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THE ROLE OF EQUALITY AND NON-DISCRIMINATION IN SHAPING CONSTITUTIONAL GENDER DYNAMICS AND SAFEGUARDING FAMILY LIFE

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ABSTRACT

The article studies the constitutional context and preconditions for shaping the constitutional gender dynamics in the Republic of Lithuania, establishing the constitutional threshold for better protection of the right to family life, equality between men and women and other gender rights. It identifies the constitutional principles of equality and non-discrimination that (along with the influence of supranational law) have had the most influence in the slow, but generally coherent development of the said constitutional concepts.

KEYWORDS

Human rights; gender equality; non-discrimination; constitutional concept of family.

INTRODUCTION

The text of the Constitution of the Republic of Lithuania (hereinafter – the Constitution), adopted through referendum in 1992¹, establishes a classic catalogue of constitutional rights and principles. As regards the constitutional gender dynamics, substantive sex equality, the rights of women, moreover, the rights of sexual minorities, the Constitution remains silent. The constitutionalisation of gender issues in national law is mostly dependent on the consistent development of the jurisprudential Constitution through the acts of the Constitutional Court of the Republic of Lithuania (*hereinafter* – the Constitutional Court). For many years, with regard to gender rights (*inter alia* women's rights), substantial development was only to be observed indirectly, i.e. with regard to the constitutional protection of family life, in particular the social rights of mothers and the constitutional protection of motherhood. In addition to the latter, the Constitutional Court has had two direct attempts² at constitutionalising the concept of family, and two indirect ones.³ Among the latter is a recent limited assessment (i.e. conclusion of 14 March 2024) of the constitutionality of certain provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (*hereinafter* – the Istanbul Convention). Although the aforementioned Convention has been signed by Lithuania in 2011 and submitted to the Parliament for ratification in 2018,⁴ to this day it remains unratified.⁵ The Constitutional Court has confirmed the conformity of the aims, as well as all of the contested provisions of the Istanbul Convention, with the national constitutional order, accordingly, qualitatively supplementing the preconditions for defining gender dynamics and ensuring constitutional sex (and gender) equality under the Constitution of Republic of Lithuania.

The aim of the article is to study the role of the evolving principles of equality and non-discrimination in shaping the constitutional gender dynamics in the Republic of Lithuania, as well as the constitutional context and preconditions for the latter jurisprudential developments.

1. THE CONSTITUTIONAL GENDER DYNAMICS: CONTEXT AND FEATURES

The Lithuanian system of constitutional justice was first created in the last decade of the twentieth century with the adoption of the Constitution in 1992,⁶ the adoption of the Law on the Constitutional Court in 1993,⁷ and, accordingly, the creation of the Constitutional Court of Lithuania. Lithuania opted for a centralised model of constitutional justice, typical to states of the continental legal tradition, aimed specifically at the adjudication of constitutional justice cases and the development of the official constitutional doctrine. Consequently, following more than 30 years of activity, close to 550 constitu-

¹ Constitution of the Republic of Lithuania, Official Gazette *Valstybės žinios* [OG], 1992, No. 33-1014, for text in English see <https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>.

² Constitutional Court, ruling of 28 September 2011 (OG, 2011, No. 118-5564); Constitutional Court, ruling of 11 January 2019 (Register of Legal Acts [TAR], 11-01-2014, No. 439).

³ Constitutional Court, ruling of 18 December 2024 (TAR, 2024, No. 22435); Constitutional Court, conclusion of 14 March 2024 (TAR, 2024, No. 4688).

⁴ President of the Republic of Lithuania, Decree on submission to the Seimas of the Republic of Lithuania of the Council of Europe's Convention on Preventing and Combating Violence Against Women and Domestic Violence, 12 June 2018 (TAR, 12-06-2018, No. 9782).

⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence (*Istanbul Convention*), (2011) // <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

⁶ Constitution of the Republic of Lithuania (OG, 1992, No. 33-1014).

⁷ Law on the Constitutional Court of the Republic of Lithuania (OG, 1993, No. 6-120).

tional justice acts on merit have been adopted by the Constitutional Court (an average of 15-20 per year),⁸ resulting in a relatively thorough jurisprudential constitution, thus indicating the achieved maturity of constitutional control.⁹

During these years, gender issues have also seen a generally gradual and not incoherent constitutionalisation through constitutional jurisprudence. However, this process has been a slow and cautious one, doubtless also due to the relative scarcity of constitutional cases related to the so-called sensitive human rights (to which gender rights belongs). There are numerous reasons for this, including limited access to constitutional justice and the wording of the Constitution of 1992, as well as the general political¹⁰ and social discourse.

1.1. The Lithuanian Model of Constitutional Justice and its Implications for the Constitutionalisation of Gender Issues

Until September 2019, the Lithuanian model of constitutional justice (along with the respective models of Bulgaria, Italy and Moldova) had remained among the four models within the Council of Europe member states that had a constitutional court, but did not ensure direct individual access to constitutional justice.¹¹ Following the original wording of the Lithuanian Constitution (Art 106), the right to initiate constitutional proceedings had been granted to a very limited number of state political actors (the Parliament, the President of the Republic, the Government, and a group of 1/5 or more of all the Members of the Parliament, i.e. the political opposition or the parliamentary minority), as well as to ordinary courts. The latter list was finite – no other persons could have initiated constitutional proceedings or questioned the constitutionality of legal acts adopted by the Parliament, the President of the Republic or the Government, even if the latter had violated their rights or freedoms.¹²

It is only in 2019 that Art 106(4) of the Constitution was amended to allow every person (all natural persons and all legal persons of private and public law) the right to apply to the Constitutional Court.¹³ Individuals, just as ordinary courts, may only initiate concrete constitutional review (abstract review is reserved for privileged applicants – state political actors), but the object of review comprises both normative (general and abstract norms) and individual acts, and includes acts adopted not only by the Parliament, President, Government, but also by referendum.¹⁴ At the same time, Lithuania has opted for the limited model of individual constitutional complaint: the

⁸ *Annual Report, 2019* (Vilnius: Constitutional Court of the Republic of Lithuania, 2020), 121 // https://www.lrkt.lt/data/public/uploads/2019/05/annual-report-web_.pdf; *Annual Report, 2023* (Vilnius: Constitutional Court of the Republic of Lithuania, 2024), 151 // <https://lrkt.lt/data/public/uploads/2024/09/annual-report-2023.pdf>

⁹ E. Jarašiūnas, "Jurisprudencinė konstitucija ir oficialiosios konstitucinės doktrinos plėtojimas" [The Jurisprudential Constitution and the Development of the Official Constitutional Doctrine], in *Konstituciniai ginčai [Constitutional Disputes]* (Vilnius: Mykolas Romeris universitetas [Mykolas Romeris University], 2019), 338; D. Žalimas, "The Constitution of the Republic of Lithuania as the Jurisprudential Constitution," in *Lithuanian Constitutionalism. The Past and the Present* (Vilnius: Constitutional Court of the Republic of Lithuania, 2017), 289–388.

