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HOW DOES THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA RECONCILE ENVIRONMENTAL PROTECTION STANDARDS WITH THE PRINCIPLE OF ECONOMIC FREEDOM?

Key words: environmental constitutionalism, climate change litigation, economic freedom, proportionality, Constitutional Court of the Republic of Lithuania

Summary

The aim of this article is to examine the balance struck by the Constitutional Court of the Republic of Lithuania between environmental protection and the freedom of economic activity. Relying on national constitutional jurisprudence, this analysis examines the Court's application of proportionality and public interest reasoning in resolving tensions between economic development and environmental objectives. The Waste-to-Energy case illustrates an evidence-based and sustainability-oriented approach to constitutional balancing.

Introduction

The growing impact of climate change has significantly altered the role of constitutional law, prompting states to reconsider the extent of their constitutional obligations regarding environmental protection. Constitutional courts are therefore increasingly tasked with reconciling environmental imperatives with other constitutionally protected values. This tension is particularly evident in legal systems that primarily frame environmental protection through state obligations rather than explicit individual rights.

The aim of this article is to analyse how the Constitutional Court of the Republic of Lithuania (LCC, CC) interprets and applies constitutional principles when balancing environmental protection requirements with the freedom of individual economic activity.

The research employs doctrinal legal methods, including document analysis, comparative analysis and teleological interpretation. Based exclusively on the jurisprudence of LCC, the study examines how constitutional values are coordinated in cases involving environmental regulation, economic freedom and public interest considerations.

The literature used in this article consists of a limited body of works by Lithuanian legal researchers addressing this topic (in particular J. Zilys, R. Ragulskyte-Markoviene and A. Juskeviciute-Viliene), supplemented by selected contributions of internationally recognised authors in this field, including L. Weis and J. Kimblin. By focusing on constitutional jurisprudence at the national level, this article aims to enhance the understanding of how Lithuania's constitution responds to environmental challenges within the broader context of European constitutionalism[1].

1. Why environmental protection matters for constitutional law today

Over the past decade, environmental protection and climate change have moved from the periphery to the very centre of constitutional discourse. Climate change no longer constitutes merely an environmental or scientific concern. Instead, it poses a profound challenge to the foundations of democratic governance, the effective protection of fundamental rights, and the pursuit of social justice. As an existential and long-term phenomenon, climate change compels states to reconsider the scope and content of their constitutional responsibilities and invites courts to reassess the boundaries of state accountability for environmental harm and the protection of future generations.

Climate change represents one of the most fundamental challenges to contemporary constitutionalism. It raises questions about whether traditional constitutional frameworks that are built around the separation of powers, the protection of individual rights, and the rule of law are capable of addressing systemic, cumulative, and intergenerational risks.[2] In particular, it brings into focus the issue of whether constitutional guarantees can effectively require states to adopt proactive, sustained, and forward-looking measures to safeguard the ecological foundations upon which human life and societal stability depend.

The growing constitutionalisation of environmental protection reflects a broader normative shift in constitutional thought: the recognition that the right to a clean, safe, and sustainable environment is intrinsically linked to the protection of life, health, human dignity, and personal autonomy. Environmental degradation

[1] AI-based tools (ChatGPT, DeepL) were used exclusively for language editing and translation. No AI system was used for legal research, interpretation of sources, or development of legal arguments.

[2] Maloy J. Climate Change, Energy Transition, and Constitutional Identity. International Studies Review, Vol. 25, Issue 1, 2023, p. 8.

and climate change increasingly threaten the effective enjoyment of these rights, thereby transforming environmental protection from a policy choice into a constitutional concern.[3]

This evolution is clearly observable in European constitutional and human rights jurisprudence. In its landmark 2021 judgment, the German Federal Constitutional Court held that insufficient climate action violated the fundamental freedoms of future generations by disproportionately shifting the burden of emissions reduction into the future. In the Netherlands, the Urgenda judgment of 2019 established a legally enforceable duty for the state to reduce greenhouse gas emissions, grounded in human rights and the state's duty of care. More recently, in KlimaSeniorinnen v. Switzerland (2024), the European Court of Human Rights recognised that Article 8 of the Convention entails a positive obligation on states to adopt timely, adequate, and science-based climate policies. Collectively, these judgments mark a decisive shift: climate protection is no longer treated as a purely political aspiration, but as a matter of constitutional and fundamental rights responsibility.

