



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University

VOLUME 17, NUMBER 2 (2024)

ISSN 2029-0454



Cit.: *Baltic Journal of Law & Politics* 17:2 (2024): 43–60

<https://content.sciencedirect.com/view/journals/bjlp/>

[bjlp-overview.xml](#)

DOI: 10.2478/bjlp-2024-00014

THE SELF-RESTRAINED POSITIVE LEGISLATOR: ASSESSING THE CONSTITUTIONAL REVIEW OF LEGISLATIVE OMISSIONS IN LITHUANIA

Dovilė Pūraitė-Andrikienė

Senior Research Fellow; PhD.

Law Institute of the Lithuanian Centre for Social Sciences, Lithuania

Contact information:

Address: Goštauto g. 12, LT-01108 Vilnius, Lithuania

E-mail address: dovile.puraite@gmail.com

Andrius Valuta

Researcher

Law Institute of the Lithuanian Centre for Social Sciences, Lithuania

Contact information:

Address: Goštauto g. 12, LT-01108 Vilnius, Lithuania

E-mail address: andrius@valuta.lt

Received: April 15, 2024; reviews: 2; accepted: September 5, 2024

ABSTRACT

The function of constitutional courts has undergone significant transformation in recent decades. More frequently, constitutional courts, instead of dealing with existing legislation, assume the role of assistants to the legislator. Some of these courts also control the absence of legislation or legislative omissions. This article seeks to explore the approach of the Lithuanian Constitutional Court in handling cases of legislative omission, particularly focusing on its efforts to strike a balance between respecting the autonomy of law-making institutions and upholding the supremacy of the Constitution. The text addresses the extent to which the Constitutional Court has adhered to the principle of self-restraint, ensuring that its interventions do not unduly encroach upon the prerogatives of law-making institutions. To reach this, the following tasks are undertaken and dealt with: 1) to shed light on the concept and typology of legislative omissions in comparative constitutional law, as well as the trends of their investigation (including statistical data) in

European countries; 2) to analyse the official constitutional doctrine formulated by the Lithuanian Constitutional Court on the concept of legislative omissions and the scope of the Court's power to examine legislative omissions; 3) to analyse the approach of the Lithuanian Constitutional Court to legislative omissions from a quantitative point of view, i.e. to examine the statistics of this Court in dealing with legislative omissions and the reasons for its changes.

KEYWORDS

Legislative omission, legal gap, constitutional review, positive legislator.

INTRODUCTION

Over recent decades, the function of constitutional courts has undergone significant transformation. They now go beyond merely identifying and nullifying unconstitutional legal acts. Constitutional courts have assigned powers to themselves that are not explicitly enshrined in the constitutions. While guaranteeing constitutional justice, constitutional courts do not simply execute their authentic functions, eliminating unlawful provisions from the legal system and interpreting constitutional norms;¹ more frequently, constitutional courts, instead of dealing with existing legislation, assume the role of assistants or auxiliaries to the legislator.² Constitutional courts are thus seen as not only being "negative legislators" which eliminate anticonstitutional legal acts from the legal system, but in some cases, they act as "positive legislators", occasionally creating a new legal regulation. Some of these courts have also performed non-judicial functions by creating provisions they deduct from the Constitution when controlling the absence of legislation or legislative omissions.³

The academic literature stresses that the power of constitutional courts to investigate legislative omissions is necessary for the following reasons: rendering the constitutional provisions enforceable, filling constitutional gaps, protecting fundamental rights and principles, and finally avoiding the constitutional obstacles caused by such omissions.⁴ From this point of view, the review of legislative omissions is very important in guaranteeing the consistency of the legal system grounded by the Constitution. The practice of constitutional courts demonstrates that identifying legislative omissions and formulating obligations to remedy legal acts enhance the safeguarding of human rights and positively influence national legislative processes. The development of the doctrine regarding constitutional scrutiny of legislative omissions mirrors a broader trend in European constitutional justice, aimed at reinforcing the protection of the Constitution within the legal framework.⁵

It has also been argued that adopting the powers of positive legislators generated many risks that might threaten the key constitutional values in modern democracies

¹ European Commission for Democracy through Law, *General Report of the XIVth Congress of the Conference of European Constitutional Courts on Problems of Legislative Omission in Constitutional Jurisprudence* (Strasbourg, 2008) // <https://www.venice.coe.int/files/Bulletin/SpecBull-legislative-omission-e.pdf>

² Allan R. Brewer-Carías, *Constitutional Courts as Positive Legislators in Comparative Law* (Washington, 2010) // <https://allanbrewercarias.com/wp-content/uploads/2010/07/1062-1008.-Brewer-Carias.-CONSTITUTIONAL-COURTS-AS-POSITIVE-LEGISLATORS.-IACL-Cong.-Exposici%C3%B3n.doc.pdf>

³ Ibid.

⁴ Ahmed Oudah Mohammed AL-Dulaimi, *From Negative to Positive Legislator? Response to Unconstitutional Legislative Omission As a Case Study in the Changing Roles of Constitutional Courts* (The School of Government and International Relations Griffith Business School Griffith University, 2018), 182.

⁵ This trend was also reflected by the XIVth Congress of the Conference of European Constitutional Courts was devoted to problems of legislative omissions in constitutional jurisprudence.

(such as separations of powers, and parliamentary sovereignty).⁶ In such instances, constitutional courts find themselves in a challenging position. As guardians of the Constitution, they urge law-making institutions to enact specific legal regulations that are missing. Therefore, there is a risk of constitutional courts being perceived incorrectly as initiators of legislation, which could raise doubts about the integrity of the principle of separation of powers.⁷ Thus, these courts face a nuanced issue – balancing the independence of law-making institutions with the imperative to uphold the supremacy of the Constitution.

Restricting the authority of constitutional courts solely to the review of the constitutionality of legal acts could render them incapable of addressing issues stemming from the inaction of law-making institutions. By not implementing their obligations, parliaments and other law-making institutions are infringing upon the constitutional mandate and undermining the supremacy of the Constitution.⁸ Thus, in the pursuit of protecting human rights, there have been no hesitations in acknowledging the legitimacy of constitutional courts' activism, even when it involves intervention in legislative functions. Therefore, the primary focus of the current discourse is not to outright dismiss the powers to review legislative omissions undertaken by the courts. Instead, the aim should be to define the scope and boundaries of this involvement in legislative functions. In other words, what should the limits of this role be?

The fact that the Lithuanian Constitutional Court has the competence to investigate the constitutionality of legal gaps prohibited by the Constitution became clear during the second decade of the Constitutional Court's activity. The Constitutional Court derived this competence from its constitutional mandate to implement constitutional justice and ensure the supremacy of the Constitution in the legal system, as well as to ensure the best possible protection of human rights and freedoms.⁹ In 2023 the Lithuanian Constitutional Court celebrated its 30th anniversary, and several publications¹⁰ were published to mark the occasion. This anniversary is also an excellent opportunity to review the Court's experience in dealing with cases of legislative omission.