¹⁰ See also: G. Sagatys, "The Concept of Family in Lithuania," *Jurisprudencija (Jurisprudence)* 1(119) (2010), 185; I. Danėlienė, "Defining the concept of family: political challenges to Constitutional justice," *Constitutional justice and politics: 18th international congress on European and Comparative Constitutional Law, Regensburg, 14–15 October, 2016*, Arnold R. (ed.) et al., Vol. 1 (Kosice: Pavol Jozef Safarik University in Kosice, 2020), 101–120.

¹¹ I. Danėlienė, "Individual Access to Constitutional Justice in Lithuania: the Potential Within the Newly Established Model of the Individual Constitutional Complaint," *Revista de Derecho Político* Núm. 111 (2021), 284.

¹² *Constitutional Court, ruling of 28 June 2016* (TAR, 29-06-2016, No. 17828).

¹³ *Law Amending Articles 106 and 107 of the Constitution of the Republic of Lithuania* (TAR, 2019-04-02, No. 5330).

¹⁴ *Constitutional Court, ruling of 24 October 2007* (OG, 2007, No. 111-4549).

Constitution only allows for the review of constitutionality of legal provisions based on which a decision has been adopted with regard to a natural or legal person, possibly breaching the constitutional rights and freedoms thereof. As individual application to the Constitutional Court is an extraordinary and subsidiary measure of defence of constitutional rights and freedoms, it is only available following the exhaustion of all effective national legal remedies. Presumably, the constitutional amendments of 2019 establish sufficient legal preconditions for the individual constitutional complaint to become an effective domestic measure of last resort for the protection of human rights – including gender rights – with regard to practices based on unconstitutional acts. However, sustainable conclusions regarding its efficiency depend *inter alia* on its functioning in practice, specifically, on the willingness of the Constitutional Court to admit such individual complaints and later adopt genuine decisions on merit, rather than dismiss or return the complaints at the first stage of admissibility or avoid coherent argumentation and principled decisions once the complaint is admitted.

Concern with regard to the latter is not ungrounded, as indirect individual access, guaranteed by the Constitution through an explicitly established obligation of the ordinary courts “to apply to the Constitutional Court regarding any legal provision that raises questions of constitutionality and is applicable in cases heard by them” (Arts. 30 and 110, paras. 1 and 2)¹⁵ and to do so each time the constitutionality of an applicable provision is questioned (even if the constitutionality of the same provision has been questioned before the Constitutional Court by other courts),¹⁶ had in recent practice proven to be both increasingly formal and dependent on the objective (in)capacity of the ordinary courts to identify potentially unconstitutional acts, as well as their subjective (un)willingness to submit such applications (e. g. an unreasoned unwillingness to stay the proceedings before the ordinary court).

The latter conclusion is substantiated, *inter alia*, by rulings of the Constitutional Court delivered following the adjudication of the first individual complaints, finding contested acts to be unconstitutional, whilst doubts regarding their constitutionality had been raised already before the respective ordinary courts and dismissed by them with little or no reasoning whatsoever.¹⁷ The judgments of the European Court of Human Rights (*hereinafter* – the ECtHR) are especially relevant in cases regarding gender dynamics and the rights of sexual minorities that had never reached the Constitutional Court due to lack of direct individual access to constitutional justice. For example, in *Beizaras and Levickas v. Lithuania*, Lithuania was found to have discriminated against two openly gay men in a same-sex relationship, thus violating the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms (*hereinafter* – the ECHR).¹⁸ The discrimination stemmed from the authorities’ refusal to investigate hateful comments on one applicant’s Facebook post of a same-sex kiss, which had gone viral and incited violence, violating of Art 14 ECHR, taken in conjunction with

¹⁵ The constitutional powers granted to courts to initiate the investigation of the constitutionality of legal acts presuppose the right of a person whose case was being heard by an ordinary court to request the court hearing the case to apply to the Constitutional Court (*Constitutional Court, ruling of 28 March 2006* (OG, 2006, No. 36-1292), as well as constitute the constitutional guarantee of the right to fair proceedings, the right to apply to court (Constitution, *supra* note 1, Art. 30).

¹⁶ *Constitutional Court, ruling of 24 October 2007* (OG, 2007, No. 111-4549); *Constitutional Court, ruling of 28 June 2016* (footnote No. 10).

¹⁷ E. g., *Constitutional Court, ruling of 9 March 2020* (TAR, 09-03-2020, No. 5178); *Constitutional Court, ruling of 19 March 2021* (TAR, 19-03-2021, No. 5546), etc.

¹⁸ ECtHR, judgment of 14 January 2020, *Beizaras and Levickas v. Lithuania*, Application No. 41288/15. Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, ETS No. 005, 1950.

Art 8, also Art 13. The applicants had requested a pre-trial investigation into the comments, but national authorities declined, and courts upheld their decisions. The courts argued that the (openly hateful and violent-natured) comments did not incite hatred or discrimination under Lithuania's criminal code (insisting that they "had chosen improper words" to express their disapproval of homosexual people; however, the "mere use of obscenities" was not enough to incur criminal liability¹⁹) and criticized the applicants' "eccentric" behaviour, suggesting it harmed societal cohesion. They also misinterpreted the Constitutional Court's jurisprudence, wrongly citing the relevant Constitutional Court's rulings as defining family as only a union between a man and a woman.²⁰ Although requested by the applicants, the ordinary courts failed to refer the case to the Constitutional Court.