Against this backdrop, constitutional law acquires a new and expanded role. It increasingly functions as a framework for articulating and enforcing positive state obligations in the field of climate protection, while simultaneously preserving institutional balance, democratic legitimacy, and the rule of law. Constitutional and supreme courts are thus called upon not only to interpret existing constitutional provisions, but also to recalibrate core constitutional principles, such as proportionality, justice, and intergenerational solidarity, in light of unprecedented environmental realities.

2. Constitutional foundations of environmental protection

This chapter examines whether environmental protection in Lithuania is constitutionally anchored and how this anchoring has evolved through constitutional jurisprudence. While the Constitution of the Republic of Lithuania does not explicitly recognise an individual right to a clean and healthy environment, it nevertheless establishes a robust constitutional framework for environmental protection through state duties and judicial interpretation.

The constitutional foundations of environmental protection in Lithuania are laid down in Chapter IV of the Constitution, "The National Economy and Labour", which also governs the economic life of the State and simultaneously guarantees freedom of individual economic activity. The core environmental provisions are contained in Articles 53 and 54. Article 53 imposes a duty on both the State and every person to protect the environment from harmful influences, while Article 54 obliges the State to safeguard the natural environment, wildlife and flora, individual

[3] Kimblin J. Climate Change, the Courts, and the Constitution. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4703120 [last viewed 02.01.2026].

natural objects, and areas of particular value. It further mandates the rational use, restoration, and enhancement of natural resources, and prohibits environmental degradation, including land destruction, pollution of water and air, radioactive impact, and biodiversity depletion.[4] These provisions constitute the constitutional basis for Lithuania's national environmental protection policy.[5]

Lithuania thus belongs to a group of EU Member States whose constitutions emphasise environmental protection guarantees and state obligations, rather than expressly formulating a subjective right to a healthy environment.[6] Nevertheless, Lithuanian constitutional doctrine increasingly recognises that environmental protection cannot be reduced to a merely programmatic objective. Through more than three decades of jurisprudence, the LCC has systematically developed the constitutional content of Art. 53 and 54, affirming that environmental protection is a public interest of universal importance and a constitutionally protected value binding upon public authorities.[7]

According to the Court's jurisprudence, the natural environment, biodiversity, individual natural objects, and areas of particular value are treated as national values of universal significance, the protection of which constitutes a public interest that the State is constitutionally obliged to guarantee.[8] In fulfilling this obligation, the State may, by law, restrict the use of natural resources, impose specific duties on economic actors, or require them to refrain from certain activities. However, such regulation must ensure a proper balance between constitutional values, respect the constitutional imperative of social harmony, and comply with the principles of justice, reasonableness, and proportionality, particularly where restrictions interfere with fundamental rights and freedoms.

In environmental protection cases, the CC most frequently applies such constitutional principles as respect for human dignity, the principle of proportionality, and the principle of intergenerational justice. Although the precautionary principle, long recognised in European Union law, has not yet been directly applied in environmental cases in Lithuania, it has become familiar to the CC following constitutional adjudication in the context of the Covid-19 pandemic and has been addressed in its constitutional doctrine.[9] Accordingly, in

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[4] Constitution of the Republic of Lithuania (adopted 25 October 1992).

[5] Ragulskyte Markoviene R. Aplinkos teise. Lietuvos derinimas su Europos Sajungos raikalavimais. [Environmental Law. Harmonisation of Lithuania with the Requirements of the European Union.] Vilnius: Eugrimas, 2005, p. 98.

