law used to be analysed in isolation from the constitutional context.⁸

Lately, however, the influence of the Constitution (just as that of the jurisprudence of the Constitutional Court) on the criminal procedure has become tangible, rather than nominal one. In support of the view that constitutionalisation of the legal order is related to the way that the constitution is understood, taught and applied⁹, the paper shall consider the influence on the criminal procedure of the jurisprudence of the Constitutional Court as the only official entity entitled to interpret the Constitution. The paper shall review the following three trends of impact of the constitutional jurisprudence: influence on the legislature in criminal procedural law, influence on the practice of the implementation of

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- 5 Ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006 “On the compliance of Paragraph 4 (version of 11 September 2001) of Article 131 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania, on the compliance of Paragraph 5 (version of 10 April 2003 and 16 September 2003) of Article 234, Paragraph 2 (versions of 10 April 2003 and 16 September 2003) of Article 244, Article 407 (version of 19 June 2003), Paragraph 1 (version of 14 March 2002) of Article 408, Paragraphs 2 and 3 (version of 14 March 2002) of Article 412, Paragraph 5 (version of 14 March 2002) of Article 413 and Paragraph 2 (version of 14 March 2002) of Article 414 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania and on the petitions of the Šiauliai District Court, the petitioner requesting to investigate whether Article 410 (version of 14 March 2002) of the Code of Criminal Procedure of the Republic of Lithuania is not in conflict with the Constitution of the Republic of Lithuania”. *Official Gazette*. 2006, No. 7-254 [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2006/r060116.htm>>.
 - 6 Mikelėnas, V. Lietuvos Respublikos Konstitucija Lietuvos bendrosios kompetencijos teismų praktikoje. Konstitucijos aiškinimas ir tiesioginis taikymas [The Constitution of the Republic of Lithuania in the Practice of Courts of General Competence. Interpretation and Direct Application of the Constitution]. *Baltic and Scandinavian countries' conference material. 15-16 March 2002, Vilnius*, p. 133.
 - 7 Kūris, E. Europos Sąjungos teisė Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos [The EU Law in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: Search for the Algorithm of Coexistence]. In: Katuoka, S. (ed.) *Teisė besikeičiančioje Europoje. Liber Amicorum Pranas Kūris*. Vilnius: Mykolo Romerio universitetas, 2008, p. 677–678.
 - 8 Abramavičius, A.; Jarašiūnas, E. Konstitucinė dimensija baudžiamojoje teisėje [Constitutional Dimension in Criminal Law]. *Teisė*. 2004, 53: 9.
 - 9 Delpérée, F. La constitutionnalisation de l'ordre juridique belg. *Revue belge de droit constitutionnel*. 1999, 3: 227. Quoted from Jarašiūnas, E., *supra* note 1, p. 33.

criminal procedural law and on the science of criminal procedural law. The paper shall mostly rely on the works by professionals in the field of constitutional law, including publications by prof. dr. Juozas Žilys, the first Chairman of the Constitutional Court of the Republic of Lithuania and the former dean of the Law Faculty of Mykolas Romeris University, as the area of criminal procedure has so far included only several publications, the direct objective of which was to study issues on the constitutionalisation of criminal procedure¹⁰.

1. Importance of the Jurisprudence of the Constitutional Court for the Development of the Law of Criminal Procedure

The abundant jurisprudence of the Constitutional Court of the Republic of Lithuania (hereinafter referred to as the Constitutional Court) of the recent years (in which much attention was drawn to the general model of the constitutional criminal procedure, to the system of the principles of criminal procedure, to the items of separate proceedings of criminal procedure and of the constitutionality of separate norms of criminal procedure¹¹) as well as the latest scientific research into criminal procedure¹² allow stating that at least on the doctrinal level, the analysis of criminal procedure is impossible without the analysis of the context of the Constitution. The definite rulings passed by the Constitutional Court regarding the law of criminal procedure have at least the ternary impact: firstly, if a norm (or several norms) of criminal procedure is declared as contradictory to the Constitution, it is not applied; secondly, if the norm which is

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- 10 Jurgaitis, R. Konstituciniai baudžiamojo proceso teisės pagrindai [Constitutional Fundamentals of the Criminal Procedural Law]. In: Ancelis, P., et al. *Sąžiningas baudžiamasis procesas: probleminiai aspektai* [Fair Criminal Procedure: Problematical Dimensions]. Vilnius: Industrias, 2009, p. 17–60; Goda, G. Konstitucinė justicija ir baudžiamojo proceso mokslas [Constitutional justice and the science of criminal procedure]. *Teisė*. 2011, 78: 68–92; Ažubalytė, R. Constitutionalisation and internationalisation of the Lithuanian Criminal Procedural Law. In: *Dny práva – 2010 – Days of Law*. Dávid, R.; Sehnálek, D.; Valdhans, J. (eds.). 1. ed. Brno: Masaryk University, 2010, p. 2–12 [interactive]. [accessed on 19-05-2012]. <http://www.law.muni.cz/sborniky/dny_prava_2010/files/sbornik.html>.
- 11 For more information about the decisions passed by the Constitutional Court of the Republic of Lithuania related to the criminal procedure, see Jurgaitis, R., *supra* note 10, p. 17–60; The Constitutional Court of the Republic of Lithuania. Rulings, decisions and conclusions [interactive]. [accessed on 19-05-2012]. <http://www.lrkt.lt/Documents1_e.html>.
- 12 Jurgaitis, R., *supra* note 10, p. 17–60; Merkevičius, R. *Baudžiamasis procesas: įtariamojo samprata*. [Criminal Procedure: Conception of the Suspect]. Vilnius: Registrų centro Teisinės informacijos departamentas, 2008, p. 29–119; Ažubalytė, R. Alternatyvūs baudžiamojo konflikto sprendimo būdai nagrinėjant bylą teisme [Alternative Methods of Resolving Criminal Conflict in Judicial Proceedings]. *Jurisprudencija*. 2008, 6(108): 42–43; Goda, G. Baudžiamojo proceso forma: optimalių procesinių taisyklių paieškos galimybės ir ribos [The Form of Criminal Procedure: the Possibilities and Limits of Searching for the Optimal Procedural Rules]. *Teisė*. 2007, 65: 54–58; Goda, G., *supra* note 10, p. 68–92; Merkevičius, R. Teismo nešališkumo principo samprata Lietuvos Respublikos Konstitucinio Teismo ir Europos žmogaus teisių teismo jurisprudencijoje [The Concept of Impartiality of the Court in the Jurisprudence of the Constitutional Court of the Republic of Lithuania and the European Court of Human Rights]. *Teisė*. 2010: 76; Ažubalytė, R. Nukentėjusio nuo nusikalstamos veikos asmens teisė kreiptis į teismą kaip teisminės gynybos realizavimo baudžiamajame procese prielaida [Victim's Right to Access to Justice]. *Jurisprudencija*. 2010: 4(122): 222–226; etc.