Examples such as the one above demonstrate that indirect individual access to constitutional justice, as an only alternative, has often constituted only a formal guarantee of the right to fair proceedings, while in practice leading to the preclusion of individuals from effectively defending their constitutional rights and freedoms on the national level. Therefore, in cases of protection of sensitive human rights, such as those related to gender dynamics, reference to ECtHR as an *ultra-ratio* measure had proved to be the only effective judicial remedy, and also a stepping stone for the case to finally reach the Constitutional Court. For example, it is only following the judgment of the ECtHR in the case of *Macatė v. Lithuania*²¹ that found measures taken against the applicant's book (restricting its distribution) in order to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships and labelling such information as harmful to be in breach of Article 10 paragraph 2 of the ECHR (freedom of expression, freedom to impart information), that the Constitutional Court concluded that the national law²² on which such restrictive measures were based were unconstitutional.²³ Prior to the latter judgment of the ECtHR, similar concerns had been dismissed both by domestic courts and national institutions, although the same constitutional provisions were in place. However, as a consequence of the latter, they constitutionalised the coherence of the constitutional provisions of Article 38 paragraphs 1 and 2, affirming both the constitutional right to family life and the priority of constitutional protection of a child. This was balanced with the constitutional freedom of expression, including the child's right to receive and to disseminate information to children about diverse family models, specifically those not based on the marriage of a man and a woman, where the relationships in their shared life are based (supposedly) on stable emotional attachment, mutual understanding, responsibility, respect, joint child-rearing, and similar ties, characteristic of the family as a constitutional institution, as well as their voluntary resolve to assume certain rights and duties.²⁴ According to the Constitutional Court, if the interpretation of the Constitution were contrary to the

¹⁹ Ibid., para 20. At the relevant time, Art 170(2) of the Criminal Code of the Republic of Lithuania established that "A person who publicly ridicules, expresses contempt for, urges hatred of or incites discrimination against a group of people or a person belonging thereto on the grounds of sex, sexual orientation <...> convictions or views <...> shall be punished by a fine or by restriction of liberty or by arrest or by imprisonment for a term of up to two years." *Criminal Code of the Republic of Lithuania* (OG, 2000, No. 89-2741).

²⁰ ECtHR, judgment of 14 January 2020, *Beizaras and Levickas v. Lithuania*, Application No. 41288/15, para 21.

²¹ ECtHR, judgment of 23 January 2023, *Macatė v. Lithuania*, Application No. 61435/19.

²² *Law on the Protection of Minors from Negative Effects of Public Information of the Republic of Lithuania*, No. XI-333 (OG 2009, No. 86-3637).

²³ Constitutional Court, ruling of 18 December 2024, *Macatė v. Lithuania*, Application No. 61435/19.

²⁴ Ibid.

latter, minors would be precluded from developing into mature, well-rounded individuals, while such a restriction is incompatible with the constitutional duty of the State to ensure the harmonious and comprehensive development of the child, based on respect for human rights and dignity, as well as the values of equality, pluralism, and tolerance characteristic of a democratic society.

1.2. Constitutional principles underlying human rights protection

Through the interpretation of the text of the Constitution – the jurisprudential Constitution – the Constitutional Court has so far established the following three foundations for the constitutional protection of human rights that are also especially relevant to this study.

First, the Constitutional Court has established within the Constitution the indisputability of the inherent nature of human rights: the latter principle is not only expressly established by Art 18 of the Constitution (that may be repealed or amended)²⁵, but also revealed in a number of other provisions (articles) of the Constitution, which consolidate respect for human rights and freedoms, human dignity, including the principle of the rule of law. Accordingly, the inherent nature of human rights is an inseparable element of democracy, values of equality, pluralism, and tolerance being characteristic of a democratic society, protected under Art 1 of the Constitution and thus enjoying maximum constitutional protection, i.e. bearing the status of an eternity clause.²⁶

Second, the jurisprudential constitution has developed the concept of the Constitution as an antimajoritarian act. Already in 2006, the Constitutional Court emphasised that the Constitution is an antimajoritarian act, as it is aimed at protecting the individual: “the state is constitutionally obliged to ensure, by making use of legal, material, or organisational means, the protection of human rights and freedoms from any unlawful attempt or limitation and to establish sufficient means for the defence and protection of human rights and freedoms”.²⁷ In 2019, the Constitutional Court further established that, *inter alia*, it follows from the concept of the Constitution as an antimajoritarian act that only a state that respects the dignity of each individual may be considered genuinely democratic, while the attitudes or stereotypes prevailing in a certain period of time among the majority of the members of society of such a democratic state may not serve as basis for discrimination.²⁸

The third aspect of human rights protection that has been especially distinctively developed through the jurisprudence of the Constitutional Court during the last decade is the consistency (harmony) of the Constitution and extranational law. The latter principle constitutes the requirement for the Constitutional Court to rely on European human rights standards because it is so obliged by the Constitution itself. Specifically, there are explicitly and implicitly established interrelated constitutional principles, which determine the openness of the Constitution towards international law (especially when it concerns human rights protection), and, accordingly, towards ECHR law. In this respect, the following principles are identified: first, the principle of respect for international law (*pacta sunt servanda*), entailing the imperative to fulfil in good faith the obligations assumed by Lithuania under international law, including both international treaties and

²⁵ Constitution, *supra* note 1, Art. 18: “Human rights and freedoms shall be inherent.”

²⁶ See: Constitutional Court, ruling of 29 December 2004 (OG, 2005, No. 1-7); Constitutional Court, ruling of 9 December 1998 (OG, 1998, No. 109-3004); Constitutional Court, ruling of 11 July 2014 (TAR, 11-07-2014, No. 10117).

²⁷ Constitutional Court, ruling of 19 August 2006 (OG, 2006, No. 90-3529).

²⁸ Constitutional Court, ruling of 11 January 2019 (OG, 2011, No. 118-5564).

the general norms of international law;²⁹ second, the principle of an open, just and harmonious civil society that, along with the principle of the geopolitical orientation of the state (grounded on the value-based commonness of Lithuania with Western democratic states and meaning the membership of Lithuania in the EU and the NATO),³⁰ imply the integration of the State of Lithuania into the community of democratic states, united through respect for inherent human rights.³¹ The latter principles constitute openness of the Constitution to the standards of European human rights protection by: first, determining the obligation to accept the relevant European standards within the national legal framework as the minimum constitutional standards;³² and, second, obliging the Constitutional Court to interpret the provisions of the Constitution in harmony with international and EU law (*inter alia*, through the duty of consistent interpretation). Derogations from the said requirements are constitutionally justifiable in two cases: first, when the Constitution raises a higher threshold for the protection of human rights than international law (e. g., as it does with regard to certain social rights); second, when a harmonized interpretation would fundamentally change the system of values enshrined in the Constitution.

In conclusion, the acknowledgment of the inherent nature of human rights as an eternity clause of the Constitution, the concept of the Constitution as an antimajoritarian act (aimed at protecting the individual) and the requirements underlying the principle of the consistency (harmony) of the Constitution and extranational law, have shaped the protection of gender rights within national constitutional order.