[6] Kuzniar K. Environmental Protection in Constitutional Law. Warsaw: Wolters Kluwer, 2021, p. 204.

[7] Juskeviciute-Viliene A. Lietuvos Respublikos Konstitucinio Teismo jurisprudencijos itaka zaliosios ekonomikos igyvendinimui Lietuvoje [The Influence of the Jurisprudence of the Constitutional Court of the Republic of Lithuania on the Implementation of the Green Economy in Lithuania]. In: Juskeviciute-Viliene A., Puraite-Andrikiene D. (eds.). Konstitucine justicija Lietuvoje. Trys veiklos desimtmeciai [Constitutional Justice in Lithuania: Three Decades of Activity]. Vilnius: Vilnius University, 2023, p. 154.

[8] Ruling of the Constitutional Court of the Republic of Lithuania of 31 March 2005. Available in English: https://www.lrkt.lt [last viewed 05.01.2026].

[9] Constitutional Court of the Republic of Lithuania, rulings of 24 of January 2023, No. KT8-N1/2023.

light of the precautionary principle's fundamental importance for environmental protection – particularly in situations of scientific uncertainty – it may be regarded as a readily available and doctrinally well-grounded instrument for future constitutional adjudication in environmental matters.

An analysis of the Court's case law further reveals that most constitutional disputes concerning environmental protection were initiated not by individuals or environmental organisations, but by business entities seeking to defend the freedom of economic activity. These cases typically concerned licensing regimes, operational obligations, taxation, or other regulatory constraints imposed in the name of environmental protection.[10] Despite this procedural posture, the CC has consistently held that restrictions on economic activity aimed at protecting human health, safeguarding the environment, ensuring the rational use of natural resources, and remedying environmental damage are, in principle, compatible with the Constitution and pursue the general welfare of the people.[11]

Taken together, the Constitution of Lithuania and the jurisprudence of the CC establish a coherent constitutional framework for environmental protection. Although the constitutional text itself remains cautious and duty-oriented, the Court has progressively expanded its normative content through interpretation. In this sense, Lithuania's model of environmental constitutionalism may be described as lying between aspirational and transformative: according to legal theory, aspirational constitutionalism refers to constitutional provisions that frame environmental protection primarily as programmatic goals or state duties with limited direct enforceability, whereas transformative constitutionalism entails the judicial translation of constitutional norms into concrete, justiciable obligations capable of fundamentally reshaping public policy and power relations[12].

While the Lithuanian Constitution remains predominantly duty-oriented and cautious in its textual formulation, the CC has increasingly moved beyond a purely aspirational model by giving these duties operative legal effect through proportionality-based review, public interest reasoning, and context-sensitive balancing between environmental protection and other constitutional rights and freedoms.

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[10] Constitutional Court of the Republic of Lithuania, rulings of 31 May 2005; 31 January 2011; 16 December 2015; 11 July 2019, 19 March 2025, No. KT14-N3/2025. Available in English: https://www.lrkt.lt [last viewed 15.01.2026].

[11] Juskeviciute-Viliene A. Bridging Between an Effective Economy and Environmental Protection Under the Lithuanian Constitution. Review of Central and East European Law, Vol. 48, Issue 2, 2023, p. 217.

[12] For further discussion of aspirational and transformative constitutionalism, see: Weis L. Environmental Constitutionalism: Aspiration or Transformation? International Journal of Constitutional Law, Vol. 16, Issue 3, 2018, pp. 836–870.

3. Constitutional foundations of economic freedom

Economic freedom constitutes one of the core elements of Lithuania's post-1990 constitutional identity. After the collapse of the Soviet economic system, the Constitution of the Republic of Lithuania established the legal foundations of a market-based democratic order. The constitutional basis of economic freedom is expressly laid down in Article 46, which guarantees the *freedom of individual economic activity and initiative* and simultaneously authorises the State to regulate economic activity so that it serves the general welfare of the people. It is interesting to note that this article falls within the same chapter of the constitution as the foundation of environmental protection (Chapter IV "The National Economy and Labour").