argued about is not declared as contradictory to the Constitution, the provisions stated in the motivational part of the ruling of the Constitutional Court are usually employed for interpretation of the norms of criminal procedure; and thirdly, the entire jurisprudence of the Constitutional Court is helpful for the scientific doctrine that investigates the law of criminal procedure¹³.

When stressing the importance of the Constitution in terms of regulating the relations in the field of criminal procedure, the Constitutional Court has stated that “*When regulating the relations linked with the establishment of criminal liability for criminal deeds, the legislator enjoys broad discretion. <...> However, this discretion of the legislator is not absolute: the legislator must pay heed to the norms and principles of the Constitution*”.¹⁴ The Constitutional Court has also declared that “*the legal regulation of criminal procedure must be based on the constitutional principles of lawfulness, equality before the law and the court, presumption of innocence, public and fair trial, impartiality and independence of the court and the judge, separation of the functions of the court and other state institutions (officials) which participate in the criminal procedure, the guarantee of the right to defence, as well as on other principles (Rulings of the Constitutional Court of 5 February 1999, 8 May 2000, and 19 September 2000)*”¹⁵. As publications by members of the working group that drafted the Code of Criminal Procedure suggest, the working group has relied both on the constitutional provisions and the case law of the Constitutional Court, in particular when modelling the procedures the constitutionality of which had already been examined by the Constitutional Court¹⁶. However, there were some scientific discussions as to the inclusion of the institute of pre-trial investigation into the Code of Criminal Procedure adopted on 14 March 2002 despite the fact that then the Constitution of the Republic of Lithuania included a provision that “*public prosecutors shall prosecute criminal cases on behalf of the State, shall carry out criminal prosecutions, and shall supervise the activities of the interrogative bodies. Interrogators shall carry out pre-trial interrogation*”¹⁷, which was only amended on 20 March 2003.¹⁸ This situation has received criticism in scientific literature, pointing out to the fact that it was not the Code of Criminal Procedure that was drafted in accordance with the Constitution, but the amendments of the Constitution were “*adapted*” to the new Code of Criminal Procedure¹⁹. The members of the working group commented on the situation by saying that it meant the recognition of the scientific ideas that first

13 Ažubalytė, R. Tendencies of Development of the Lithuanian Criminal Procedural Law. *Jurisprudencija*. 2010, 1(119): 287.

14 Ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006, *supra* note 5.

15 *Ibid.*

16 Goda, G., *supra* note 10, p. 76–79.

17 Constitution of the Republic of Lithuania. Article 118. *Official Gazette*. 1992, No. 33-1014 [interactive]. [accessed on 19-05-2012]. <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=1890>.

18 Law on the Amendment of Article 118 of the Constitution of the Republic of Lithuania. *Official Gazette*. 2003, No. 32-1316.

19 Ancelis, P. Procesinių funkcijų esmė ir suderinamumo problemos ikiteisminiame baudžiamajame procese [The Essence of Procedural Functions and Problems of their Compatibility in Pre-Trial Criminal Procedure]. In: Ancelis, P., *et al.* *Sąžiningas baudžiamasis procesas: probleminiai aspektai* [Fair Criminal Procedure: Problematical Aspects]. Vilnius: Industus, 2009, p. 122.

were imbedded in the new Code of Criminal Procedure and then in the Constitution²⁰, however the Constitution is still recognised to be the basis of the entire legal system, which makes the implementation of the provisions *expressis verbis* mandatory in the course of legislative procedure; therefore, the legislator had taken incorrect actions.

The new Code of Criminal Procedure has also chosen to “ignore” the negative opinion of the Constitutional Court²¹ on the opportunities of the court to introduce changes to the accusations at the time a case is pending before the court²². As a matter of fact, the Constitutional Court has received another application asking to examine the constitutionality of certain aspects of changing the accusation at the court²³.

Although the supremacy of the Constitution in the legal system is undisputed, however, there are instances in practise when new legislation initiated is in conflict with the Constitution. For example, there is now an initiative under way on the participation of public judges in the examination of certain criminal cases²⁴, with no reference (or denial?) to the fact that this would require the amendment of specialised legislation (the Law on Courts, the Code of Criminal Procedure and other laws), as well as the Constitution. Such initiatives are understandable because the process of amending the Constitution is fairly complicated. However, the stability of the Constitution guarantees the rule of law, human rights and freedoms²⁵.

