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LEGAL FRAMEWORK OF THE RULE OF LAW IN THE EUROPEAN UNION

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WHAT IS THE RULE OF LAW?

- **ONE OF THE VALUES OF THE EU: ART. 2 AND ART. 19 TEU**
- **PREREQUISITE OF THE ACCESSION TO THE EU: ART. 49 TEU**
- **CORNERSTONE OF THE EU LEGAL ORDER**

How can we define the Rule of Law?

- **Common Constitutional Traditions of MS**
- **Work of the European Commission for Democracy through Law (“Venice Commission”)**
- **Case-Law of the ECtHR and the CJEU**
- **Regulation 2020/2092**

VENICE COMMISSION

The Rule of Law

- Legality
- Legal certainty
- Prevention of abuse (misuse) of powers
- Equality/non discrimination
- Effective judicial protection
- Respect for human rights

JUDGMENT ASSOCIAÇÃO SINDICAL DOS JUÍZES PORTUGUESES, C-64/16

“Article 19 TEU, which gives concrete expression to the value of the rule of law affirmed in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice “.

- Judicial appointments. Powers of the Prime Minister (20.4.21, C-2896/19)

COURT OF JUSTICE HAS INDEED CLARIFIED THE MEANING AND SCOPE OF THE PRINCIPLE OF JUDICIAL INDEPENDENCE

In [Minister for Justice and Equality](#) (Deficiencies in the system of justice), Case C-216/18, for example, the Court of Justice stressed the fact that the principles of judicial independence and mutual trust are deeply intertwined—national courts of different Member States will stop trusting each other if they do not exercise their judicial functions wholly autonomously.

In that case, the Court of Justice also elevated the principle of judicial independence to the apex of EU legal norms, holding that it is part of the “essence” of the right to a fair trial enshrined in Article 47 of the Charter. This means that the **principle of judicial independence may not be subject to limitations**, regardless of the public objectives put forward by the national executive or legislature.

Dialogue between national courts and the Court of Justice is based on the law and nothing but the law access to the preliminary reference mechanism is only open to courts that are independent.

Judicial independence is required because it guarantees that the national court referring a question to the Court of Justice will not take political considerations into account when making the reference or when implementing the Court’s judgment

THE CONCEPT OF THE RULE OF LAW

- ✓ is political but first it is legal concept
- ✓ lacks a legal definition - hence, the EU institutions fill it with content
- ✓ is **derived from the constitutional traditions of the member states and general principles of law**,
- ✓ therefore some MS either question the existence of the EU rule of law and if not, then they give it their own meaning. according to national standards

The founding treaties (treaty of Paris (1951), treaties of Rome (1957)) – don't contain the concept of the rule of law, the task of introducing this principle into the EU legal order fell to the CJEU.

The CJEU's judicial activism - confirmation and development the definition (meaning/understanding) of the rule of law as a **general principle of EU law** which was then introduced into the Constitutional Treaty (**art. 1-2 The Union's values**)

Treaty of Maastricht - **in the preamble referred to the principle of the rule of law** to which the MS are attached as well as to **the goal of the Community and Union** in the field of external development policy (art. 130u) and common security and defence policy (art. J1 TUE)

Treaty of Amsterdam - contained a **catalogue of principles** on which the EU was based.

Art F TUE Treaty of Amsterdam - contained a catalogue of principles on which the EU was based. Art. F TUE (Maastricht) was changed by adding (art. 6(1)).

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States The principle of the rule of law has become a treaty principle derived from the legal orders of the MS. Its importance increased gradually in terms of both EU internal policies and external actions. It has evolved and continues to place particular emphasis on the judicial protection within the EU.

Lisbon Treaty - contains a **catalogue of values** on which the Union is based (art. 2 TUE)

The Union is founded **on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities**

Treaty on the EU includes

- ✓ the catalog of values was placed at the beginning of the TUE,
- ✓ a systemic interpretation leads to the conclusion that the entire treaty regulation is based on values the EU should take into account in all its activities,
- ✓ CFR refers to the principles of democracy and the rule of law on which the Union is founded, as opposed to the values of human dignity, freedom, equality and solidarity.