This article seeks to explore the approach of the Lithuanian Constitutional Court in handling cases of legislative omission, focusing particularly on its efforts to strike a balance between respecting the autonomy of law-making institutions and upholding the supremacy of the Constitution. It delves into the extent to which the Constitutional Court has adhered to the principle of self-restraint, ensuring that its interventions do not unduly encroach upon the prerogatives of law-making institutions. To achieve this, the following tasks are undertaken: 1) to shed light on the concept, typology, and trends in the investigation of legislative omissions in comparative constitutional law; 2) to analyse the official constitutional doctrine formulated by the Lithuanian Constitutional Court on the concept of legislative omissions and the scope of the Court's power to examine legislative omissions; and, 3) to analyse the practice and statistics of the Lithuanian Constitutional Court in dealing with legislative omissions.

⁶ Ahmed Oudah Mohammed AL-Dulaimi, *supra* note 4, 159–167.

⁷ European Commission for Democracy through Law, *supra* note 1.

⁸ Ahmed Oudah Mohammed AL-Dulaimi, *supra* note 4, 113.

⁹ Elena Masnevaite and Jolita Miliuvienė, "Kai kurie legislatyvinės omisijos konstitucingumo kontrolės aspektai," *Vilnius University Open Series*, Konstitucinė justicija Lietuvoje: trys veiklos dešimtmečiai (2024): 353.

¹⁰ For example, Agnė Juškevičiūtė-Vilienė, Dovilė Pūraitė-Andrikienė (eds.), *Konstitucinė justicija Lietuvoje: trys veiklos dešimtmečiai* (Vilnius: Vilnius university, 2023); Danutė Jočienė et. al, *Trisdešimt konstitucinės justicijos metų: tempore et loco* (Vilnius: Constitutional Court of the Republic of Lithuania, 2023).

The structure of the article reflects these tasks. The first part of this article introduces the concept and typology of legislative omissions in comparative constitutional law, as well as the trends of their investigation (including statistical data) in European countries. The second part of the paper presents the specifics of Lithuania: the doctrine of the Constitutional Court on the concept of omissions and the scope of its powers to examine legislative omissions, while trying to assess whether it is in line with the European trends discussed in the first part of the paper and whether the Constitutional Court has formulated sufficient safeguards that would ensure the aforementioned balance between the independence of lawmaking institutions with the imperative to uphold the supremacy of the Constitution. The third and final part of the article analyses the practice of the constitutional review of legislative omissions in the Constitutional Court during 1993–2020 from a quantitative point of view.¹¹

As the main object of research, the investigation of legislative omission in the Lithuanian Constitutional Court has been analysed in the works of Sinkevičius¹², as well as Masnevaitė and Miliuvienė.¹³ Some aspects of legislative omissions investigated in this Court were also analysed by Kūris¹⁴ and Žalimas.¹⁵ The aforementioned works examine mostly the Constitutional Court's doctrine on legislative omission but do not focus on the Court's efforts to strike a balance between respecting the autonomy of law-making institutions and upholding the supremacy of the Constitution. This issue has also not been sufficiently examined in the broader comparative context of other European countries. Additionally, the preceding authors have not examined the statistics of legislative omissions before the Constitutional Court and how these compare in the context of other European countries. There is also a lack of English sources on the Lithuanian constitutional practice of investigating legislative omissions. Thus, this article is the first research that seeks to explore the approach of the Lithuanian Constitutional Court in handling cases of legislative omission from qualitative and quantitative points of view and from a comparative perspective, that focuses on the Court's efforts to strike a balance between respecting the autonomy of law-making institutions and upholding the supremacy of the Constitution.

To reveal theoretical and practical aspects of the question under consideration, this article combines different methods of scientific inquiry, including analysis of documents, as well as the logical, systemic, critical, and comparative, methods of analysis. The paper also analyses the statistical information on the investigation of legislative omissions in Lithuania as well as in other European countries.

¹¹ The statistical data analysed in this article was collected as part of an international comparative research project JUDICON-EU, that aimed to map the diversity and measure the strength of decisions of constitutional courts, as well as explain their behavior vis-à-vis the legislative branch in Europe. During this project, the rulings on the constitutionality of acts adopted by the Parliaments of 19 European constitutional courts between 1990 and 2020 were coded and analysed. One of the authors of this article was a participant in the project, and the project organizers have granted permission to use the data gathered during the project for other publications. For more information on the project's aims, results, and methodology, see JUDICON-EU (uni-nke.hu). The project has resulted in the publication of two monographs summarising the project results: Kalman Pocza (ed.), *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective* (New York: Routledge, 2024); Kalman Pocza (ed.), *Constitutional Review in Western Europe: Judicial-Legislative Relations in Comparative Perspective* (New York: Routledge, 2024).

¹² Vytautas Sinkevičius, "Legislatyvinė omisija Konstitucinio Teismo jurisprudencijoje," *Konstituciniai ginčai* (Mykolas Romeris University, 2019), 251–262.

¹³ Elena Masnevaitė, Jolita Miliuvienė, *supra* note 9.

¹⁴ Egidijus Kūris, "Konstitucinis Teismas," *Lietuvos teisinės institucijos* (Vilnius: Centre of Registers, 2011), 100.

¹⁵ Dainius Žalimas, "The Constitution of the Republic of Lithuania as the Jurisprudential Constitution," *Lithuanian Constitutionalism: The Past and the Present* (Vilnius: The Constitutional Court of the Republic of Lithuania, 2017), 302–303.

1. CONCEPT, TYPOLOGY, AND TRENDS OF CONSTITUTIONAL REVIEW OF LEGISLATIVE OMISSIONS IN EUROPE

In the broadest sense, legislative omission is perceived as a legal gap prohibited by law, primarily the Constitution of the country; legislative omissions happen when Parliament or another law-making body, which had the duty to adopt a legal act, fails to ensure that the relevant and necessary acts are passed and are complete, thereby leaving a legal gap, *lacunae* or vacuum in the legal system.¹⁶ Certain criteria that characterize legislative omissions and allow them to be distinguished from other legal gaps are provided in the academic literature: 1) an obligation to legislate a specific law or rules is required as it is explicitly outlined in the constitution or by adopting the necessary implications from the existence of a constitutional right; 2) there is a need for that legislation to render the constitutional rules executable or to protect constitutional rights; 3) the legislative branch intentionally fails or omits to carry out that obligation; and, 4) omission leads to a constitutional violation.¹⁷

Two sorts of legislative omissions are generally distinguished: absolute and relative omissions.¹⁸ Instances where the legislator or other law-making institutions neglect to establish necessary legal regulations represent absolute omissions. When they establish regulations that are incomplete or inadequate, it constitutes a partial (relative) omission.¹⁹ Most constitutional courts (such as those in Austria, Italy, Poland, Romania, Spain, and Switzerland) have interpreted their authority to review only incomplete or insufficient legal regulations as anti-constitutional (partial or relative omission), rather than viewing the failure of law-making institutions to act as anti-constitutional; however constitutional courts in Czech Republic, Germany, and Hungary investigate absolute omission.²⁰