2. Application of the Law of Criminal Procedure and the Constitutional Jurisprudence

The influence of the constitutional case law on the application of the law of criminal procedure is by no means homogenous: on the one hand, being of the opinion that a

20 Goda, G., *supra* note 10, p. 77.

21 The ruling of the Constitutional Court of the Republic of Lithuania of 5 February 1999 “On the compliance of Parts 4 and 5 of Article 255, Part 4 of Article 256, Part 4 of Article 260 and Parts 1, 2 and 6 of Article 280 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania” [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/1999/n9a0205a.htm>>.

22 Furthermore, the view taken by the Constitutional Court concerning the principle of impartiality of the court, which is significant in interpreting this particular institute, has not escaped changes either. The ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006, *supra* note 5.

23 Order of the President of the Constitutional Court of the Republic of Lithuania of 26 March 2010 “On the admission of the application”. *Official Gazette*. 2010, No. 36-1731.

24 Draft of the Law on the amendment of the preamble and appendix with part III (1) of the Law on Courts of the Republic of Lithuania No. 12-1007-01 [interactive]. [accessed on 28-05-2012]. <http://www.lrs.lt/pls/proj/dokpaieska.showdoc_l?p_id=133335&p_query=&p_tr2=&p_org=8&p_fix=y>.

25 Regrettably, there is another controversial trend observed over the last decades: when seeking for effective counter-terrorism measures, some countries that have traditionally showed great respect for human beings (including the ones accused of a crime) try to find ways (not necessarily under the Constitution) to apply special rules in terrorism-related proceedings. Giannouloupoloulos, D. Torture, Evidence and Criminal Procedure in the Age of Terrorism: a Barbarization of the Criminal Justice System? In: *Warrior's Dishonour – Barbarity, Morality and Torture in Modern Warfare*. Kassimeris, G. (ed.). Ashgate Publishing Limited, 2006, p. 223–240 [interactive]. [accessed on 19-05-2012]. <http://books.google.lt/books?id=NUJe6K0t-L4C&pg=PR3&dq=constitutionalization+of+criminal+procedure&hl=lt&source=gbs_selected_pages&cad=3#v=onepage&q=constitutionalization%20of%20criminal%20procedure&f=false>.

certain provision to be applied in a particular case is in conflict with the Constitution, the courts cannot apply it and, having come across the case of the kind, must address the Constitutional Court; on the other hand, when interpreting the provisions of the criminal procedure to be applied in a particular case, and when dealing with collisions of the respective provisions of criminal procedure or in a situation where a legal gap is found in a specific case, the courts must rely on the Constitution and the final acts of the Constitutional Court, representing the source of the criminal procedural law of supreme power.

Notably the courts have been increasingly active in addressing the Constitutional Court concerning the constitutionality of the laws applicable in cases considered by them. From 1993 to 2003 (in 10 years) the Constitutional Court received 257 applications; from 2004 to 2012 (in 8 years) the Constitutional Court received as many as 461 applications²⁶. This demonstrates that when applying the law in specific cases, the courts of general jurisdiction interpret it based on the Constitution and in certain cases they take a critical stance regarding the conformity of a particular law with the Constitution, thereby providing conditions for the protection of rights of individuals that may not address the Constitutional Court directly by filing an individual complaint.

As to the content and the importance of the constitutional case law and the constitutional principles and provisions described therein, one must point out that to start with, *“the said constitutional provisions are to be construed also in the context of the constitutional principle of a state under the rule of law, which is a universal principle and upon which the entire legal system of Lithuania and the Constitution of the Republic of Lithuania itself are based”*²⁷, and in the course of dealing with a criminal case, one must follow both the general principles of law and the principles of the criminal procedure. One must also take into consideration the rules governing law interpretation²⁸.

The constitutional doctrine envisages certain rules providing for the harmony of the system of principles: *“the necessity that arises from the Constitution to follow the principles and norms of the criminal procedure when considering a criminal case does not mean that other legal norms and principles, which do not belong to the criminal procedure, but which can be significant during the consideration of a corresponding criminal case, can be ignored. It is in particular worth emphasising that a duty to take into consideration the principles and norms of criminal procedure law when considering a criminal case cannot be interpreted as permitting to place the principles and norms of criminal procedure law or those of criminal procedure above the principles and norms of the Constitution or to construe the principles and norms of criminal procedure law or those of criminal procedure so that the meaning of the provisions of the Constitution*

26 Konstituciniame Teisme gautų ir išnagrinėtų prašymų ir paklausimų statistiniai duomenys. 1993–2012 m. gegužės 1 d. [Statistics on the number of applications and enquiries received and examined at the Constitutional Court. From 1993 to 1 May 2012] [interactive]. [accessed on 13-05-2012]. <<http://www.lrkt.lt/Statistika.html>>.

27 Ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006, *supra* note 5.

28 *Ibid.*

is denied, distorted or ignored, including the contra-positioning of the principles and norms of criminal procedure law or those of criminal law against the general principles of law”²⁹.

Notably the establishment of the jurisprudence of the Constitutional Court as a source of constitutional law was a gradual process, despite the fact that it was accompanied by active scientific discussions³⁰. Today there are practically no discussions on the fact that the emergence of the constitutional jurisprudence as a new source of constitutional law compels the modification of a regular concept of the Constitution as a “framework law”, including the idea of a “live”, ever evolving Constitution³¹. Therefore, the list of “mandatory” sources of the law of criminal procedure now includes the jurisprudence of the Constitutional Court. The case law of the courts of general jurisdiction, including that of the Supreme Court, is arguably adjusted based on the doctrine shaped by the Constitutional Court (e.g. indemnification of moral damage in genocide cases³²; evaluation of evidence obtained during the interrogation of anonymous witnesses³³, etc.).