In its jurisprudence, the LCC has interpreted freedom of economic activity broadly. This freedom encompasses, *inter alia*, freedom of contract, freedom of fair competition, equality of economic actors, the freedom to enter and exit the market, and the right to engage in any economic activity not prohibited by law, etc.[13] Economic freedom is thus recognised both as a constitutional value and as a subjective right forming the basis of a functioning market economy.[14]

At the same time, Lithuanian constitutional law clearly rejects an absolutist understanding of economic freedom. The Constitution reflects the socially oriented nature of the State, requiring a balance between private initiative and collective interests[15]. Article 46 obliges the State to support economic efforts useful to society, and, moreover, to regulate economic activity in a manner that ensures the general welfare of the people. According to the CC, this welfare cannot be reduced to individual material gain; it must be assessed in light of broader economic, social, health-related, security-related, and environmental considerations.[16]

This constitutional framework is particularly relevant in cases where economic freedom comes into tension with environmental protection. The Constitution expressly obliges the State to protect human health and the natural environment (Arts 53–54), thereby establishing environmental protection as a constitutionally significant public interest. The CC has consistently held that economic freedom may be restricted where such restrictions pursue legitimate constitutional objectives, including the protection of the environment, provided that the principle of proportionality is respected.[17]

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[13] Constitutional Court of the Republic of Lithuania, rulings of 13 May 2005; 29 April 2009; 15 January 2015; 24 January 2023.

[14] Juskeviciute-Viliene A. Asmens ukines veiklos laisves konstituciniai pagrindai Lietuvoje: ekonomines, istorines ir lyginamosios izvalgos [Constitutional Foundations of the Freedom of Individual Economic Activity in Lithuania: Economic, Historical and Comparative Perspectives]. Vilnius: Vilnius University, p. 16.

[15] Zilys J. Socialine valstybe konstitucineje teiseje [Social State in Constitutional Law]. Jurisprudencija, No. 12(90), 2006, p. 19.

[16] Constitutional Court of the Republic of Lithuania, ruling of 6 February 2012.

[17] Constitutional Court of the Republic of Lithuania, ruling of 16 March 2005.

Proportionality functions as the central constitutional standard for assessing limitations on economic freedom. Restrictions must be established by law, suitable and necessary to achieve the pursued objective, and must not impose an excessive burden on economic actors. Through this balancing exercise, the Court seeks to reconcile economic freedom with other constitutional values, ensuring that environmental protection measures do not arbitrarily undermine economic initiative, while at the same time preventing economic activity from overriding constitutionally protected public interests.[18]

Taken together, the constitutional regulation of economic freedom in Lithuania reveals a mixed constitutional economic model**.** While the Constitution consolidates the foundations of a market economy based on private ownership and economic initiative, it embeds these freedoms within a broader framework of social justice and environmental responsibility. Economic freedom is therefore protected, but not absolute; it operates as a constitutionally conditioned freedom that must be exercised in harmony with the requirements of environmental protection and the general welfare of the people.

4. Searching for balance: The Waste-to-Energy case

The 18 February 2020 ruling of the LCC on waste incineration plants constitutes one of the clearest illustrations of how Lithuanian constitutional law seeks to balance environmental protection and freedom of economic activity in practice.[19] The case directly operationalised the constitutional frameworks discussed in the previous chapters, namely, the State's environmental obligations under Articles 53 and 54 of the Constitution and the constitutionally protected freedom of individual economic activity under Article 46.