1.3. The evolving content of the constitutional principles of equality and non-discrimination: gender dynamics

The Constitution of the Republic of Lithuania lays down *expressis verbis* the constitutional principles of equality³³ and non-discrimination.³⁴ It does not, however, expressly establish a sex equality provision. Rather, only the equal rights of spouses within a family are *expressis verbis* protected under Art 38(3).³⁵ Being of an especially broad content, the principle of equality is in essence shaped through constitutional jurisprudence. It is understood under the Constitution as a general requirement for the fundamental rights and freedoms for every person be consolidated in the legal system of the country equally with others and with no exceptions.³⁶ The principle of equality obliges the state to defend the rights and freedoms of every person by equally effective means,³⁷ and it imposes the obligation to assess homogenous facts in the same manner and prohibits any arbitrary assessment of essentially the same facts in a different manner in the course of both the adoption and application of laws.³⁸ The Constitution proclaims "the formal equality of all persons" (including equality between natural and

²⁹ Constitutional Court, ruling of 18 March 2014 (TAR, 19-03-2014, No. 3226); Constitutional Court, ruling of 14 March 2006 (OG, 2006, No. 30-1050). The latter principle is established by Art 135(1) of the Constitution (OG, 1992, No. 33-1014), also held by the Constitutional Court an inseparable element of the constitutional principle of the rule of law.

³⁰ Constitutional Court, ruling of 24 January 2014 (TAR, 24-01-2014, No 478).

³¹ See: D. Žalimas, "Europos Žmogaus Teisių Teismo praktikos įtaka Lietuvos Respublikos Konstitucinio Teismo jurisprudencijai," *Konstitucinė jurisprudencija* No. 3(43) (2016), 155.

³² Ibid., 159, 162.

³³ Art 29(1): "All persons shall be equal before the law, courts, and other state institutions and officials."

³⁴ Art 29(2): "Human rights may not be restricted and no one may be granted any privileges on the grounds of sex, race, nationality, language, origin, social status, belief, convictions, or views."

³⁵ Art 38(4): "In the family, the rights of spouses shall be equal."

³⁶ Constitutional Court, ruling of 18 April 1996 (OG, No. 36-915).

³⁷ Constitutional Court, ruling of 30 June 2000 (OG, No. 54-1587).

³⁸ Constitutional Court, ruling of 4 July 2003 (OG, 68-3094); Constitutional Court, ruling of 30 December 2003 (OG, No. 124-5643).

legal persons), which includes the prohibition of both discrimination and privileges.³⁹ However, it does not deny the possibility of establishing, by means of a law, a legal regulation that is differentiated with respect to certain categories of persons who are in different situations (i. e. so-called *positive discrimination*).⁴⁰ When applied with respect to individuals, it means the innate – therefore, an irrevocable – right of an individual to be treated equally with others.⁴¹

With regard to women's rights, the Constitutional Court had many times concluded that the said principle requires the equal treatment among mothers (the mothers who have employment or state service relationships and those who do not have such relationships, *inter alia*, self-employed mothers, etc.). It had also often stressed the constitutional aim of ensuring similar child bearing conditions to mothers and fathers (through, for example, the "ensured opportunity given not only to the mother, but also to the father" to raise children at home). The principle of equality has for a long time encompassed the implicit preconditions to guarantee not only formal, but also substantive sex equality, as well as equal participation of women within the state and society. However, constitutional law had not realised such potential in practice.⁴² Nor had the concept of sex equality, or the concept of gender, been constitutionalised until 2024.

Only in its conclusion of 14 March 2024 did the Constitutional Court expressly determine that the concept "gender" refers to the "social aspect of sex" and is to be understood as it is defined by the Istanbul Convention, i.e. as meaning the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men⁴³ and constitutes a separate ground of discrimination as prohibited under Article 29 of the Constitution.⁴⁴ In this respect, one must reiterate that the constitutional protection of equality between men and women, as well as gender equality, have implicitly always been most closely related to the constitutional principle of non-discrimination. It is recognized both as an expressly established constitutional principle (Art 29(2)) and a sub-principle derived from the above-described principle of equality (the requirement of non-discrimination "does not allow the violations of the equality of the rights of persons – the general rule"⁴⁵). One may also conclude that the Constitutional Court has kept to a cautious, but firm approach in developing the principle of non-discrimination in this regard. The role of the Constitutional Court in this respect is of critical importance because, in defining the principle of non-discrimination, the written text of the Constitution of 1992 provides a finite list of the so-called traditional grounds, based on which discrimination is prohibited: sex, race, nationality, language, origin, social status, belief, convictions, or views. For a long time, this list was deemed sufficient to preclude all grounds and forms of discrimination. It has only recently been expressly established through official constitutional doctrine that the Constitution may not be understood as consolidating an exhaustive list of the grounds

³⁹ Ibid. Also Constitutional Court, ruling of 30 June 2000 (OG, No. 54-1587).

⁴⁰ Constitutional Court, ruling of 28 February 1996 (OG, No. 20-537).

⁴¹ Constitutional Court, ruling of 30 June 2000 (OG, No. 54-1587).

⁴² See, e. g.: T. Birmontienė, "Moterų teisių raida Lietuvoje: konstitucinis pripažinimas, politinio lygiateisiškumo siekis," *Jurisprudencija (Jurisprudence)* 12(90) (2006), 39.

⁴³ Constitutional Court, conclusion of 14 March 2024 (TAR, 2024, No. 4688).

⁴⁴ In its conclusion of 14 March 2024, the Constitutional Court emphasized that the term "gender" as referred to in the Istanbul Convention (Art. 3, pts c and d; Art. 4, para 3), is based on the binary (female and male) concept of sex and is not intended to replace the terms "woman" and "man"; that it does not imply the possibility of choosing a sex different from one's biological sex; instead, it aims to emphasize that certain roles or entrenched stereotypes, typically attributed to women, lead to manifestations of undesirable and harmful behaviour and contribute to the perception that violence against women is acceptable.

⁴⁵ Constitutional Court, ruling of 11 January 2019 (TAR, 11-01-2014, No. 439).

of non-discrimination, as the latter assumption would create preconditions for denying the very essence of the constitutional principle of the equality.⁴⁶ Accordingly, the constitutional principle of non-discrimination is to be understood (among other ways) as prohibiting the restriction of the rights of a person on the basis of age,⁴⁷ sexual orientation,⁴⁸ sexual identity (lt. *dėl lytinės tapatybės*),⁴⁹ as well as gender, i.e. the “social aspect of sex”.⁵⁰

With respect to gender dynamics, the Constitutional Court has reiterated that the principle of non-discrimination is an element of the constitutional protection of human dignity – an inalienable characteristic of a human being as the greatest social value.⁵¹ All people by nature should be deemed equal in terms of their dignity and rights. Thus, discrimination based on sex, as prohibited by the Constitution, degrades the dignity of the discriminated individual. One prominent example of such jurisprudence is a conclusion of the Constitutional Court (in line with its special jurisdiction under Art 105(3) of the Constitution) issued on the (non)existence of the breach of the Constitution and of the constitutional oath during the course of impeachment proceedings against Mr Kęstutis Pūkas, a former member of the Parliament. In this case, the Constitutional Court: first, concluded the fact of the violation of the constitutional principle of non-discrimination in respect to discrimination based on (biological) sex; second, directly linked the infringement of the latter principle to the infringement of human dignity; and, finally, constitutionalised both the concept of harassment (understood as “offensive, unacceptable, or unwanted conduct that has the purpose or effect of violating the dignity of a person, or creating a hostile, intimidating, humiliating, or offensive environment for a person on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views, as well as other attributes such as disability, age, or sexual orientation”⁵²), as well as harassment based on sex, *inter alia*, sexual harassment, as one of the constitutionally prohibited forms of discrimination.⁵³

Accordingly, through the acknowledgment of additional grounds of non-discrimination, the Constitutional Court has now not only constitutionalized the concepts of

⁴⁶ Ibid.