The preamble to the Charter the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity: IT IS BASED ON THE PRINCIPLES OF DEMOCRACY AND THE RULE OF LAW
Art. 47 CFR (Right to an effective remedy and to a fair trial) addresses the independence of the judiciary and judges

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law Values are the basis of the axiological order of the EU from which the principles are derived. The rule of law is a value and a general principle of EU law. As a value, the rule of law is a structural constitutional principle, the primary axiological norm which is superior and justifies deriving from it the principle of the rule of law as a general principle of law. As a principle, it has two aspects: formal (procedural) and substantive (liberties and rights)

CJEU referred to the rule of law for the first time in the judgment *Les Verts*

It must first be emphasized in this regard that the European Economic Community is

a community based on the rule of law, because as neither its MS nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the treaty.

Judgment Les Verts v European Parliament, Case 294/83, para. 23

Similar point of view was in the Opinion 1/91 In contrast, the EEC Treaty, albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a Community based on the rule of law. The Community treaties established a new legal order for the benefit of which the States have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only MS but also their nationals. The essential characteristics of the Community legal order which has thus been established are in particular its primacy over the law of the MS and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves.

Opinion of the Court, Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area, Opinion 1/91, para. 21

The European Community is, however, a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the Treaty and with the general principles of law which include fundamental rights.

Judgment of the Court *Unión de Pequeños Agricultores v Council of the European Union*, Case C-50:00, para. 38

The European Union is a community based on the rule of law, because as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with its basic constitutional charter, the Treaty, or the law which derives from that treaty.

Judgment of the General Court (First Chamber, extended composition) of 2014 *Westfaltsch-Lippischer Sparkassen- und Giroverband v European Commission*, Case T-457/09, para. 140

The European Community is a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the Treaty and with the general principles of law which include fundamental rights.

Individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States.

Judgment of the Court of First Instance (Third Chamber, extended composition) of 2005, *Sniace, S4 v Commission of the European Communities*, Case T-141/03, para. 39

THE RULE OF LAW AS A VALUE

As is apparent from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union's external action, to which Article 23 TEU, relating to the CFSP, refers, one of the European Union's founding values is the rule of law.

Judgment of the Court (Grand Chamber) of 2017, PJSC Rosneft Oil Company v Her Majesty's Treasury and Others, Case C-72/15, para. 72

In that regard, it must be noted that, as is apparent from both Article 2 TEU, which is included in the common provisions of the EU Treaty, and Article 21 TEU, concerning the European Union's external action, to which Article 23 TEU, relating to the CFSP, refers, the European Union is founded, in particular, on the values of equality and the rule of law Judgment of the Court (Grand Chamber) of 19 July 2016, H v Council of the European Union and Others, Case C-455/14 P. ECLI:Ep:C:2016:569. para. 41

European Union is a union based on the rule of law in which all acts of its institutions are SUBJECT TO REVIEW OF THEIR COMPATIBILITY WITH, IN PARTICULAR, THE TREATIES, GENERAL PRINCIPLES OF LAW AND FUNDAMENTAL RIGHTS. Judgment of the Court (Grand Chamber) of 6 October 2015, Maximilian Schrems v Data Protection Commissioner, Case C-362/14. para. 60

INDEPENDENT COURTS AND EFFECTIVE JUDICIAL REVIEW

The CJEU confirmed the importance of the rule of law, and the **KEY TO THE UNDERSTANDING OF THIS PRINCIPLE WAS THE CONTROL OF PUBLIC AUTHORITIES' DECISIONS BY INDEPENDENT COURTS** (effective judicial review)

In the judgment *Rosneft* the Court said.

Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.

The very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law.

Judgment of the Court (Grand Chamber) of 2017, *PJSC Rosneft Oil Company v Her Majesty's Treasury and Others*, Case C-72/15, paras 73

The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law.

Judgment of the Court (Grand Chamber) of 2016, *H v Council of the European Union and Others*, Case C-455/14 P, para. 41

Legislation not providing for any possibility for an individual to pursue legal remedies in order to have access to personal data relating to him, or to obtain the rectification or erasure of such data, does not respect the essence of the fundamental right to effective judicial protection, as enshrined in Article 47 of the Charter.