In the case of judicial review regarding relative (partial) legislative omissions, Constitutional Courts have developed the technique of declaring the unconstitutionality of the insufficient provisions but without annulling them, sending instead to the legislator, directives, guidelines, and recommendations to seek correction of unconstitutional legislative omissions.²¹ In these cases, the Constitutional Courts have developed the role of assisting and collaborating with the legislator. Thus, the investigation of partial (relative) legislative omissions before the constitutional courts is less restrictive to the activities of law-making institutions than the investigation of absolute omissions. Therefore, constitutional courts that investigate only partial (relative) omissions are less likely to be involved in disputes over violating the principle of the separation of powers or to be accused of interfering with the competence of the law-making institutions. When investigating partial legislative omissions, constitutional courts act like assistants or partners of the legislator. This type of choice is more in line with keeping the balance between the independence of law-making institutions, with the imperative to uphold the supremacy of the Constitution. Therefore, at least partly, for this reason, only a few constitutional courts investigate absolute omissions.

The scope of these powers also depends on the specificities of each country. For example, although Hungary deals with cases of absolute omission, researchers of this

¹⁶ Allan R. Brewer-Carías, *supra* note 2.

¹⁷ Ahmed Oudah Mohammed AL-Dulaimi, *supra* note 4, 89–90.

¹⁸ Allan R. Brewer-Carías, *supra* note 2.

¹⁹ European Commission for Democracy through Law, *supra* note 1.

²⁰ *Ibid.*

²¹ Allan R. Brewer-Carías, *supra* note 2.

country emphasize that in the Hungarian context declaring omission does not imply a particularly strong decision. In these cases Parliament is not told how to remedy an unconstitutional situation, but the Court merely establishes the unconstitutionality resulting from inadequate or missing legislation. It is stressed that, in comparison with the rulings that state legislative omissions, this court adopts stronger types of rulings, such as constitutional requirements, where the court becomes a mild or rigorous positive legislator by giving guidance and directions to the legislator about what interpretations of regulations under review are constitutional.²²

Only the Constitution of Portugal²³ explicitly consolidates the powers of the Constitutional Court to investigate legislative omissions. In some states, such as Estonia, Germany, Hungary, and Slovenia, the right of Constitutional Courts to investigate and assess the constitutionality of legal gaps is expressly consolidated in the law regulating the activity of the Constitutional Court.²⁴ For example, in Estonia, the right to adjudicate cases of legislative omission was enacted into law in 2004 as a part of an amendment to ensure state liability for omission (including failure of the legislature to implement binding EU law).²⁵ However, the majority of Constitutional Courts derived the powers to investigate legislative omission in constitutional jurisprudence from the overall regulation of the Constitution. In other states, this right was derived from the law that governs the activities of the Constitutional Court, even though it is not explicitly stated in that law.²⁶ Most constitutional courts also do not have a special procedure for the investigation of legislative omissions and apply general procedures of investigation of compliance of legal acts with the Constitution. Only in Portugal a special procedure is regulated in the Law on the Constitutional Court of Portugal.²⁷ However, this exception is due to the fact that in this country the power to deal with cases of legislative omission is directly enshrined in the Constitution.

The recognition of legislative omission is not a self-serving process. Constitutional Court rulings that highlight legislative omissions are executed when the law-making institution corrects the deficiencies in the legal framework it has established. In certain countries, the decision of the Constitutional Court imposes a formal requirement to address the gap, while in others it serves as a recommendation to rectify the identified gap in legal regulation, or to notify the law-making institution about the existence of the gap.²⁸ Some constitutional courts, aiming to ensure more guarantees for addressing legislative omissions, offer guidelines concerning the timeframe for rectification, as seen in Hungary.²⁹ Others opt to wait for the declaration of obligations on the part of

²² Attila Gyulai, Kalman Pocza, Gabor Dobos, "The Hungarian Constitutional Court: Dialogue in practice," *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective* (New York: Routledge, 2024), 123.

²³ Article 283 (1) of the Constitution of Portugal states that: "At the request of the President of the Republic, the Ombudsman, or, on the grounds of the breach of one or more rights of the autonomous regions, presidents of Legislative Assemblies of the autonomous regions, the Constitutional Court shall review and verify any failure to comply with this Constitution by means of the omission of legislative measures needed to make constitutional rules executable".

²⁴ European Commission for Democracy through Law, *supra* note 1.

²⁵ Paloma Kroot Tupay, "The Estonian Supreme Court: Strength by Pragmatic Collegiality," *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective* (New York: Routledge, 2024), 93.

²⁶ European Commission for Democracy through Law, *supra* note 1.

²⁷ Law on the Constitutional Court of Portugal has a separate Section IV „Cases for the control of unconstitutionality by omission".

²⁸ European Commission for Democracy through Law, *supra* note 1.

²⁹ Article 46 (1) of the Act of the Constitutional Court of Hungary states that if the Constitutional Court, in its proceedings conducted in the exercise of its competencies, finds an omission on the part of the legislative body that culminates in a breach of the Fundamental Law, it shall call upon the infringing body to fulfill its responsibilities within the prescribed time limit.

law-making institutions to enact the missing regulations, as observed in Estonia.³⁰ For-
mos viršus Nevertheless, law-making institutions do not consistently respond promptly
to these rulings, and the approach outlined by the Constitutional Court isn't always
adhered to in the application of the law.

In summary, the following main trends in the investigation of legislative omissions
in the constitutional courts of European countries can be identified: 1) in most of Eu-
ropean countries, the investigation of legislative omissions is the result of the jurisper-
dential activities of constitutional courts, as the largest part of the Constitutional Courts
derived the powers to investigate legislative omission from the overall regulation of the
Constitution; 2) this trend is also reflected in the fact that most countries of the region
do not regulate the procedure for dealing with legislative omissions and their removal
in their legislation; 3) the majority of constitutional courts interpreted their powers to
investigate only incomplete, insufficient legal regulation as anti-constitutional (partial
(relative) omission), rather than the acknowledgment of absolute omissions. This is so
because in this case courts are less likely to be involved in disputes over the violation of
the principle of the separation of powers or to be accused of interfering with the com-
petence of the law making institution.