29 Ruling of the Constitutional Court of the Republic of Lithuania of 16 January 2006, *supra* note 5.

30 See: Žilyys, J. Konstitucinio teismo aktai teisės šaltinių sistemoje [Acts of the Constitutional Court in the System of Legal Sources]. *Jurisprudencija*. 2000, 17(9): 72–78; Vilkickas, E. Konstitucinio Teismo išaiškinimai: imperatyvas ar rekomendacija [Interpretation of the Constitutional Court: Imperative or Recommendation]. *Justitia*. 1998, 2; Lapinskas, K. Teisės šaltiniai ir konstitucinės priežiūros institucijų baigiamieji aktai [Sources of Law and Final Acts of the Constitutional Supervisory Authorities]. *Konstitucinės priežiūros institucijų baigiamieji aktai: konferencijos medžiaga*. Vilnius: Konstitucinis Teismas, 2000; Birmontienė, T. Naujos tendencijos Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje [New Trends in the Jurisprudence of the Constitutional Court]. *Jurisprudencija*. 2002, 30(22): 148–160; Jarašiūnas, E. Konstitucinės justicijos studijų įvadas, arba L. Favoreu „Konstituciniai teismai“ [Introduction to the Studies of Constitutional Justice or The Constitutional Courts by L. Favoreu]. In: Favoreu, L. *Konstituciniai teismai*. Vilnius, 2001; Kūris, E. Konstitucija, konstitucinė doktrina ir Konstitucinio Teismo diskrecija [The Constitution, the Constitutional Doctrine and the Discretion of the Constitutional Court]. *Seimo kronika*. 2002-05-13, No. 13(219); Jarašiūnas, E. Aukščiausioji ir ordinarinė teisė: požiūrio į Konstituciją pokyčiai [Highest Law and Ordinary Law: Transformation of the Approach to a Constitution]. *Jurisprudencija*. 2002, 33(25): 30–41.

31 Kūris, E. Konstitucinė justicija Lietuvoje: pirmasis dešimtmetis [Constitutional Justice in Lithuania: the First 10 years]. In: *Konstitucinis teisingumas ir teisės viešpatavimas*. Vilnius, 2004, p. 30.

32 Ruling of the Constitutional Court of the Republic of Lithuania of 29 November 2010 “On the compliance of the Law of the Republic of Lithuania On the compensation for the damage inflicted by the USSR occupation (version of 12 March 1998), the Law of the Republic of Lithuania “On restoring the rights of persons repressed for resistance against the occupation regimes” (version of 12 March 1998) and the Law of the Republic of Lithuania “On the liability for genocide of the Lithuanian Residents” (version of 9 April 1992 with subsequent amendments) with the Constitution of the Republic of Lithuania [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2010/r101129.htm>>; Ruling of the extended panel of the Civil Division of the Supreme Court of Lithuania of 28 February 2011 in Civil case No. 3K-7-70/2011 [interactive]. [accessed on 28-05-2012]. <http://www.infolex.lt/lat_web_test/4_tpbuiletiniai/senos/nutartis.aspx?id=34962>.

33 Ruling of the Constitutional Court of the Republic of Lithuania of 19 September 2000 “On the compliance of Articles 118-1, 156-1, Item 5 of Article 267 and Article 317-1 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania”. *Official Gazette*. 2000, No. 80-2423 [interactive]. [accessed on 02-06-2012]. <<http://www.lrkt.lt/dokumentai/2000/r000919.htm>>; Ruling of the plenary session of the Criminal Division of the Supreme Court of Lithuania of 27 June 2002 in the case No. 2A-41/2002.

In this context a significant issue is worth mentioning, still ignored by the academics of criminal procedure. As indicated above, the professionals of constitutional law have reached a consensus on the fact that the acts passed by the Constitutional Court are indivisible and their indivisibility reflects the principle of constitutional integrity, while parts of the afore-mentioned acts (the stating and ruling ones) constitute an integral system³⁴, which makes them all binding. Such an interpretation, despite other opinions, namely that only the operative part of a decision is binding, is logical and acceptable. At the time when the binding nature of the reasons and arguments that form the basis of the ruling acts of the Constitutional Court were still subject to discussions, some literature already included statements that the reasons and arguments behind the decisions of the Constitutional Court might be of importance to the courts primarily as pre-judicial facts and their certainty need not be determined when examining specific cases; therefore they may acquire a legal value of their own.³⁵ Knowing the responsibility of the Constitutional Court to examine both the law and the facts that are often connected to the impeachment of supreme public officials³⁶, it is important to discuss the pre-judicial value of the facts found by the Constitutional Court in terms of the cases examined by other courts, especially in criminal cases.

First, the scope of the discussion should be defined, as the paper only concerns the pre-judicial importance of the facts established in a constitutional case when dealing with a criminal case. The differences between constitutional and criminal legal liability automatically allow concluding that the application of sanctions (or refusal to do so) in unrelated cases has no direct interconnection. The Constitutional Court has declared that “*Even though the basis for the procedure of constitutional responsibility impeachment and that of the criminal responsibility is the same (in this case the fact that a crime has been committed), constitutional and other sanctions are applied by different institutions, the decisions of which are not bind onto each other*”.³⁷ Furthermore, in the case *Paksas v.*

34 Žilys, J., *supra* note 30, 77; Sinkevičius, V. Lietuvos Respublikos Konstitucinio Teismo jurisdikcijos ribos [The Limits of the Jurisdiction of the Constitutional Court of the Republic of Lithuania]. *Jurisprudencija*. 2002, 30(22): 132; Decision of the Constitutional Court of Republic of Lithuania of 12 January 2000 “On the construction of the Ruling of the Constitutional Court of the Republic of Lithuania of 21 December 1999”. *Official Gazette*. 2000, No. 4–100 [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2000/d000112.htm>>.