The first paragraph of Article 47 of the Charter requires everyone whose rights and freedoms guaranteed by the law of the European Union are violated to have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.

The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law.

[Judgment of the Court \(Grand Chamber\) of 2015, Maximilltan Schrems v Data Protection Commissioner, Case C-362/14. para. 95](#)

Also art. 47 of the CFR is a confirmation of the principle of effective judicial protection

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal

Moreover, the independence of courts (judiciary) should be seen in the context of the principle of separation of powers, which serves to uphold the rule of law, for according to this principle the judiciary should be distinguished from the executive.

Associação Sindical, LM (request for preliminary ruling from High Court (Ireland)) and Achmea

According to Article 2 TEU, the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails.

Judgment of the Court (Grand Chamber), 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas, Case C-64/16, para. 30

The European Union is a union based on the rule of law in which individual parties have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU act

Judgment of the Court (Grand Chamber), 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas, Case C-64/16, para. 31

ARTICLE 19 TEU, WHICH GIVES CONCRETE EXPRESSION TO THE VALUE OF THE RULE OF LAW stated in Article 2 TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the Court of Justice but also to national courts and tribunals

Judgment Portuguese, para 32

National courts and tribunals, in collaboration with the Court of Justice, fulfil a duty entrusted to them jointly of ensuring that in the interpretation and application of the Treaties the law is observed

Judgment of the Court (Grand Chamber), 2018, Associação Sindical dos Juizes Portugueses v Tribunal de Contas, Case C-64/16, para 33

The MS are therefore obliged, by reason, inter alia, of the principle of sincere cooperation, set out in the first subparagraph of Article 4(3) TEU, to ensure, in their respective territories, the application of and respect for EU law. In that regard, as provided for by the second subparagraph of Article 19(1) TEU, MS are to provide remedies sufficient to ensure effective judicial protection for individual parties in the fields covered by EU law.

It is, therefore, for the MS to establish a system of legal remedies and procedures ensuring effective judicial review in those fields

Judgment Portugueses, para. 34

And since national courts can decide on issues relating to the application or interpretation of EU law, hence the MS concerned must ensure that that court meets **the requirements essential to effective judicial protection** in accordance with the second subparagraph of Article 19(1).

Judgment Portugueses, para. 40

ARTICLE 258 TFEU AS A TOOL TO PROTECT RULE OF LAW

- ✓ C-286/12 European Commission v. Hungary (the Supreme Court)
- ✓ C-192/18 European Commission v. Poland (common courts)
- ✓ C-619/18 European Commission v. Poland (the Supreme Court)
- ✓ C-791/19 European Commission v. Poland (Disciplinary regime applicable to judges)
- ✓ C-78/18 European Commission v. Hungary (financial transparency of associations)
- ✓ C-66/18 European Commission v. Hungary (Central European University)
- ✓ C-204/21 European Commission v. Poland (the muzzle law)

ARTICLE 267 TFEU AS A TOOL TO PROTECT RULE OF LAW

- ✓ C-64/16 sędziowie portugalscy – activation of Article 19(1) TFEU
- ✓ C-216/18 LM – rule of law in the framework of judicial cooperation in criminal matters

EU LAW DEFINITION: REGULATION 2020/2092

- ‘The rule of law’ refers to the Union value enshrined in Article 2 TEU.
- It includes the principles of **legality** implying a transparent, accountable, democratic and pluralistic law-making process; **legal certainty**; **prohibition of arbitrariness of the executive powers**; **effective judicial protection**, including access to justice, by independent and impartial courts, also as regards fundamental rights; **separation of powers**; and **non-discrimination and equality before the law**.
- The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU.

Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget

- For the purposes of this Regulation, the following may be indicative of breaches of the principles of the rule of law:
 - (a) endangering the independence of the judiciary;
 - (b) failing to prevent, correct or sanction arbitrary or unlawful decisions by public authorities, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest;
 - (c) limiting the availability and effectiveness of legal remedies, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

LEGALITY

- Supremacy of law
- Compliance with the law
- Exceptions in the emergency
- Duty to implement the law

LEGAL CERTAINTY

- Accessibility to legislation
- Accessibility of court decisions
- Foreseeability of the laws
- Stability and consistency of law
- Legitimate expectations
- Non retroactivity
- “Nulla poena sine lege”
- “Res iudicata”

CJEU: LEGAL CERTAINTY

- Know precisely the extend of obligations (20.12.17, C-516/16)
- Need for clear rules on retroactivity (14.5.20, C-15/19)
- Limit to retroactivity of the interpretation given by CJEU: good faith and risk of serious difficulties (23.4.20, C-401/18)
- Limit to the obligation to interpret national law in conformity with EU Law (5.9.19, C-331/18)
- Limit to the discretion of MS in implementing EU Law (19.12.19, C-386/18)
- Setting of time limits for bringing proceedings (7.11.19, C-280/18)

PREVENTION OF ABUSE (MISUSE) OF POWERS

- Unfair, unreasonable, irrational or oppressive decisions violate the Rule of Law
- Indication of the scope of executive discretion
- Judicial control or independent review
- Obligation to give reasons

CJEU: EQUALITY AND NON-DISCRIMINATION

- Uniform interpretation of the law (7.11.19, C-555/18)
- Transparency as its corollary (4.4.19, C-699/17)
- Comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified (3.12.19, C-482/17)
- Obligation of national courts to set aside discriminatory provisions without having to request or wait its prior removal by the legislature (8.5.19, C-396/17)

Equality in law

Equality before the law

ECTHR

- The right to a fair hearing before a tribunal as guaranteed by Article 6.1 must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (*Guðmundur Andri Ástráðsson v. Iceland* and *Sabeh El Leil v. France*).
- Even in the context of a state of emergency, the fundamental principle of the rule of law must prevail (*Pişkin v. Turkey*).
- Independence: the unlawful appointment of a judge in bench means that the case was not heard by a tribunal established by law (*XeroFlor v. Poland*).

PROTECTION OF FUNDAMENTAL RIGHTS

- Constant **priority of the Supreme Administrative Court**
- Usually deals with violations of human rights and fundamental freedoms when cases in the sphere of adequate protection of the right to property, the right to respect for private and family life, the freedom of assembly and association, the right to a fair trial.
- International legal acts have become an important source of law.
- For example in judgement of 7 May 2010, in administrative case also locally known as the “Gay pride” case, the Supreme Administrative Court **directly applied** Article 11 of the ECHR and **relied on the practice of the European Court of Human Rights** in the case *Bączkowski and Others v. Poland*. The Court has annulled interim measures applied by the court of first instance— to suspend the validity In a decision in administrative case, the Court had decided that although the case was on the lawfulness of provisional measures, **it was necessary to examine the case on its merits**. If the dispute regarding the lawfulness to organize a march “For Equality” had not been examined on its merits by the scheduled day of the march, the suspension of the validity of the permission to organize the march would have denied an essential condition for the effective use of the right of assembly, based on the practice of the European Court of Human Rights.

SACL AND EU LAW

- Supreme Administrative Court gives priority to the **coherent interpretation and application** of the Constitution and European Union law.
- Both legal systems may **converge through jurisprudence.**
- Supreme Administrative Court in the sphere of human rights protection is not static but has changed **from a passive observer to an active provider** of a high protection standard when human rights are considered an integral part of administrative courts' legal culture.

RULING OF 14 MARCH 2006 OF THE CONSTITUTIONAL COURT

Constitutional Court developed the principle of the EU law supremacy in relation to the provisions of Lithuanian legal acts enshrined in the Constitutional Act:

- the Constitution consolidates not only the principle that, in cases where national legal acts establish such a legal regulation that competes with that established in an international treaty, the international treaty must be applied,
- but also expressis verbis establishes the **collision rule concerning EU law**, consolidating the priority of the application of EU legislative acts in cases where the provisions of EU law arising from the founding Treaties of the European Union compete with the legal regulation established in Lithuanian national legal acts (regardless of their legal force), **with the exception of the Constitution itself.**
- If a Member State fails to comply with its obligations the European Commission may file an infringement claim at the European Court of Justice?