The contested legal regulation prohibited the construction of waste-to-energy facilities within a 20-kilometre radius of residential areas. Formally, the restriction pursued constitutionally legitimate objectives: the protection of public health and the prevention of harmful environmental effects. As the CC reaffirmed, waste management constitutes a public interest, since improperly managed waste poses a threat to both the environment and human health. In this sense, the case clearly fell within the constitutional paradigm according to which environmental protection may justify restrictions on economic freedom.[20]

However, the CC emphasised that the constitutional legitimacy of the aim alone is insufficient. Consistently with its doctrine on economic freedom, the CC subjected the restriction to a strict proportionality review. It found that the absolute and uniform 20-kilometre distance requirement lacked a sufficient scientific basis and, due to Lithuania's settlement structure, was practically impossible to

[18] Constitutional Court of the Republic of Lithuania, rulings of 31 January 2011; 16 December 2015.

[19] Constitutional Court of the Republic of Lithuania, ruling of 18 February 2020.

[20] Constitutional Court of the Republic of Lithuania, rulings of 31 May 2005; 16 December 2015.

implement. As a result, the regulation did not merely restrict economic activity but effectively eliminated the possibility of developing waste-to-energy projects altogether.

Importantly, the CC rejected a simplified opposition between environmental protection and economic development. Drawing on the constitutional concept of the general welfare of the people, it underlined that sustainable waste management – including waste-to-energy solutions – serves environmental objectives by supporting the circular economy and reducing reliance on landfilling. Consequently, the contested restriction paradoxically undermined environmental protection rather than strengthening it. This reasoning reflects the mixed constitutional economic model discussed earlier, in which economic activity is not inherently antagonistic to environmental values but may, under certain conditions, contribute to their realisation.[21]

From the perspective of environmental constitutionalism, the case is particularly significant because it demonstrates the Court's insistence on evidence-based environmental regulation. While acknowledging the State's duty to act preventively in environmental matters, the CC made clear that preventive measures must be rational, targeted, and proportionate.

Taken together, the Waste-to-Energy case exemplifies how the LCC mediates between environmental protection and economic freedom within a coherent constitutional framework. By integrating proportionality, public interest, and rule-of-law considerations, the CC ensured that environmental regulation remains constitutionally grounded, economically viable, and oriented towards sustainable development. In doing so, the judgment serves as a concrete illustration of the broader constitutional balance analysed in the preceding chapters. It confirms the gradual evolution of Lithuanian constitutional doctrine towards a more nuanced and sustainability-oriented model.

Conclusions

Although freedom of economic activity is explicitly enshrined in the Constitution of the Republic of Lithuania as an individual right, the right to a healthy and clean environment is not formulated as such. However, the jurisprudence of the LCC has significantly expanded the constitutional content of environmental protection. The Court consistently emphasises that the constitutional foundations of environmental protection derive from Art. 53 and 54 of the Constitution, constituting a constitutional value of particular importance aimed at safeguarding the interests of society as a whole while providing a constitutional basis for individuals' rights to live in a clean and healthy environment. Against this background, the CC clearly holds that restrictions on the freedom of economic activity imposed for the purpose of environmental

[21] Constitutional Court of the Republic of Lithuania rulings of 16 March 2005; 30 May 2017.

protection are constitutionally justified and compatible with the Constitution. Nevertheless, such restrictions are lawful only if they comply with the principle of proportionality and if the necessity to limit economic freedom is substantiated by sufficient, objective and rational evidence.

An analysis of the LCC's case law reveals that, to date, no individuals or groups have applied to the Court alleging that economic activity has infringed their right to a healthy or clean environment. In fact, the majority of cases have been initiated by economic operators who are challenging what they perceive to be disproportionate restrictions on economic activity introduced for environmental protection purposes.

However, international practice and the rapidly developing field of environmental constitutionalism suggest that, in the future, Lithuania may also experience an increase in cases in which environmental protection issues are raised as a basis for the protection of individual or collective rights. In this context, it may be argued that the jurisprudence of the CC developed over more than three decades is sufficiently mature and well prepared to address such challenges. Moreover, the LCC's consistent engagement with the case law of supranational and foreign courts allows for the reasoned prediction that, in the future, the LCC will shape a constitutional doctrine that is more favourable to environmental protection rather than exclusively oriented towards economic freedom.

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