35 Pavilionis, V. *Lex retro non agit* principas Lietuvos Respublikos įstatymų leidyboje ir Konstitucinio Teismo praktikoje [*Lex retro non agit* principle in the Legislation of the Republic of Lithuania and the Case Law of the Constitutional Court]. *Teisė*. 1995, 29: 14.

36 Conclusion of the Constitutional Court of the Republic of Lithuania of 31 March 2004 “On the compliance of actions of the President of the Republic of Lithuania Rolandas Paksas against whom an impeachment case has been instituted with the Constitution of the Republic of Lithuania”. *Official Gazette*. 2004, No. 49-1600 [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2004/c040331.htm>>; Conclusion of the Constitutional Court of the Republic of Lithuania of 27 October 2010. Conclusion of the Constitutional Court “On the compliance of actions of Linas Karalius, a member of the Seimas of the Republic of Lithuania, against whom an impeachment case has been instituted, and Aleksandr Sacharuk, a member of the Seimas of the Republic of Lithuania, against whom an impeachment case has been instituted, with the Constitution of the Republic of Lithuania” [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/2010/c101027.htm>>.

37 Ruling of the Constitutional Court of the Republic of Lithuania of 11 May 1999 “On the compliance of Article 259 of the Statute of the Seimas of the Republic of Lithuania with the Constitution of the Republic of Lithuania” [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/1999/n9a0511a.htm>>.

Lithuania the European Court of Human Rights has stated that “*The Court thus concludes that Article 6 § 1 of the Convention is not applicable in either its civil or its criminal aspect to the Constitutional Court proceedings in issue; the applicant was not “charged with a criminal offence” within the meaning of Article 6 § 2 of the Convention in those proceedings, or “convicted” or “tried or punished in criminal proceedings” within the meaning of Article 4 § 1 of Protocol No. 7, and that the proceedings did not result in him being held “guilty of a criminal offence” or receiving a “penalty” within the meaning of Article 7 of the Convention*”³⁸. The Constitutional Court has taken an equivalent stance; the Court stated that “*the effect of successful impeachment proceedings is a specific constitutional sanction: removal of a person from office or revocation of his mandate. Thus impeachment is not an application of criminal responsibility even though a crime may form a basis for it*”³⁹. Therefore, neither can a decision taken by the Parliament concerning the impeachment negate a judgement that has entered into effect, nor can a court (whether national or international) negate a decision taken by the Parliament concerning the impeachment of an official.

The Constitutional Court has expressly declared that the facts determined in a given constitutional case can have pre-judicial significance in another constitutional case⁴⁰. The Code of Civil Procedure and the case law describe, with sufficient distinction, the employment of pre-judicial facts as a means of proof in civil cases⁴¹. The Code of Criminal Procedure does not govern the provisions on the employment of pre-judicial facts in the process of proof, the doctrine does not focus on this issue either. However, there may be instances when the same unlawful actions can be a reason for both constitutional and other liability, e.g., criminal liability for a committed crime⁴², and the courts of general competence are then obliged to evaluate the facts determined in a constitutional case.

So far there has been only one case when the court had to decide in the course of a criminal procedure on the pre-judicial importance of the facts determined in a case dealt with by the Constitutional Court: the court of first instance, and subsequently the Supreme Court of Lithuania, refused to recognise as a pre-judicial fact the actual circumstances declared in a case that was brought before the Constitutional Court⁴³. The above situation caused heated discussions in the media and political circles (as the

38 *Paksas v. Lithuania* [GC], App. No. 34932/04. ECtHR Judgment of 6 January 2011.

39 Ruling of the Constitutional Court of the Republic of Lithuania of 11 May 1999, *supra* note 37.

40 Conclusion of the Constitutional Court of the Republic of Lithuania of 31 March 2004, *supra* note 36.

41 Code of Civil Procedure of the Republic of Lithuania. *Official Gazette*. 2002, No. 36-1340; Art.182, 187.

42 Ruling of the Constitutional Court of the Republic of Lithuania of 11 May 1999. Ruling of the Constitutional Court of the Republic of Lithuania “On the compliance of Article 259 of the Statute of the Seimas of the Republic of Lithuania with the Constitution of the Republic of Lithuania” [interactive]. [accessed on 19-05-2012]. <<http://www.lrkt.lt/dokumentai/1999/n9a0511a.htm>>.

43 Ruling of the extended panel of the Criminal Division of the Supreme Court of Lithuania of 13 December 2005 in Criminal Case No. 2K-7-544/2005 [interactive]. [accessed on 19-05-2012]. <http://www.infolex.lt/lat_web_test/4_tpbuleteniai/senos/nutartis.aspx?id=29228>.

investigation involved actions of the impeached President), including legal literature, in particular among the professionals of constitutional law⁴⁴.

Some authors claim that “legal facts recorded in a finding of the Constitutional Court are deemed completely determined, and no one can deny, change or question them in any way. The actual circumstances determined in a case before the Constitutional Court represent *res judicata*.”⁴⁵ The other position is that “the Constitution does not provide for a criminal procedure, so that the Constitutional Court does not have to prove the guilt of committing a crime in a criminal case”⁴⁶, therefore, a court of general jurisdiction is entitled to question the facts determined by the Constitutional Court and the assessment thereof, although stressing that it is the criminal procedure that provides the defendant with the opportunity to enjoy every procedural right⁴⁷. On the other hand, the Constitutional Court has found that “in cases when the fact of committing a crime is not clear, the Seimas under the Constitution may not conduct the impeachment procedure on the grounds of the fact of committing a crime until a convicting court judgement is passed and gone into effect”⁴⁸, thereby granting the “priority” of dealing with issue of committing a crime and related guilt at a court of general jurisdiction. The above overview suggests that the employment of facts declared in final judgements in other cases as pre-judicial facts not only facilitates the process of proof, but also further ensures that a “single” truth (with respect to certain facts) can be determined in different courts. However, their employment must be based on respective rules and cannot determine completely identical final conclusions to be reached by different courts. Difference in “evidence law standards” in different procedures is the reason why the facts that can serve as sufficient ground for certain liability are insufficient for different kind of liability. Criminal liability in terms of an *ultima ratio* is based on respective principles. The process of proof in criminal cases is greatly affected by