Having discussed the investigation of legislative omissions before the European
constitutional courts from a qualitative perspective, it is also useful to give at least a
brief overview of this phenomenon from a quantitative perspective. According to the
results of the coding of the JUDICON-EU project,³¹ the Lithuania Constitutional Court
ranks 4th out of the 19 European constitutional justice institutions³² in terms of the
number of rulings that state legislative omissions. The Italian Constitutional Court is
the first in terms of the number of cases of legislative omissions recognized between
1990 and 2020, having recognized legislative omissions in its decisions 793 times,
followed by Hungary (158 times) and Slovenia (101 times), Lithuania found 52 cases
of legislative omission during the period.³³ Lithuania is, thus, one of the countries with
the highest number of legislative omissions in Europe. In the context of these statis-
tics, the question may arise as to whether the Lithuanian Constitutional Court, when
investigating legislative omissions, has not interfered too much with the discretion of
the law-making institutions, and whether the Court has managed to maintain a balance
between the independence of law-making institutions, with the imperative to uphold
the supremacy of the Constitution. This question will be answered in the following parts
of the article by analysing the official constitutional doctrine of the Constitutional Court
on the scope of its powers to investigate legislative omissions and the statistics on le-
gislative omissions before this court.

³⁰ Paloma Kroot Tupay, *supra* note 25, 93.

³¹ The methodology for the collection and coding of this statistical data is presented in more detail in part 3
of this article.

³² Researchers from 19 European Union countries took part in this project.

³³ For more on this see: Kalman Pocza, *Constitutional Review in Central and Eastern Europe: Judicial-Legis-
lative Relations in Comparative Perspective* (New York: Routledge, 2024), 300.

2. THE CONCEPT OF LEGISLATIVE OMISSIONS AND THE LIMITS OF THEIR CONSTITUTIONAL REVIEW IN THE OFFICIAL DOCTRINE OF THE LITHUANIAN CONSTITUTIONAL COURT

Article 105(1–2) of the Lithuanian Constitution³⁴ consolidates the powers of the Constitutional Court to assess the constitutionality of laws and other legal acts. It is stipulated that the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution (Article 105(1)); and whether the acts of the President of the Republic and the acts of the Government of the Republic are in conflict with the Constitution and laws (Article 105(2)). The following entities may apply to the Constitutional Court on the constitutionality of the above-mentioned legislation: a group of members of the Seimas (the Parliament), the President of the Republic, the Government, the courts, and the Seimas (*in corpore*) (Article 106 (1–3))³⁵. This circle of entities was significantly extended on 21 March 2019, when the Seimas adopted the constitutional amendments consolidating the mechanism for individual constitutional complaints (Article 106(4)).³⁶

Provisions of the Constitution on the objects of constitutional review are very laconic and do not specify what particular laws (except ordinary ones) or other legal acts fall within the scope of constitutional review. Therefore, the Constitutional Court faced the need in its jurisprudence to interpret whether the range of constitutional review objects includes laws on amending the Constitution, constitutional laws, laws adopted by referendum, laws adopted before the entry into force of the Constitution, the Statute of the Seimas, legal acts that are no longer in force, etc.³⁷

The same can be said about the powers of the Constitutional Court to investigate legislative omissions, as the issue of legal gaps is not directly mentioned in the provisions of the Constitution. On this issue, the original position of the Constitutional Court has changed significantly. At the beginning of its work the Court stated that it does not deal with gaps in the law, as this is the prerogative of the legislator.³⁸ However, the doctrine has subsequently evolved in such a way that the Constitutional Court has come to regard a special type of legal gap – legislative omission – as falling within its jurisdiction if the contested legal act itself falls within its jurisdiction.³⁹

Gradually, the Constitutional Court has developed a constitutional doctrine that it has the power to investigate legal gaps of a particular type and that it has the power not only to declare that the law (or a part of the law) under investigation has a legislative omission but also to declare that such a legal regulation is unconstitutional. Like the

³⁴ *The Constitution of the Republic of Lithuania*, Official Gazette (1992, No. 33–1014).

³⁵ These entities are additionally differentiated, part of them are granted the powers to apply to the Constitutional Court only concerning an investigation into the constitutionality of a particular part of legal acts falling within the Court's jurisdiction. Specifically, the President of the Republic could exclusively apply to assess the compliance of the acts of the Government with the Constitution and is not authorized to challenge the constitutionality of laws or other legal acts adopted by the Seimas (the Parliament). However, the Government may apply only concerning the constitutionality of laws or other legal acts adopted by the Seimas.

³⁶ This Article states that; „Every person shall have the right to apply to the Constitutional Court concerning the acts specified in the first and second paragraphs of Article 105 if a decision adopted on the basis of these acts has violated the constitutional rights or freedoms of the person and the person has exhausted all legal remedies. The procedure for implementing this right shall be established by the Law on the Constitutional Court”.

³⁷ For more on this see: Dovilė Pūraitė-Andrikienė, “The Development and Prospects of the Lithuanian Constitutional Justice Model,” *Legal Developments During 30 Years of Lithuanian Independence* (Cham: Springer Nature, 2021), 225–245.

³⁸ Dovilė Pūraitė-Andrikienė, “The Lithuanian Constitutional Court: The Gradual Emergence of a Strong Guardian,” *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective* (New York: Routledge, 2024), 174.

³⁹ Egidijus Kūris, *supra* note 14, 100.

majority of European constitutional courts, the Lithuanian Constitutional Court has derived this mandate from the overall constitutional regulation, according to which there can be no such law or other legal act whose conformity with the Constitution cannot be examined, also in the aspect that it does not contain what according to the Constitution it must contain.⁴⁰ This accords with its constitutional functional purpose: to execute constitutional justice, to guarantee the supremacy of the Constitution in the legal system, and to ensure constitutional legality.⁴¹

The Constitutional Court has formulated clear criteria for what constitutes a legislative omission. According to the concept put forward by the Constitutional Court, a legislative omission means that the relevant legal regulation is not laid down in a particular legal act (or part of it), even though it must be laid down in accordance with the Constitution (or any other legal act of higher authority), and must be laid down in that particular legal act (or that particular part of it).⁴²

The Constitutional Court has also noted that a legislative omission is also a gap in the law that arises after the Constitutional Court has formulated the relevant provisions of the official constitutional doctrine, which presupposes the establishment of a certain legal regulation. The existence of a legislative omission may also be caused by the absence of a relevant regulation in a sub-legislative act, where the need to establish such a regulation arises not from the Constitution, but from the law.⁴³

Thus, it can be concluded that the Lithuanian Constitutional Court, as well as most other European constitutional courts, interpreted its powers to investigate only incomplete, insufficient legal regulation as anti-constitutional (i.e. partial (relative) omission), and not absolute omissions. It should be stressed that the Lithuanian Constitutional Court does not consider such a gap in the law, where certain social relations have not yet been regulated by any legal acts, although there is a need to regulate them legally, as a legislative omission at all. As mentioned in the previous part of the article, this choice is more in line with keeping the balance between the independence of law-making institutions, with the imperative to uphold the supremacy of the Constitution. In this respect, it can be assumed that the Constitutional Court follows the doctrine of self-restraint to comply with the principle of the separation of powers and not to interfere too much with the legislative discretion of the legislator or the other law-making institutions.