⁴⁷ Constitutional Court, ruling of 10 February 2020 (TAR, 10-02-2020, No. 2923).

⁴⁸ Constitutional Court, ruling of 11 January 2019 (TAR, 11-01-2014, No. 439); Constitutional Court, conclusion of 19 December 2017 (TAR, 02-01-2018, No. 60).

⁴⁹ Constitutional Court, ruling of 11 January 2019 (TAR, 11-01-2014, No. 439).

⁵⁰ Constitutional Court, conclusion of 14 March 2024 (TAR, 2024, No. 4688).

⁵¹ Constitutional Court, ruling of 11 January 2019 (TAR, 11-01-2014, No. 439); Constitutional Court, conclusion of 19 December 2017 (TAR, 02-01-2018, No. 60).

⁵² Constitutional Court, conclusion of 19 December 2017 (TAR, 02-01-2018, No. 60). The constitutional concept of harassment differs from the according definition found in the Criminal Code, as it does not require official subordination, as well as proof of intentional harassment, which is almost impossible to prove before court. According to the Constitutional Court, in assessing whether certain conduct should be considered harassment, including harassment based on gender (*inter alia*, sexual harassment), consideration should be given to the fact how the harassed person perceived such conduct (*inter alia*, it is not necessary to establish that an individual who possibly committed harassment did so with the purpose of degrading the dignity of the person or with the purpose of creating an intimidating, hostile, humiliating, or offensive environment for him/her).

⁵³ The Constitutional Court then assessed the actions of Mr Pūkas, and the compliance thereof with the Constitution, *inter alia*, the constitutional principle of non-discrimination, concluding that there had been a breach of the Constitution and of the constitutional oath. It found that the then parliamentarian Mr Pūkas interacted in an uncivil and disrespectful manner with his female assistants-secretaries at work and with the women applying for these positions during job interviews; when talking to them, he chose intimate, boldly disturbing, sex-related, and exclusively personal topics, which were in no way relevant to the job responsibilities; he commented on their appearance and physical characteristics, emphasised his own higher social status, made comments humiliating and degrading women; he gave his assistants-secretaries tasks of personal nature (in no way related to parliamentary activities and direct responsibilities of an assistant-secretary); etc. The testimony of the witnesses given in the case showed that the conduct of Mr Pūkas was considered by all women as unwanted, unpleasant, and humiliating; such conduct was systematic and continuous.

the “social aspect of sex (i. e. gender)”, “sexual orientation”, “sexual identity”, and has attributed them to prohibited grounds for non-discrimination, but has also established that harassment, including harassment based on sex, *inter alia*, sexual harassment, constitutes one of the forms of discrimination as prohibited under the Constitution, because it infringes human dignity, the physical or mental inviolability of a person, his or her private life.

1.4. Constitutional protection of family life: coherence with the principles of equality and non-discrimination

1.4.1. The concept of family as influenced by the principle of non-discrimination

The text of the Lithuanian Constitution, just as most national constitutions in Central and Eastern Europe, firmly establishes the social centrality of the family structure, as well as expressly establishes the right to a heterosexual marriage. Article 38 of the Constitution (included in Chapter III “Society and the State”) stipulates that “family, motherhood, fatherhood, and childhood shall be under the protection and care of the State” (para 2) and that “marriage shall be concluded upon the free mutual consent of a man and woman” (para 3). The constitutional content of the concept of family has thus been an object of debates on various public, political, legislative and constitutional platforms ever since, even more so, during the last decade or so. The Constitutional Court has had two significant direct attempts at constitutionalising this concept – in 2011 and in 2019. The two constitutional cases originated under quite different circumstances: the first one reached the Constitutional Court upon the petition of privileged applicants (a group of parliamentarians) and was a case of normative review. The second one was formally initiated by an ordinary court resolving an individual case (also actively petitioned for by the applicants in the ordinary case). Both of them, however, received massive public attention, indicating that the debates are far from over on all levels, including the constitutional one.⁵⁴

In 2011 the Constitutional Court examined the constitutionality of the parliamentary resolution (a framework act) of 3 June 2008 on the approval of the State Family Policy Concept (hereinafter – the Concept), insofar as it consolidated various concepts (and types) of families.⁵⁵ It singled out and defined such concepts as a harmonious family, a multi-child family, a family living through a crisis or family at social risk, also an extended family and an incomplete family. The family definitions provided were especially formal and narrow, and had been based exclusively on the fact of the conclusion of marriage. Thus, under the Concept, the notion of family did not include couples living together but not married to each other (with children or without). Also, in contrast to a man or a woman who had previously been married, a single man or a woman and his/her children (adopted children) born (adopted) outside of marriage were not to

⁵⁴ *Nota bene.* In its ruling of 17 April 2025, the Constitutional Court concluded that the respective provisions of the Civil Code of the Republic of Lithuania that define civil partnership as partnership only between a man and a woman, are in conflict with paragraphs 2 and 3 (protection of dignity) of Article 21, paragraphs 1 and 4 (protection of private and family life) of Article 22, Article 29 (equality and non-discrimination), and paragraphs 1 and 2 (concept of family) of Article 38 of the Constitution and the constitutional principle of a state under the rule of law. Accordingly, the provisions of the Law on the Approval, Entry into Force, and Implementation of the Civil Code (Art. 28), according to which the provisions of Chapter XV of Book Three of the Civil Code on cohabitation without marriage registration were to come into force from the moment of the entry into force of a law regulating the procedure for the registration of partnerships, have been found to be in conflict with the constitutional principles of a state under the rule of law and responsible governance. However, it remains unknown how this ruling will influence further legislative and judicial developments.