SACL AND FUNDAMENTAL RIGHTS

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RELATIONSHIP BETWEEN THE FUNDAMENTAL RIGHTS OF THE MS AND THE CHARTER

- The **differences between the fundamental rights** of the EU and the fundamental rights of the Member States will not be viewed in favor of the Member States, but the Charter **should** not weaken the protection of the Member States' fundamental rights, since the supremacy of the EU fundamental rights, superseding the fundamental rights of the Member States, would be contrary to the objectives of Article 53 of the Charter.
- Similarly, the fundamental rights of the Member States cannot be relied upon when their application would conflict with EU law.
- The fundamental rights of the EU should be considered when interpreting the fundamental rights of the Member States.
- It is also worth considering, whether a person should be granted a possibility to rely on a fundamental EU right, when it provides greater protection.

APPLICATION OF THE CHARTER STANDARD IN THE JURISPRUDENCE OF THE SACL

It is visible from the jurisprudence of the SACL that the Charter is relevant for the court in several instances:

- as a **source of interpretation** of national law,
- in instances, when the provisions of the Charter are **analyzed reviewing of the arguments of the parties**, and finally,
- when the provisions of the Charter are **applied directly**.

In all of the instances, whether the Court makes references to the Charter, relies on it or applies it directly, it does so in a broader scope than set out in Article 51 of the Charter, i.e. within the scope of EU law or national legislation implementing the latter.

PEFTIEV CASE

Concerning the refusal of the Ministry of Foreign Affairs to release frozen financial funds of foreigners in extent that they were necessary to pay for legal services.

- In Peftiev decision of 12 June 2014, the CJEU: Ministry of Foreign Affairs, when deciding on the issue of releasing frozen financial funds to the extent necessary to pay for the legal services, must exercise their competences in accordance with the rights provided for in the second sentence of Paragraph 2 Article 47 of the Charter and the requirement that the plaintiff must be represented by a lawyer before the General Court.
- The Court noted that the ministry does not enjoy unlimited discretion, when applying exceptions, the reasoning of the disputed decisions was insufficient.

CASE LAW ON BORDER PROCEDURES

- Case of SACL A-1091-822/2022

The foreigner **was not recognized as an asylum seeker essentially on the sole ground of his illegal entry into the territory of the Republic of Lithuania**, despite the fact that the foreigner had submitted his application for asylum orally and in writing to the competent authorities.

SACL has referred to the CJEU for a preliminary ruling on, inter alia, whether the provisions of Article 8(2) and (3) of Directive 2013/33/EU are to be interpreted as precluding a provision of national law under which, in the context of a state of war, a state of emergency or a state of emergency due to a mass influx of foreigners, **an asylum seeker may be detained on the sole ground of the fact that he/she has entered the Republic of Lithuania by illegally crossing the Lithuanian state border.**

JUDGMENT IN CASE C-72/22 PPU, M.A.

Article 6 and Article 7(1) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection are to be interpreted as precluding legislation of a MS under which,

in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens,

illegally staying third-country nationals are effectively deprived of the opportunity of access, in the territory of that Member State, to the procedure in which applications for international protection are examined.

Article 8(2) and (3) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection must be interpreted as precluding legislation of a Member State under which,

in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens,

an asylum seeker may be placed in detention for the sole reason that he or she is staying illegally on the territory of that Member State.

The Supreme Administrative Court considered that there was no reason to conclude that the mere unlawfulness of the applicant's stay in the Republic of Lithuania in itself constituted a sufficiently serious threat.

JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA - ASSESSMENT OF THE REGULATION ON TEMPORARY ACCOMMODATION OF ALIENS

- The legal regulation, where all asylum seekers had to be accommodated in specified places **without the right to free movement** within the territory of the Republic of Lithuania, where such accommodation could last up to 6 months according to paragraph 8 of this Article, without the competent authority having taken a decision that could be appealed to a court, was contrary to Article 20 of the Constitution.
- The Constitutional Court of the Republic of Lithuania recalled that in its jurisprudence it had also noted that the **protection of common interests in a democratic state governed by the rule of law may not deny a particular human right or freedom in general.**

DIFFERENT LEVELS OF FUNDAMENTAL RIGHTS PROTECTION IN THE CASE-LAW OF THE SUPREME ADMINISTRATIVE COURT

- **Direction of non-opposition** of constitutional provisions and EU law provisions arising out of the Charter.
- SACL emphasizes the **importance of international obligations** and adherence to them, but also notes that the contradiction of EU law and Constitutional provisions should not be raised artificially, i. e. the provisions of the Constitution should not be amended in a manner, which conflicts with the EU law.
- The question that follows is, whether a tension of different levels of fundamental rights protection has arisen or may arise in the practice of the Supreme Administrative Court of Lithuania.