To underline this, the Constitutional Court also emphasized that legislative omission differs from other legal gaps in that it is always the consequence of the action of the law-making subject that issued a respective legal act, but not that of its failure to act. Moreover, it is not a consequence of an action (especially, a lawful one) or failure to act of any other subject.⁴⁴

The Constitutional Court justified its lack of authority to address absolute omissions by emphasizing that if its powers were interpreted to include investigating and ruling on cases where no law is passed, it would create confusion. Specifically, it would be unclear how Paragraph 1 of Article 107⁴⁵ of the Constitution should apply, as there

⁴⁰ Vytautas Sinkevičius, *supra* note 12, 252.

⁴¹ Elena Masnevaite and Jolita Miliuvienė, *supra* note 9, 353.

⁴² The decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ According to this Article, a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

would be no legal act to challenge. This interpretation would also undermine the fundamental concept of the Constitutional Court's legal effects.

In order not to interfere too much with the legislative discretion of the law-making bodies, the Constitutional Court also applies other means of self-restraint. In its decision of August 8, 2006, the Court also clearly identified the cases which will not be considered as legislative omissions:

1. Those cases where the Constitution (as well as no other higher legal act) does not require that the relevant legal regulation be established, or even more so, that it be established in that particular act (in that particular part of the act), according to the Constitutional Court, may not be treated as a legislative omission, but as a mere legal gap, the constitutionality of which is not subject to the assessment by the Constitutional Court.
2. Such a legal gap where certain social relations have not even begun to be regulated by certain legal acts, although there exists a need for their legal regulation, is not to be regarded as a legislative omission.
3. A legislative omission cannot occur after the Constitutional Court by its ruling recognizes in a constitutional justice case that a certain legal act is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution.
4. There will also be no legislative omission if the legal regulation in question, although not expressly set out in the relevant legal act, can be derived from other provisions of the act, i.e. where the legal regulation is set out implicitly in the legal act. Thus, as the Constitutional Court has noted, the absence of a particular explicit legal regulation in the legal act under examination (namely, the part of the legal act under examination) may be compensated for by the fact that the relevant legal regulation is explicitly or implicitly contained in some other legal act (other parts of the same legal act). In such a case, the Constitutional Court will have no grounds to investigate or declare that the relevant legal regulation contradicts the Constitution. For example, in its ruling of July 11, 2014⁴⁶, the Constitutional Court established the following doctrine: if the powers of a public administration entity are not explicitly (*expressis verbis*) stated in law but are derived implicitly, although they are not defined in a clear, precise, comprehensible, non-controversial manner – there is no legislative omission, and such legal regulation does not contradict the Constitution. Another example is the ruling of December 7, 2016⁴⁷, when the Constitutional Court determined that the power of municipal councils to impose land taxes does not have to be explicitly stated in law but may be established implicitly in the totality of relevant legal regulations and that in such a case there is no legislative omission.

It should be noted that the cases of non-recognition of legislative omission that are based on the implicit legal regulation established by law have been criticized by some Lithuanian scholars. Sinkevičius considers that such a view is questionable, as it contradicts the doctrine previously established by the Constitutional Court that, when imposing taxes, the legal regulation enshrined in the law must be clear and understandable, and the wording of legal acts must be precise so that the subjects of legal relations can orient their behaviour in accordance with the requirements of the law.

⁴⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 11 July 2014.

⁴⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 7 December 2016.

Implicit legal regulation cannot ensure this. He argues that the argument that there is no legislative omission because the relevant legal regulation is implicit should be used with great caution. Particularly in the area of public law, where the powers conferred on public authorities must be expressly (*expressis verbis*) and explicitly and concretely, and not implicitly, determined by the Constitution.⁴⁸ However, this position of the Court may be justified from the point of view of the doctrine of self-limitation, where the Court tries to avoid too much interference in the activities of law-making entities.

As in most other countries where the power of constitutional courts to investigate legislative omission is derived from the overall constitutional regulation, no special procedure for the investigation of legislative omission is established/provided for *expressis verbis* in the Constitution or in the laws. In Lithuania, these issues are dealt with under the general rules for verifying the constitutionality of legal acts. However, the Constitutional Court accepts a petition, which disputes a legislative omission only in pursuance of certain conditions formulated in constitutional jurisprudence.⁴⁹ In other cases, the Constitutional Court itself, when assessing the constitutionality of the legal regulation in question, “discovers” situations that are not permitted under the Constitution, and if such situations are caused by the contested legal regulation, this is a ground for declaring that it is not in conformity with the Constitution.⁵⁰

This attitude seems to allow for more opportunities for the Constitutional Court to actively interfere in the sphere of the legislature. Nevertheless, it is in line to strengthen constitutional review and the supremacy of the Constitution. The rationale for this behavior is based on the necessity to safeguard the supremacy of the Constitution. The Constitutional Court follows a long-established doctrine that states that the Constitutional Court must declare not only the unconstitutionality of legal regulations that were challenged by the applicant but also other legal regulations that were interposed while reviewing the challenged one and were found to be in conflict with the Constitution.⁵¹ This means that the Constitutional Court has certain leeway to expand the scope of its examination and is not completely restricted by the exact legal regulation that the applicant challenged. An opposite interpretation of the Constitutional Court’s mandate would mean that it would frequently have to turn a blind eye to the unconstitutionality of legal regulations that was spotted during the examination of related legal regulations. Therefore, such an interpretation would suppose a flawed and ineffective constitutional review system, an ultimately weak system of constitutional supremacy. The Constitutional Court has retained and applied this mandate to declare the unconstitutionality of unchallenged legal regulations also in terms of legislative omissions.

Like most European countries, Lithuania does not regulate the procedure for removing legislative omissions. Once the Constitutional Court identifies legislative omission and deems a legal act lacking necessary regulation to violate the Constitution, the responsibility falls primarily on the law-making institution that caused the omission to rectify it. The Constitutional Court has no powers to control the execution of this obligation. The Constitutional Court has stated that after the Constitutional Court has recognized by its ruling that a legal act (part thereof) of lower legal force is in conflict with a legal act of higher legal force, *inter alia*, the Constitution, a constitutional duty

⁴⁸ Vytautas Sinkevičius, *supra* note 12, 261.

⁴⁹ For more on these conditions see: Dainius Žalimas, *supra* note 15, 302–303.

⁵⁰ Elena Masnevaite and Jolita Miliuvienė, *supra* note 9, 365.

⁵¹ This constitutional doctrine is expressly adhered to since the ruling of 29 November 2001 and has since been developed and cited in many rulings, for example, the ruling of 2 March 2009.

arises to a corresponding law-making subject to recognize such legal act (part thereof) as no longer valid or, if it is impossible to do without the corresponding legal regulation of the social relations in question, to change it so that the newly established legal regulation is not in conflict with legal acts of higher legal force, *inter alia* (and, first of all), the Constitution. Until this has not been done, the corresponding legal gap persists. To remove it, a certain period of time might be necessary.