⁵⁵ *Constitutional Court, ruling of 28 September 2011* (OG, 2011, No. 118-5564).

be regarded as family ("an incomplete family" being a family consisting of one parent and a child or children, born to parents, who had been, but no longer are, married to each other). The Concept was designed to form the foundation for the national family policy and the legal regulation in this area. An inevitable outcome of the Concept would have been the exclusion of families other than those founded on the basis of marriage from the area of legal and social protection.

After examining the case, the Constitutional Court established that, having narrowed the content of the family as a constitutional institution, the Parliament had not observed the concept of the family as a constitutional value stemming from the Constitution, which, contrary to the provisions of the Concept, may be founded not only on the basis of marriage. The Constitutional Court recognised that the contested legal provisions were discriminatory against all families, other than those which were formed on the basis of marriage; the resolution of the Parliament was declared to be in conflict with the Constitution (Art 38(1) and 38(2)). The Constitutional Court further identified the constitutional concept of family, distinguishing two main lines of reasoning. First of all, it held that even the formal (literal, verbatim) interpretation of the text of the Constitution did not substantiate the assertion that the notions of marriage and family could be regarded as overlapping: the constitutional concept of the family may not be derived solely from the institution of marriage, which, under the Constitution, is understood exclusively as a union between a man and a woman. The Constitutional Court noted that "the fact that the institutions of marriage and family are consolidated in the same Article 38 of the Constitution is indicative of an inseparable and unquestionable relationship between marriage and family", thus recognizing the special status of marriage-based families within the society ("it a historically established family model, having an exceptional value in the life of society, ensuring the viability of the nation and the state, and the historical survival thereof"⁵⁶). However, marriage is only one of several grounds for the creation of family relationships. Motherhood and fatherhood (including adoption), being a constitutional value in itself, are other grounds for family relations irrespective of the fact of marriage between the parents.

In its ruling of 28 September 2011, the Constitutional Court revealed these constitutional elements of the concept of family: mutual responsibility between family members, understanding, emotional affection, assistance and similar relations, voluntary determination to take on certain rights and responsibilities. The Constitutional Court stressed the significance of the content of family relationships, and noted that the form of expression of these relationships has no essential significance for the constitutional concept of the family. The constitutional concept of family, as established by the Constitutional Court in its ruling of 28 September 2011, was, first, based on Constitution itself: the principle of non-discrimination (equality of rights), human dignity and respect for private life. Second, it was in line with the principle of the consistency of the Constitution and extranational law with regard to the development of human rights standards. In this case, the Constitutional Court relied not only on supranational law (the extensive jurisprudence of the ECtHR), but also on the official constitutional doctrine of other European states (the Czech, Slovenian, Croatian, German constitutional jurisprudence).⁵⁷

Following the ruling of 2011, these constitutional requirements had to be taken into account by the Parliament, when exercising its constitutional legislative powers in

⁵⁶ Ibid.

⁵⁷ For more see: I. Danélienė, "Who is Entitled to the Right to Respect for Family Life Under the European Union Law?" *Teisé* Vol. 110 (2019), 24–45.

regulating family relationships. However, apart from references to marriage, biological motherhood, fatherhood and adoption, the Constitutional Court did not expressly reveal to the legislator other constitutional grounds for the creation of family, nor in any way refer to the need for the legal recognition of civil partnership, or of the right to family life of same-sex families.

Some of these questions were answered in the ruling of 11 January 2019, as the constitutional case specifically concerned the right to respect for family life in cases of family reunification of same-sex partners. Specifically, it was about whether the Lithuanian Constitution allows for the refusal to issue a temporary residence permit to a foreign national who has entered into a same-sex marriage or a same-sex registered partnership in another state with a citizen (and resident) of the Republic of Lithuania, taking into account the circumstance that such marriages or partnerships are not allowed under Lithuanian law. The case before the ordinary court that brought the said constitutional issue to the Constitutional Court was initiated by a third country national who contested the decision of the Department of Migration to refuse him a permit of temporary residence within Lithuania on the ground of family reunification, whereas his spouse was a Lithuanian citizen and resided permanently in Lithuania.

In answering the question before it, the Constitutional Court mostly relied on two lines of reasoning. First of all, the Constitutional Court once again referred to the principle of the consistency of the Constitution and extranational law. However, this time they also expressly emphasized that full membership by the Republic of Lithuania in the EU is in itself a constitutional value that *inter alia* implies the constitutional obligation of Lithuania to properly implement the requirements of EU law. According to the Constitutional Court, constitutional provisions related to the free movement of EU citizens, including Lithuanian citizens, within the EU, including Lithuania, should thus be interpreted not in the light of the relevant legal provisions of the Treaties of the European Union, the Charter of Fundamental Rights of the European Union, and the case law of the Court of Justice of the European Union (CJEU) and of the European Court of Human Rights. In its reasoning, the Constitutional Court relied on the jurisprudence of the CJEU for the interpretation of the regulation of the civil status of individuals, for the interpretation of EU legislation (*inter alia*, the Directive 2004/38/EC⁵⁸) governing the right to move and reside freely within the territory of the Member States, including provisions relating to the principle of non-discrimination.⁵⁹ The Constitutional Court also singled out the special relevance of the CJEU judgment of 5 June 2018 delivered in *Coman and Others* (C-673/16), which, *inter alia*, interpreted the provisions of Article 21(1) of the TFEU and of the Directive 2004/38/EC. The Constitutional Court took into account the provisions of the acts of the Council of Europe, *inter alia*, those related to the protection of the right to private and family life and the right to marry⁶⁰, and the prohibition on discrimination based on sex, sexual orientation and gender identity,⁶¹ and the relevant jurisprudence of the ECtHR.

⁵⁸ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

⁵⁹ Court of Justice of the European Union, judgment of 1 April 2008, *Maruko*, C-267/06; of 24 November 2016, *Parris*, Case C-443/15.

⁶⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, ETS No. 005, signed 4 November 1950, entered into force 3 September 1953. Artic. 8(1), 12 and 14.