44 Jarašiūnas, E. Lietuvos Respublikos Konstitucinis Teismas ir aukštųjų valstybės pareigūnų apkalta: kelios aktualios problemos [The Constitutional Court of the Republic of Lithuania and Impeachment of High-Ranking State Officials: Some Important Problems]. *Jurisprudencija*. 2006, 2(80); Statkevičius, M. Apkaltos padariniai [The Consequences of Impeachment]. *Teisė*. 2005, 56; Bacevičius, V. Apkaltos institutas ir konstitucinė atsakomybė: probleminiai aspektai [Institute of Impeachment and Constitutional Liability: Problematic Aspects]. *Jurisprudencija*. 2008, 9(111); Sinkevičius, V. Removal of the President of the Republic from Office: Some Theoretical Aspects of the Constitutional Delict. *Jurisprudencija*. 2010, 4(122): 71–94; Sinkevičius, V. *Parlamento teisės studijos* [Parliamentary Law Studies]. Vilnius: Mykolo Romerio universitetas, 2011, p. 401–405.

45 Jarašiūnas, E., *supra* note 44, p. 47.

46 Sinkevičius, V., *Jurisprudencija*, *supra* note 44, p. 87; Sinkevičius, V. *Parlamento teisės studijos*, *supra* note 44, p. 404.

47 Sinkevičius, V., *Jurisprudencija*, *supra* note 44, p. 87–88; Sinkevičius, V. *Parlamento teisės studijos*, *supra* note 44, p. 404–405.

48 Ruling of the Constitutional Court of the Republic of Lithuania of 15 April 2004. Ruling on the compliance of Paragraph 1 of Article 230 of the Statute of the Seimas of the Republic of Lithuania and Decree of the President of the Republic of Lithuania No. 397 “On the Proposal to institute Impeachment Proceedings against the member of the Seimas of the Republic of Lithuania Artūras Paulauskas” of 12 March 2004 with the Constitution of the Republic of Lithuania. *Official Gazette*. 2004, No. 56-1948 [interactive]. [accessed on 29-05-2012]. <<http://www.lrkt.lt/dokumentai/2004/r040415.htm>>; Sinkevičius, V. *Parlamento teisės studijos*, *supra* note 44, p. 405.

the presumption of innocence, to the effect that all doubts must be interpreted for the benefit of the defendant. The Supreme Court observes that “*a conclusion of the Court (the Constitutional Court, note of the author) that “the President of the Republic of Lithuania Rolandas Paksas knowingly dropped a hint to Jurij Borisov that in his regard institutions of law and order were conducting operational investigations and tapping his telephone conversations”, in terms of the Criminal Code does not represent a criminal legal qualification of an action; this finding therefore is not sufficient to draw a conclusion concerning the criminal liability of an individual*”.⁴⁹

Another area of impact of constitutional jurisprudence on the application of the rules of criminal procedure has to do with the decision of the Constitutional Court declaring a specific rule of criminal procedure as in conflict with the Constitution. When delivering the above decision, the Constitutional Court of the Republic of Lithuania essentially develops a certain vacuum in the field of legal regulation⁵⁰. Professor Juozas Žilys has indicated several solutions to the situation. According to prof. J. Žilys, the Statute of the Parliament can prescribe a procedure of immediate revision of legal regulation, or provide for a revision of the Law on the Constitutional Court by adding a provision on the prerogative of the Constitutional Court to draft supplementary rules on the entry into effect of a ruling of the Constitutional Court.⁵¹ However, when a court examining a criminal case practically encounters a gap of law, it only has one option, i.e. direct application of the Constitution and the principles of criminal procedure, except for the situations when the court can resort to coercion defined by the proceedings⁵². In contrast to the civil procedure, this position has not yet been universally recognised in the doctrine of criminal procedure. According to the Constitutional Court, “*the mere fact that the corresponding subject of law-making has not legally regulated certain relations, or if it has not regulated them sufficiently enough, does not mean that courts are not allowed or do not have to administer justice. In such cases courts are not denied an opportunity to fill the legal gaps to a certain extent ad hoc and to apply law (inter alia by making use of legal analogy, by applying general principles of law, as well as legal acts of higher power, first of all the Constitution)*.”⁵³

The fact that the court does not have considerable opportunities to “wait” for the assistance of the legislator in revising an anti-constitutional provision can be supported by the need to ensure time-efficient proceedings. As a matter of fact, when considering the breach of Article 6 of the Convention on Human Rights the European Court of Human Rights does not consider the fact that the duration of the criminal proceedings has been caused by a usually lengthy proceedings at the Constitutional Court to be

49 Ruling of the Supreme Court of Lithuania, *supra* note 43.

50 Žilys, J. Kai kurios Lietuvos teisės kūrimo problemos ir Konstitucinis Teismas [Some Issues of the Creation of Lithuanian Law and the Constitutional Court]. *Jurisprudencija*. 1999, 12(4): 64.

51 *Ibid.*, p. 64.

52 See: Ažubalytė, R. Baudžiamojo proceso principai: teisės spragų šalinimas [Principles of Criminal Procedure: Elimination of Regulations Gaps]. In: *Lietuvos Respublikos baudžiamojo proceso kodeksui – 10 metų*. Vilnius, 2012, p. 26, 30.