When discussing such situations, the Constitutional Court also follows the doctrine of self-restraint in order not to interfere too much with the legislative discretion of the legislator or other legislative subjects. The Court has stated that even the fact that this time might be quite lengthy, in itself does not mean that the Constitutional Court is granted the powers to investigate the compliance of the same legal act concerning the Constitution, which in the same aspect has already been investigated by the Constitutional Court in an earlier considered constitutional justice case, and upon the investigation of which and entry into force of the corresponding ruling of the Constitutional Court the said legal gap precisely occurred.⁵²

However, the Constitutional Court proposes a different solution to enable individuals to protect their rights in such cases. The Constitutional Court has stated that it does not mean that the aforementioned persons cannot defend their rights and freedoms (as well as in court) at all, which are violated because the said law-making decisions have not been adopted. The Court emphasized that legal gaps (including legislative omission) which are in legal acts of lower legal force can be filled *ad hoc*, when courts within their competence decide cases on an individual social relation and when they apply (and construe) law. However, it needs to be emphasized that when the courts execute these constitutional powers, legal gaps are not removed for good—they are only filled *ad hoc*.⁵³

Thus, the examination of legislative omissions in Lithuanian Constitutional Court is generally in line with European trends: 1) like most of the constitutional courts in the region, the Lithuanian Constitutional Court has derived such powers from the overall constitutional regulation; 2) like most European courts, the Constitutional Court examines only cases of partial legislative omissions; 3) cases of legislative omissions are examined according to the general rules of reviewing the constitutionality of legislation; and, 4) the procedure for removing legislative omissions is not regulated. In examining cases of legislative omissions and formulating a constitutional doctrine on the scope of powers to investigate legislative omissions, the Constitutional Court follows the doctrine of self-restraint in order not to interfere too much with the powers of the law-making institutions, among other things, by stating that it does not have the power to investigate cases of absolute legislative omission, by making a clear distinction between other cases which will not be considered as legislative omission and by not interfering in the process of removing legislative omission.

3. THE PRACTICE OF THE CONSTITUTIONAL REVIEW OF LEGISLATIVE OMISSIONS IN THE LITHUANIAN CONSTITUTIONAL COURT

The statistics of the investigation of legislative omissions in the Lithuanian Constitutional Court, as well as the reasons for its changes, is also an important angle to consider. It is important to note that according to the methodology of the JUDICON-EU project,

⁵² The decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006.

⁵³ Ibid.

not the individual final acts of the Constitutional Court that recognized cases of legislative omission were coded, but the operative parts of those acts, i.e., single Constitutional Court ruling, may recognize more than one case of legislative omission. Also, given that the object of the project was the relationship between the constitutional courts and the legislator, these statistics include only cases of legislative omission found in acts adopted by the Seimas (the Parliament), but not cases of legislative omission found in acts of the Government or the President.

It should be also noted that there is no unanimous position in the doctrine of Lithuanian scholars on when the Constitutional Court first recognized legislative omission. Spruogis and Jarašiūnas who represented the Constitutional Court and authored the Lithuanian national report for the Congress of the Conference of European Constitutional Courts indicated that the earliest instance of a declared unconstitutionality of a legislative omission was in the ruling of 14 January 2002.⁵⁴ In the same report they disregarded the claim of Ragauskas that the Constitutional Court de facto declared the constitutionality of a legal gap as early as 1999.⁵⁵ According to Sinkevičius, the Constitutional Court in its ruling of March 4, 2003, formulated the doctrine that it has the mandate not only to determine that there is a legislative omission in the investigated legal regulation but also to declare that such legal regulation is unconstitutional.⁵⁶ It has to be noted that in this ruling the Constitutional Court did not explicitly formulate any such doctrine or even mention legal gaps or legislative omissions at all. What the Court did do was de facto pronounced that certain legal regulation was unconstitutional in so far as it did not contain a certain legal regulation that was present in its previous wording. According to Masnevaite and Miliuvienė, the foundations of the official constitutional doctrine of the Constitutional Court on the issue of legislative omissions were “laid” in the Constitutional Court’s decisions of May 6, 2003, and May 13, 2003, the term “legislative omission” was used for the first time in the jurisprudence of the Constitutional Court in the decision of April 16, 2004, and the detailed doctrine of this constitutional legal institution was formulated a little later – in the decision of August 8, 2006.⁵⁷ Taking into account these disagreements, 2006 was taken as the starting point for collecting statistical information on the investigation of legislative omissions before the Constitutional Court, when the Constitutional Court formulated a definitive and unequivocal position on its competence to examine cases of legislative omissions and the scope of this competence.

It should also be noted that it is not always easy to tell whether a legislative omission is declared by the Constitutional Court. The Constitutional Court may find that the contested legal regulation is unconstitutional on the grounds of a legislative omission even when the ruling does not even mention the existence of a legislative omission, either by the applicant or by the Constitutional Court itself, and the term of legislative omission is not used at all in the relevant ruling. Nevertheless, the operative parts of the Constitutional Court’s rulings which find that the contested legislation is unconstitutional on the ground that it contains a legislative omission are different from others. In such rulings of the Constitutional Court, rather than simply declaring the legislation

⁵⁴ Egidijus Jarašiūnas, Ernestas Spruogis, *Problems of Legislative Omission in Constitutional Jurisprudence: XIVth Congress of the Conference of European Constitutional Court* (Vilnius: Constitutional Court of the Republic of Lithuania, 2007), 21 // https://www.confconstco.org/reports/rep-xiv/report_Lithuania_en.pdf

⁵⁵ Ibid.

⁵⁶ Vytautas Sinkevičius, *supra* note 12, 252.

⁵⁷ Elena Masnevaite and Jolita Miliuvienė, *supra* note 9, 353.

or part of it unconstitutional, the operative part of the ruling expressly states that it is unconstitutional “to the extent that it does not provide for any provision” or “to the extent that it does not regulate <...>”. Therefore, cases of legislative omission have been identified primarily on such wording in the operative part of the Constitutional Court’s rulings.