⁶¹ Resolution of the Parliamentary Assembly of the Council of Europe 1728(2010) on discrimination on the basis of sexual orientation and gender identity of 29 April 2010; Recommendation CM/Rec(2010)5 of the

Second, the Constitutional Court interpreted the right to family re-unification in the light of the Constitution, i.e. on the Constitution itself: the principle of non-discrimination (equality of rights), human dignity and respect for private and family life, the principle of democracy and the concept of the Constitution as an anti-majoritarian act. The Constitutional Court recalled that the Constitution may not be understood as consolidating an exhaustive list of the grounds of non-discrimination; thus one of the forms of discrimination prohibited under the latter provision is the restriction of the rights of a person on the grounds of his/her gender identity and/or sexual orientation. The concept of the Constitution as an anti-majoritarian act protects the individual: it prohibits discrimination on the basis of gender identity and/or sexual orientation, as limiting the protection of relationships with other family members. This newly revealed aspect of the principle of non-discrimination allowed for the conclusion that the constitutional concept of family is based on the content of relationships, whereas the form of expression of such relationships has no essential significance for the constitutional concept of the family, as well as expressly supplement it with the aspect of sex-neutrality. Unlike the constitutional concept of marriage, the constitutional concept of family is neutral in terms of sex. Consequently, and as confirmed by later constitutional jurisprudence, the constitutional concept of family includes family models other than those based on the marriage of a man and a woman, where the relationships in their shared life are based on stable emotional attachment, mutual understanding, responsibility, respect, joint child-rearing, and similar ties, characteristic of the family as a constitutional institution, as well as their voluntary resolve to assume certain rights and duties. A contrary interpretation (*inter alia* a different definition provided by law) would unconstitutionally narrow the content of family as a constitutional institute.⁶²

Accordingly, the Constitutional Court ruled that, under the Constitution, the legal regulation governing family reunification in the context of the free movement of persons within the EU and migration must be based on the principle of respect for human dignity and the private and family life of a person, as well as the principle of the equality of the rights of persons. The legislator must take into account also such circumstances that the family of a citizen of the Republic of Lithuania, of a citizen of any other EU Member State, or of a third-country national lawfully residing in Lithuania, whose family members wish to enter Lithuania and reside there for reasons of family reunification, may have been founded not only in the Republic of Lithuania, but also under the law of another EU Member State or under that of a third country, which may also allow marriages or registered partnerships between two persons of the same sex. The legislator must lay down such a legal regulation related to the free movement of persons within the EU and migration that would provide for the right to reunification for a family founded by two same-sex persons in another state through a legally concluded marriage or registered partnership, as the said requirement also arises from the constitutional imperative of full participation by the Republic of Lithuania in the EU.

In conclusion, the existent constitutional jurisprudence may thus be considered as satisfying the minimum requirements of protection of the right to family life as established by supranational law and as follows from the Constitution itself. In addition to the concept constitutionalized in 2011, the new jurisprudence of 2019 expressly recognizes that, unlike marriage, the constitutional concept of family is neutral in terms of sex, as

Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

⁶² Constitutional Court, conclusion of 14 March 2024 (TAR, 2024, No. 4688).

well as obliges the State to guarantee the constitutional protection of such families, including the right of the members of same-sex families to re-unification. However, once again, the Constitutional Court has not expressly obliged the Parliament to ensure the legal recognition of civil partnership in Lithuania, moreover, indicate a term for doing so. The right to reunification may be implemented only when a family is founded by two same-sex persons in another state that, unlike Lithuania, allows them to legally conclude marriage or registered partnership. Accordingly, the scope of constitutional protection of family life in Lithuania remains narrowed by ordinary law.

1.5. Constitutional protection of family life: the scope of equality in the context of social rights

As regards gender dynamics in Lithuania, the most manifest developments relate to social family rights: the constitutional clauses on parenthood and, even more so, on motherhood. The jurisprudence of the Constitutional Court has developed the guarantees expressly established in the text of the Constitution not merely as constitutional principles, but also as enforceable rights, thus acknowledging a comparatively high standard of protection with regard to certain social family rights. Article 39(2) of the Constitution proclaims that the “law shall make a provision for working mothers to be granted paid leave before and after childbirth, as well as favourable working conditions and other concessions.” Therefore, the Constitution expressly establishes the constitutional guarantee of paid leave before and after childbirth for working mothers, i.e. paid maternity leave. Apart from guaranteeing paid maternity leave, the provisions of Article 39(2) also entail the constitutional clause which recognizes affirmative action with regard to working mothers and which, according to the Constitutional Court, to a certain level also extends to non-working mothers.⁶³

1.5.1. The constitutional guarantee of paid maternity leave: the constitutional equality of mothers

Within the Lithuanian constitutional order, maternity leave guarantees are expressly developed in a manner that substantiates the special status of a woman-mother and her relationship with the new-born child. The purpose of the constitutional guarantee of paid maternity leave (“paid leave before and after childbirth for working mothers”) is twofold: first, the need to secure the protection of the special physiological condition of a pregnant woman and a woman after childbirth, the need of healthcare of women for some time before and after childbirth; second, to secure the special link between mother and child during the first weeks of life of the child, by creating the possibility for a working woman to withdraw, for a reasonable time, from her work (professional) activities before and after childbirth.⁶⁴ A number of cases that deal with various aspects of the constitutional guarantee of paid maternity leave have been heard by the Constitutional Court, all having been brought to it by ordinary courts that had been examining claims of women, seeking to fully implement this right. In all of these cases, the Constitutional Court consistently observed the special status of the constitutional guarantee as expressly determined by the wording of the Constitution, its constitutional aim to protect motherhood and childhood, as well as its equal application with respect to all working mothers.

⁶³ Constitutional Court, ruling of 27 February 2012 (OG, 2012, No 26-1200).

⁶⁴ Ibid.

The Constitutional Court has thus stressed that, taking into account its constitutional purpose, paid leave before and after childbirth guaranteed to working mothers is a specific constitutional institute of the protection of motherhood and childhood.⁶⁵ In its ruling of 15 March 2016, the Constitutional Court addressed the issue of the constitutionality of the provisions in force at the time, establishing that maternity allowance amounts to 100 percent of the compensatory earnings of the recipient of the allowance, however, may not exceed the maximum of such compensatory earnings, i.e. an amount linked to a value approved by the Government.⁶⁶ Thus, under the impugned legal regulation, in cases where the average remuneration received by a working woman exceeded the maximum compensatory earnings, the amount of the allowance had possibly been lower than the average of the received remuneration. The Constitutional Court recognised the unconstitutionality of the contested provisions, having taken into account the constitutional aim of the guarantee and it being one of the two types of paid leave *expressis verbis* specified in the Constitution. According to the Constitutional Court, the latter constitutional guarantee gives rise to the duty of the legislature, among other things, to establish a legal regulation by which pay for the period of such leave would be connected to the remuneration received by a working woman before the leave, and the amount of the benefits paid during this leave would correspond to the average remuneration received by the working woman within a reasonable period of time before the leave.⁶⁷

In addition, the Constitutional Court has established that this right should be interpreted with reference to the constitutional right to freely choose an occupation or business freedom (Art 48(1)), and understood as a right applicable not only to those mothers that have chosen an occupation under an employment contract or have entered state service, but also to those engaged in other working (professional) activities, including self-employed mothers. However, the law in question did not provide for such a guarantee with regard to the latter, thus disregarding the constitutional principles of the equality of the rights of persons and justice. The legislator was obliged to choose a new constitutionally justified model that – in line with the principles of equality and justice – would treat equally the mothers who have employment or state service relationships and those who do not have such relationships, but who have contributed to social insurance to the same extent established under the law (have paid the respective social insurance contributions or these contributions have been paid for them).⁶⁸

The same principles also determine that such a guarantee must apply to those mothers who have contributed to social insurance to the extent provided for under the law, but – due to objective reasons – ceased their professional activity before the day on which, under law, they would become entitled to paid leave before and after childbirth.⁶⁹ This interpretation was specifically relevant to mothers who were engaged in professional sports (as a rule, being self-employed), and had had to discontinue professional sports activities at an earlier time of their pregnancy than others, and before

⁶⁵ A one-time benefit is paid to a pregnant woman who is not entitled to maternity benefit from the State Social Insurance Fund in accordance with the Law on Child Benefits of the Republic of Lithuania, e. g. because she has not been employed for a period of at least 12 months during the last 24 months.