CASES RELATED TO THE INVIOABILITY OF PRIVATE LIFE

- **Right to use one's name and last name.** This right, which is an integral part of the right to family and private life, has been consistently assessed in the jurisprudence of SACL taking into account the official constitutional doctrine and the interpretations provided by the CJEU on the spelling of personal names, taking into account its modern social context, with an emphasis that inability for a person to use the original letters of his surname in a passport, restricts his right to private and family life.
- Constitutional Court has noted that Lithuanian **language is a specific constitutional value**, which is the basis of ethnic and cultural identity of the Lithuanian nation, a guarantee of the nation's identity. Lithuanian language preserves the identity of the nation.

RIGHT TO USE ONE'S NAME AND LAST NAME

- The SACL has stated in a particular case that a restriction of subjective rights, was carried out **without a defined legal basis**, and that does not correspond to the constitutional principle of limiting human rights only by law, elaborated in the jurisprudence of the Constitutional Court; the inscription of a person's name in a passport of the Republic of Lithuania in both Lithuanian and non-Lithuanian characters is compatible with the Constitution of Lithuania.
- The change of social context in this field is also reflected in a new law of the Republic of Lithuania of 1 May 2022 on writing a person's name and surname in documents, which already directly establishes that the names and surnames in documents confirming personal identity of a citizen of the Republic of Lithuania and records of acts of civil status may be inscribed in original letters, but only in Latin alphabet and without diacritics.

CASES RELATED TO THE INVIOLABILITY OF PRIVATE LIFE

Interpretation of the concept of family members

- SACL dealt with a question, whether a **refusal to recognize a same-sex marriage** concluded in another Member State is a restriction of the **right to move and live freely in the territory of Member States, established in Article 21 of the TFEU**, and whether such a restriction **could be justified by public order and inherent national identities provided in Article 4(2) of the TEU**.
- In this case, although same-sex marriages (partnerships) are not possible under the national law of Lithuania, in order to defend the individuals' right of the inviolability of private life, SACL established that the refusal to issue a residence permit in the Republic of Lithuania may not be based solely on the foreigner's gender identity and/or sexual orientation.
- The Court thus annulled the decision of an institution to refuse a residence permit in the Republic of Lithuania to a citizen of a third country.

INTERPRETATION OF THE CONCEPT OF FAMILY MEMBERS

- The legal regulation was evaluated and applied **taking into account the principle of EU law primacy**, as well as due respect for the competence and jurisdiction of the national Constitutional Court was maintained.
- Although the issue arose in the field of regulation of EU law, the Supreme Administrative Court of Lithuania turned to the Constitutional Court in order to eliminate any doubts that the implementation of these rights may be incompatible with the provisions of the Constitution **in the context of national identity**, enshrined in Article 4 Paragraph 2 of the TEU. In this particular case, the legal regulation was also assessed and applied taking into account **the social context** and legal situation related to the matter in question in other Member States.

DIFFERENT LEVELS OF FUNDAMENTAL RIGHTS PROTECTION

- Lithuanian administrative courts consistently emphasize the **synthesis of the provisions of the Constitution of Republic of Lithuania and the legal system of the European Union, the common value context**, the fact that those systems complement each other, because both European Union law and the Constitution are **based on the**
- **principles of democracy and respect for fundamental human rights.**
- On the other hand, the court must be careful and conduct review, in each case individually, whether the **arguments of national identity** have to be taken into account to defend the fundamental rights enshrined in the Constitution; the latter could be regarded as the basis of the national identity provided for in Article 4 Paragraph 2 of the TEU.

**THANK YOU
FOR YOUR ATTENTION!**