Table 1. The number of legislative omissions declared by the Lithuanian Constitutional Court in 2006–2020

Year	Total number of operative parts of rulings	Number of operative parts of rulings on legislative omissions	Percentage of operative parts of rulings on legislative omissions
2006	99	4	4%
2007	20	2	10%
2008	26	3	11,5%
2009	21	6	28,6%
2010	21	4	19%
2011	64	15	23,4%
2012	58	9	15,5%
2013	99	6	6,1%
2014	34	1	2,9%
2015	25	0	0%
2016	19	0	0%
2017	10	1	10%
2018	16	0	0%
2019	20	1	5%
2020	45	0	0%
Total	577	52	9%

As can be seen from the statistical data presented in Table 1, during 2006–2020 almost every tenth operative part (9%) of the Lithuanian Constitutional Court’s rulings concerned the unconstitutionality of legislative omissions. The majority of all legislative omissions were recognized in the period of 2011–2013 (15 in 2011, 9 in 2012, 6 in 2013, totaling in 30 cases (57,7%) of legislative omissions). Several reasons may have contributed to this trend. First of all, these statistics reflect a general tendency of the Court’s strengthening. The scientific literature emphasizes that the position of the Lithuanian Constitutional Court in the State has gradually strengthened through the periods of the Court’s activity.⁵⁸

The activity of the Constitutional Court can be divided into three main periods.⁵⁹ The first period of the Constitutional Court’s activity (1993–2000) can be described as a period of consolidation of a model of constitutional judicial review, which had never existed in Lithuania before, into the Lithuanian legal system.⁶⁰ This outlook marked the first decade of the newly established constitutional review in Lithuania when the Constitutional Court took a rather reserved stance about the interference with the legislature. During that period the Constitutional Court dismissed cases that posited legal gaps which emerged because the legislator was not yet able to establish and harmonize all legal regulations of the new legal system⁶¹. Claims that contested legal regulation was

⁵⁸ Dovilė Pūraitė-Andrikiienė, *supra* note 38, 168–190.

⁵⁹ Of course, these periods do not have strict boundaries, but simply reflect a certain sequential development in the jurisprudential activity of the Constitutional Court.

⁶⁰ Dovilė Pūraitė-Andrikiienė, *supra* note 38, 175.

⁶¹ The ruling of the Constitutional Court of the Republic of Lithuania of 24 September 1998.

breaching the Constitution because it lacked certain provisions were deemed by the Constitutional Court as grounds for dismissal of the constitutional case.⁶² However, it is questionable whether some of the Constitutional Court's rulings adopted during this period could also be categorised as having detected a legislative omission. It was found that in three rulings in 1997 and 1999, without any mention of legal gaps or legislative omissions, the Constitutional Court declared the reviewed legal regulations to be in conflict with the Constitution to the extent that they lacked certain provisions and so prevented persons from defending their rights in court or the impeachment process.⁶³

The second period of the Constitutional Court's activity (2001–2010) can be described as the years of consolidation of the constitution-centric concept of law and its role as a central and strong guardian of the Constitution.⁶⁴ With growing constitutional case law and expanding the concept of the Constitution as a foundation of the whole legal system, it gradually became apparent that not all legal gaps are to be resolved only by the legislature and the failure to enact certain regulations should constitute a breach of the Constitution. As mentioned above, there is no consensus in the academic literature as to when the Constitutional Court first recognized a legislative omission, but there is no doubt that it was in its decision of August 8, 2006, that it definitively put an end to the debate on its competence to deal with legislative omissions. As can be seen from the statistical data in Table 1, in 2006–2010 the Constitutional Court recognized at least a few cases of legislative omissions each year.

In the third period of the Court's activity (2011–2020), the Constitution has become an actual measure of constitutionality, with sufficiently clear and defined criteria, which are being further developed by the Constitutional Court.⁶⁵ Thus, the increase in the number of legislative omissions at the beginning of this period (2011–2013), may be at least partly connected to the strengthening trend of this Court.

However, these developments have been largely caused by external factors rather than an activist approach of the Court. In particular, during that period the Constitutional Court had to work in a rather difficult period of economic and financial crisis for the country as a whole and for the Constitutional Court itself. In 2011–2013, the Court's cases were dominated by questions concerning the constitutionality of austerity measures (legislative provisions aimed at tackling the economic crisis) taken by the legislature and the executive. These types of cases have led to a significant increase in both the number of applications received by the Constitutional Court and the number of rulings issued, as well as the number of provisions of legal acts declared unconstitutional. These trends reveal that the functioning of constitutional justice also largely depends on the social, political, and legal environment.

Therefore, the increase in the number of cases of legislative omissions (as well as in the number of rulings declaring legislative provisions unconstitutional) can largely be attributed to the period of economic crisis, when the legislator often side-lined human rights and freedoms to achieve economic stabilization. The Constitutional Court was faced with the challenge of preventing human rights from being infringed by legislative decisions based on short-sighted motives of political expediency.⁶⁶

⁶² The decision of the Constitutional Court of the Republic of Lithuania of 11 July 1994.

⁶³ See: the ruling of the Constitutional Court of the Republic of Lithuania of 1 October 1997; the ruling of the Constitutional Court of the Republic of Lithuania of 4 March 1999; the ruling of the Constitutional Court of the Republic of Lithuania of 11 May 1999.

⁶⁴ Dovilė Pūraitė-Andrikiienė, *supra* note 38, 177.

⁶⁵ *Ibid.*, 181.

⁶⁶ *Ibid.*

Another external reason that explains the increase in the number of rulings (as well as of rulings recognizing cases of legislative omission) was the amendments to the Law of the Constitutional Court⁶⁷ of 2011, which made it possible to hear constitutional cases by written procedure. These amendments also abolished the legal regulation according to which the Constitutional Court was not allowed to hear more than one case at the same time (once it had started to deal with a specific case, it would also be able to take up a new case). This has speeded up the time it takes to hear cases before the Constitutional Court. As a result, the Court started adopting more rulings during the year.

Thus, considering that the vast majority of cases of legislative omission (30 out of 52) were declared in 2011–2013, it is likely that the increase in this number is largely due to external factors: the economic crisis and the above-mentioned amendments to the Law of Constitutional Court, which have led to an increase in the number of rulings adopted in general. As can be seen, legislative omissions have been very rare since the end of the economic crisis (2014–2020). These trends suggest that the relatively high number of legislative omissions in the practice of the Constitutional Court in the comparative perspective was mainly due to external causes, but not only due to the Court's activist approach or insufficient self-restraint.

CONCLUSIONS

In most European countries, the investigation of legislative omissions is the result of the jurisprudential activity of constitutional courts, as the largest part of these courts derived these powers from the overall constitutional regulation. This trend is also reflected in the fact that most countries of the region do not regulate the procedure for dealing with legislative omissions and their removal in their legislation. The majority of constitutional courts interpreted their powers to investigate only incomplete, insufficient legal regulation as anti-constitutional (partial omissions), rather than the acknowledgment of inaction of law-making institutions as anti-constitutional (absolute omission). This is so because, in this case, courts are less likely to be involved in disputes over the violation of the principle of the separation of powers or to be accused of interfering with the competence of the law-making institution.

The investigation of legislative omissions in Lithuanian Constitutional Court is generally in line with European trends: 1) like most of the constitutional courts in the region, the Lithuanian Constitutional Court has derived such powers from the overall constitutional regulation; 2) like most European courts, the Constitutional Court examines only cases of partial legislative omissions; 3) cases of legislative omissions are examined according to the general rules of reviewing the constitutionality of legal acts; and, 4) the procedure for removing legislative omissions is not regulated. In examining cases of legislative omissions and formulating a constitutional doctrine on the scope of powers to investigate legislative omissions, the Constitutional Court follows the doctrine of self-restraint in order not to interfere too much with the powers of the law-making institutions, among other things, by stating that it does not have the power to investigate cases of absolute legislative omission, by making a clear distinction between other cases which will not be considered as legislative omission, and by not interfering in the process of removing legislative omission.