⁶⁶ *Constitutional Court, ruling of 15 March 2016* (TAR, 02-01-2017, No. 2).

⁶⁷ In Lithuania, the period of maternity leave is provided for in the Labour Code, and amounts to 70 days before childbirth and 56 days (in certain cases, 70 days) after childbirth (a total of 126 or 140 days). *Law on Sickness and Maternity Social Insurance of the Republic of Lithuania*, No. XI-333 (OG, 2009, No. 86-3637).

⁶⁸ *Constitutional Court, ruling of 19 December 2018* (TAR, 19-12-2018, No. 20843).

⁶⁹ *Ibid.*

gaining right to full financial support during maternity leave. Similarly, the Constitutional Court declared unconstitutional the contested provisions of the Law on Sickness and Maternity Social Insurance, under which women under 26 years of age were entitled to a maternity allowance without completing, due to their studies, the established qualifying period exclusively in cases where they had become insured (employed) only *after graduating* from the respective educational institutions, but not those who had become insured (employed) *before graduating* from the respective school.⁷⁰ The Constitutional Court found that the circumstance whether persons had or did not have a document certifying the completion of their studies at the time when they became employed could not be regarded as an objectively justified ground for the different treatment of persons who were in the same situation from the aspect that they had not completed the established qualifying period due to their studies: the impugned legal regulation disregarded the requirements stemming from the constitutional principle of the equality of the rights of persons, from the constitutional imperatives of justice and harmonious society and the constitutional principle of a state under the rule of law (inappropriately implemented the guarantees of Art 38).

1.5.2. Other constitutional guarantees of parenthood

Other constitutional guarantees implementing the constitutional obligation of the state to create a favourable environment for family, motherhood, fatherhood and childhood are developed in a manner as to promote the equal care duties within the family, however, with no aim whatsoever as to equalize such involvement of the parents (spouses). The right to paternity leave (derived from Art 39(1)), being of subsidiary nature to maternity leave ("substantially different from the guarantee of paid leave granted before and after childbirth to working mothers"⁷¹) is both non-obligatory and transferrable: the opportunity is given not only to the mother, but also to the father to raise and bring up children at home, while, in their absence, such a possibility is transferrable to other working members of the family.⁷² Just as maternity leave, it is linked to a concrete period needed for raising a child at home, but also to the capabilities of the state and society. It does not consolidate the duty for the legislator to establish specifically such a form of support as leave for raising children at home, nor does it establish the amounts of financial support provided during this leave.⁷³ Accordingly, the right to financial support during parental leave may be reduced on the emergence of a particularly difficult economic and financial situation in the state.⁷⁴ It also does not oblige the state to prescribe such an amount of support that would correspond to the average remuneration received before such leave by the recipient of this support.⁷⁵ Furthermore, under the Constitution, the legislator has both an obligation and a broad discretion to choose instruments of protection and support. By ensuring conditions for parents to combine work (professional) activities and the duties related to raising children, by creating a sufficient network of child care and education institutions, and, by assisting families in performing the functions of upbringing and education of children, other necessary

⁷⁰ Constitutional Court, ruling of 15 March 2016 (TAR, 02-01-2017, No. 2).

⁷¹ Constitutional Court, ruling of 24 January 2018 (TAR, 24-01-2014, No 478).

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Constitutional Court, ruling of 5 March 2013, No. 25-1222.

⁷⁵ Following the current wording of Art. 24 of the Law on Sickness and Maternity Social Insurance, a child-care allowance may be paid until the child turns either 1 or 2 years-old, the latter period determining the amount of the monthly allowance. Law on Sickness and Maternity Social Insurance of the Republic of Lithuania (OG, 2009, No. 86-3637).

infrastructure necessary for fostering family, motherhood, fatherhood and childhood as constitutional values is developed; and so forth.⁷⁶

Such constitutional regulation equally promotes the balance between family duties and professional activities for both parents. However, in no way does it question or challenge the traditional arrangements and distribution of family duties or seeks equal rights and duties for mothers and fathers.

CONCLUSIONS

The evolving constitutional equality and non-discrimination principles have played an essential role in advancing the constitutional gender dynamics and ensuring better protection of the right to family life. Traditionally, as respects the constitutional gender dynamics (*inter alia*, women's rights), substantial development was only to be observed indirectly, i.e. with regard to the constitutional protection of social family rights and the equal rights among mothers (i.e. the right to paid leave before and after childbirth guaranteed to working mothers as not merely as constitutional principle, but also as an enforceable right to a fully compensated maternity leave; the consistently developed principle of the equality of all working mothers, regardless of their employment circumstances and status). Although not expressly established by the original wording of the Constitution of 1992, the constitutional scope of the principle of equality has recently been expanded through constitutional jurisprudence to explicitly include sex equality. Through the acknowledgment of additional grounds of non-discrimination, concepts such as the "social aspect of sex" (i. e. gender), "sexual orientation", "sexual identity" have been constitutionalized, as well as attributed to prohibited grounds for non-discrimination, while harassment, including harassment based on sex, *inter alia*, sexual harassment, has been identified as one of the forms of discrimination as prohibited under the Constitution within constitutional jurisprudence. In recognizing the concept of gender within national constitutional order as the "social aspect of sex", its consistency with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) has been emphasized, along with the constitutional principles of human dignity, equality between men and women and non-discrimination.

Through the development of the constitutional principle of non-discrimination, national constitutional jurisprudence has moved towards a broader understanding of family, recognizing family models beyond traditional marriage-based relationships. In this respect, the official doctrine of the Constitutional Court aims to align with international human rights standards, while ordinary law falls short of the effective implementation of these principles.

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⁷⁶ Constitutional Court, ruling of 27 February 2012 (OG, 2012, No 26-1200).

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