53 Ruling of the Constitutional Court of the Republic of Lithuania of 29 November 2010, *supra* note 32.

an extraordinary one, as the proceedings taking place at the Constitutional Court are included in the duration of the criminal proceedings.⁵⁴ If Lithuania introduces the opportunity for individuals to file constitutional complaint, the problem is likely to grow in scale.⁵⁵

3. Constitutional Jurisprudence: Source of the Doctrine of Criminal Procedure or Part of the Doctrine

The latest abundant jurisprudence of the Constitutional Court of the Republic of Lithuania, also focusing on the issues of constitutionality of the criminal procedure has had a significant impact on the doctrine of criminal procedure and *vice versa*, decisions of the Constitutional Court have been affected by the doctrine of criminal procedure⁵⁶. Despite this trend, the publication by Ramūnas Jurgaitis has so far remained the only publication focusing on the constitutional framework of criminal procedure⁵⁷. A thorough analysis of the constitutional status of an accused has been carried out by Remigijus Merkevičius⁵⁸, and the relation between constitutional justice and the science of the criminal law has been investigated by Gintaras Goda⁵⁹. Review of the latest scientific publications⁶⁰ suggests that the analysis of the Constitution already makes up an integral part of special scientific studies of criminal procedure; however, a systematic analysis of criminal procedure and separate institutes thereof is still missing. Nonetheless, as the jurisprudence of the Constitutional Court of the Republic of Lithuania turns into an integral part of the doctrine of criminal procedure, one may ask whether the rulings delivered by the Constitutional Court themselves do not turn into a doctrine of criminal procedure, rather than being a single though highly significant source of the doctrine, due to the fact that they include extensive argumentation of the issues considered, reference to the previous jurisprudence and international regulations, including decisions of international courts and the doctrine of legal science, and the wide scope thereof. Textbooks make the best illustration of the above trend as they include texts of the rulings delivered by the Constitutional Court that take up a considerable number of pages

54 *Kaemena and Thöneböhn v. Germany*, App. No. 45749/06 and 51115/06, ECtHR judgement of 22 January 2009. In: *Europos žmogaus teisių teismo praktikos dėl teisės į bylos nagrinėjimą per įmanomai trumpiausią laiką baudžiamosiose bylose (Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos 6 straipsnio 1 dalis) analizė*. [Analysis of the case law of the European Court of Human Rights concerning the right to a hearing within a reasonable time in criminal cases (Article 6 Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms)] [interactive]. [accessed on 28-05-2012]. <http://www.infolex.lt/lat_web_test/4_tpbuuletieniai/senos/nutartis.aspx?id=34939>.

55 Birmontienė, T., *supra* note 30, p. 155.

56 Goda, G., *supra* note 10, p. 80.

57 Jurgaitis, R. *supra* note 10, p. 17–60.

58 Merkevičius, R. *Baudžiamasis procesas: įtariamojo samprata*, *supra* note 12, p. 29–119.

59 Goda, G., *supra* note 10, p. 68–92.

60 *Supra* note 12.

therein.⁶¹ This is usually justified by saying that the textbooks are intended for students who are only embarking on their studies of law and therefore must learn the “textbook” knowledge, i.e. a sufficiently complex system of knowledge found in the mandatory sources of the law of criminal procedure. It is considered that the study of original texts (both regulations, and jurisprudence) is one of the principal methods for teaching law students. Yet another attitude prevails in situations where scientific studies that are almost inconceivable without the analysis of constitutional justice often lack critical approach essential to science, as it is in scientific doctrine that the discussions that are often “revolutionary” with respect to predominant doctrine should abound. Given that the Constitutional Court has delivered over several dozens of rulings directly related to the provisions of criminal procedure⁶², it is strikingly strange that only several of the rulings attracted the attention of the academics, who submitted their position based on scientific arguments that completely or partially contradicted the position provided for in the final act of the Constitutional Court⁶³. It is paradoxical that the academic community “tacitly” disapproved the decisions delivered by the Constitutional Court and they were “circumvented” with the help of the legislative process: as the new Code of Criminal Procedure was drafted and adopted, it included the procedures approved by the academics. The interpretation of the constitutional right to defence may be quoted as an example in this case. The academic community has almost ignored the decision of the Constitutional Court, which stated that the provision of the Code of Criminal Procedure authorising the representatives of law enforcement institutions to take part in the meetings of the defence counsel with the detained or arrested defendant does not contradict the Constitution⁶⁴. However, the working group that investigated the readiness of Lithuania to ratify the Convention on Human Rights had declared the above provision to be in conflict with the jurisprudence of the European Court of Human Rights⁶⁵ and the above possibility was removed from the new Code of Criminal Procedure.

It is likely that after the establishment of the institute of a dissenting opinion of a judge of the Constitutional Court in the Lithuanian legal system⁶⁶, the academics will also engage in the analysis of the rulings delivered by the Constitutional Court, and will express their scientific positions concerning the allegedly unconstitutional provisions of the code in effect that have so far escaped their analysis. In any case, one should

61 Jurka, R.; Ažubalytė, R.; Gušauskienė, M.; Panomariovas, A. *Baudžiamojo proceso principai* [Principles of Criminal Procedure]. Metodinė mokymo knyga. Vilnius: Eugrimas, 2009, p. 247.

62 Goda, G., *supra* note 10, p. 68–69.

63 *Ibid.*, p. 68–92.

64 Ruling of the Constitutional Court of the Republic of Lithuania of 18 November 1994 “On the compliance of item 3, Part 2, Article 58 of the Code of Criminal Procedure of the Republic of Lithuania with the Constitution of the Republic of Lithuania” [interactive]. [accessed on 02-06-2012]. <<http://www.lrkt.lt/dokumentai/1994/n4a1118a.htm>>.