⁶⁷ Law amending Articles 27, 41, 44 of the Law on the Constitutional Court and supplementing it with Article 531, Official Gazette, (2011, No. 154-7262).

The number of legislative omissions declared by the Lithuanian Constitutional Court is relatively high compared to other European countries. However, considering that most cases of legislative omissions in Lithuania were recognized in 2011–2013, it is likely that the increase in this number was largely due to external factors: specifically, the economic crisis and the amendments of the Law of Constitutional Court, which have led to an increase in the number of rulings adopted in general. Since the end of the economic crisis (2014–2020), legislative omissions have been very rare. Thus, from a comparative perspective the relatively high number of legislative omissions declared by the Constitutional Court was due largely to external causes (the economic crisis and the amendments of the Law of Constitutional Court), and not only due to the Court's activist approach or insufficient self-restraint.

BIBLIOGRAPHY

5. AL-Dulaimi, Ahmed Oudah Mohammed. *From Negative to Positive Legislator? Response to Unconstitutional Legislative Omission as a Case Study in the Changing Roles of Constitutional Courts*. The School of Government and International Relations Griffith Business School Griffith University, 2018.
6. Brewer-Carías, Allan R. "Constitutional Courts as Positive Legislators in Comparative Law." Washington, 2010 // <https://allanbrewercarias.com/wp-content/uploads/2010/07/1062-1008.-Brewer-Carias.-CONSTITUTIONAL-COURTS-AS-POSITIVE-LEGISLATORS.-IACL-Cong.-Exposici%C3%B3n.doc.pdf>
7. European Commission for Democracy through Law. *General Report of the XIVth Congress of the Conference of European Constitutional Courts on Problems of Legislative Omission in Constitutional Jurisprudence*. Strasbourg, 2008 // <https://www.venice.coe.int/files/Bulletin/SpecBull-legislative-omission-e.pdf>
8. Gyulai, Attila, Pocza Kalman, Dobos Gabor. "The Hungarian Constitutional Court: Dialogue in practice." *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective*. New York: Routledge, 2024.
9. Jarašiūnas, Egidijus, Ernestas Spruogis. *Problems of Legislative Omission in Constitutional Jurisprudence: XIVth Congress of the Conference of European Constitutional Court*. Vilnius: Constitutional Court of the Republic of Lithuania, 2007 // https://www.confueconstco.org/reports/rep-xiv/report_Lithuania_en.pdf
10. Jočienė, Danutė et. al. *Trisdešimt konstitucinės justicijos metų: tempore et loco (Thirty Years of Constitutional Justice: tempore et loco)*. Vilnius: Constitutional Court of the Republic of Lithuania, 2023.
11. Juškevičiūtė-Vilienė, Agnė, Dvilė Pūraitė-Andrikienė (eds.). *Konstitucinė justicija Lietuvoje: trys veiklos dešimtmečiai (Constitutional Justice in Lithuania: Three Decades of Activity)*. Vilnius: Vilnius university, 2023.
12. Kūris, Egidijus. "Konstitucinis Teismas" ("Constitutional Court"). *Lietuvos teisinės institucijos (Lithuanian Legal Institutions)*. Vilnius: Centre of Registers, 2011.
13. Kroot Tupay, Paloma. "The Estonian Supreme Court: Strength by Pragmatic Collegiality." *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective*. New York: Routledge, 2024.
14. Masnevaitė, Elena, Jolita Miliuvienė. "Kai kurie legislatyvinės omisijos konstitucingumo kontrolės aspektai" ("Some aspects of constitutional control of legislative omission"). Vilnius University Open Series. *Konstitucinė justicija Lietuvoje:*

- trys veiklos dešimtmečiai (Constitutional Justice in Lithuania: Three Decades of Activity)*, 2024.
15. Pocza, Kalman (ed.). *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective*. New York: Routledge, 2024.
 16. Pocza, Kalman (ed.). *Constitutional Review in Western Europe: Judicial-Legislative Relations in Comparative Perspective*. New York: Routledge, 2024.
 17. Pūraitė-Andrikienė, Dovilė. "The Development and Prospects of the Lithuanian Constitutional Justice Model." *Legal Developments During 30 Years of Lithuanian Independence*. Cham: Springer Nature, 2021.
 18. _____. "The Lithuanian Constitutional Court: The Gradual Emergence of a Strong Guardian." *Constitutional Review in Central and Eastern Europe: Judicial-Legislative Relations in Comparative Perspective*. New York: Routledge, 2024.
 19. Sinkevičius, Vytautas. "Legislatyvinė omisija Konstitucinio Teismo jurisprudencijoje." *Konstituciniai ginčai (Constitutional Disputes)*. Mykolas Romeris University, 2019, 251–262.
 20. Žalimas, Dainius. "The Constitution of the Republic of Lithuania as the Jurisprudential Constitution." *Lithuanian Constitutionalism: The Past and the Present*. Vilnius: The Constitutional Court of the Republic of Lithuania, 2017.

LEGAL REFERENCES

1. *The Constitution of the Republic of Lithuania*. Official Gazette (1992, No. 33-1014).
2. *Law amending Articles 27, 41, 44 of the Law on the Constitutional Court and supplementing it with Article 531*. Official Gazette (2011, No. 154-7262).
3. *The decision of the Constitutional Court of the Republic of Lithuania of 11 July 1994, Case No. 18/94*.
4. *The ruling of the Constitutional Court of the Republic of Lithuania of 1 October 1997*. Official Gazette (1997, No. 91-2289).
5. *The ruling of the Constitutional Court of the Republic of Lithuania of 24 September 1998, Case No. 1/98*. Official Gazette (1998, No. 85-2382).
6. *The ruling of the Constitutional Court of the Republic of Lithuania of 4 March 1999*. Official Gazette (1999, No. 23-666).
7. *The ruling of the Constitutional Court of the Republic of Lithuania of 11 May 1999*. Official Gazette (1999, No. 42-1345).
8. *The ruling of the Constitutional Court of the Republic of Lithuania of 29 November 2001*. Official Gazette (2001, No. 102-3636).
9. *The decision of the Constitutional Court of the Republic of Lithuania of 8 August 2006, Case No. 34/03*.
10. *The ruling of the Constitutional Court of the Republic of Lithuania of 2 March 2009*. Official Gazette (2009, No. 25-988).
11. *The ruling of the Constitutional Court of the Republic of Lithuania of 11 July 2014*. Register of legal acts. 2014, No. 10117.
12. *The ruling of the Constitutional Court of the Republic of Lithuania of 7 December 2016*. Register of legal acts. 2016, No. 28387.