65 Bernatonis, J., et al. *Žmogaus teisės ir laisvės. Lietuvos Respublikos įstatymų ir 1950 m. Europos Žmogaus teisių ir pagrindinių laisvių apsaugos konvencijos suderinamumo problemos* [Human rights and freedoms. Issues of harmonization of the legislation of the Republic of Lithuania and 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms]. Vilnius, 1995, p. 146–147. Quoted from Goda, G., *supra* note 10, p. 71.

66 Law on the Constitutional Court of the Republic of Lithuania. *Official Gazette*. 1993, No. 6-120, Art. 55.

agree with the opinion that the science of criminal procedure must remain significant to the constitutional jurisprudence, i.e. the Constitutional Court must use the concepts of criminal procedure adequately, assess the influence of the types (models) of criminal procedure on the system of principles and rules of positive criminal procedure that is based on the Constitution, as well as on specific institutes of the said procedure⁶⁷.

Conclusions

Although the supremacy of the Constitution in the legal system is undisputed, there are instances in the legislative process when amendments and supplements to the laws of criminal procedure are initiated without the analysis of compliance thereof with the requirements of the Constitution with respect to the criminal procedure. On the other hand, all decisions of the Constitutional Court in the field of criminal procedure have been implemented.

The fact that the doctrine of criminal procedure and the case law tend to neglect the application of pre-judicial facts (including those declared in the final act of the Constitutional Court) in criminal procedure, including the rules on filling legal gaps (including those appearing once the Constitutional Court declares a provision of criminal procedure to be unconstitutional) in criminal cases, determines the irregular practice of application of the law in criminal cases.

The constitutional jurisprudence and the doctrine of criminal procedure are important for their mutual development. The constitutional jurisprudence is becoming an integral part of research in the field of criminal procedure, although a critical view of the academics on the importance of the decisions of the Constitutional Court in terms of criminal procedure is still lacking. As a result, the constitutional jurisprudence has to rely on the achievements in the field of the criminal procedure to arrive at convincing solutions.

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67 Goda, G., *supra* note 10, p. 88–89.

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KONSTITUCINIO TEISMO JURISPRUDENCIJOS ĮTAKA BAUDŽIAMAJAM PROCESUI

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Santrauka. Šiame straipsnyje nagrinėjama Konstitucinio Teismo, kaip vienintelio oficialaus Konstitucijos interpretavimo subjekto, jurisprudencijos įtaka baudžiamajam procesui. Apžvelgtos trys konstitucinės jurisprudencijos įtakos baudžiamajam procesui kryptys: poveikis įstatymų leidybai baudžiamojo proceso srityje; Konstitucinio Teismo baigiamųjų aktų poveikis bendrosios kompetencijos teismų praktikai baudžiamosiose bylose bei konstitucinės jurisprudencijos įtaka baudžiamojo proceso doktrinos raidai. Straipsnyje daugiausia remiamasi konstitucinės teisės specialistų darbais, tarp jų ir pirmo Lietuvos Respublikos Konstitucinio Teismo pirmininko, buvusio Mykolo Romerio universiteto Teisės fakulteto dekanı,

prof. dr. Juozo Žilio publikacijomis, nes baudžiamojo proceso srityje kol kas yra tik keletas publikacijų, kurių tiesioginis objektas buvo baudžiamojo proceso konstitucionalizacijos problemos.

Konstatuojama, kad nors Konstitucijos viršenybė teisės sistemoje yra neginčijama, teisėkūros procese pasitaiko atveju, kai baudžiamojo proceso įstatymų pakeitimai bei papildymai yra inicijuojami neatlikus analizės, ar jie dera su Konstitucijos reikalavimais konstituciniam baudžiamajam procesui (kaip pavyzdys nurodomas šiuo metu inicijuojamas visuomenės teisėjų institutas, kuri siūloma įvesti nagrinėjant baudžiamąsias bylas). Straipsnyje taip pat keliama prejudicinių faktų (taip pat ir konstatuotų Konstitucinio Teismo baigiamajame akte) taikymo baudžiamosiose bylose problema ir teisės spragų (taip pat ir tų, kurios atsiranda Konstituciniam Teismui pripažinus baudžiamojo proceso nuostatą antikonstitucine) užpildymo problema. Šiems aspektams Lietuvos baudžiamojo proceso moksle neskiriama pakankamai dėmesio, dėl to teismų praktika nėra vienareikšmė. Konstitucinė jurisprudencija ir baudžiamojo proceso doktrina yra svarbios viena kitos raidai. Viena straipsnio dalis skiriama konstitucinės jurisprudencijos ir baudžiamojo proceso doktrinos santykiui. Konstatuojama, kad konstitucinė jurisprudencija tampa neatskiriama mokslinių tyrimų baudžiamojo proceso srityje dalimi, tačiau doktrinoje stokojama kritiško mokslininkų požiūrio į svarbius baudžiamajam procesui Konstitucinio Teismo sprendimus.

Reikšminiai žodžiai: *baudžiamasis procesas, baudžiamojo proceso konstitucionalizacija, konstitucinė jurisprudencija.*

Rima Ažubalytė, Mykolo Romerio universiteto Teisės fakulteto Baudžiamojo proceso katedros profesorė. Mokslinių tyrimų kryptys: baudžiamasis procesas, baudžiamojo proceso konstitucionalizacija, baudžiamojo proceso diferenciacija, nepilnamečių baudžiamasis procesas, diskrecinis baudžiamasis persekiojimas, asmens teisių apsauga baudžiamajame procese.

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