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The Impact of the Covid-19 Pandemic on Economic Freedom in Lithuania

Keywords: Constitution, Economic freedom, Constitution, Special regimes

Słowa kluczowe: Konstytucja, wolność gospodarcza, Konstytucja, reżimy specjalne

Abstract

The main purpose of this article is to discuss whether the decisions adopted by the government of the Republic of Lithuania are not in conflict with the guarantees of economic freedom enshrined in the Constitution. The article analyses four issues: 1. what constitutional bases of economic freedom are entrenched in the Constitution of the Republic of Lithuania and the official constitutional doctrine of the Constitutional Court; 2. what conditions for restricting the economic freedom are established by the Lithuanian Constitution; 3. has economic freedom not been violated during the First and Second quarantines in Lithuania; 4. discuss the first case in Lithuania in which the court indicated whether the economic freedom had not been violated during the First Quarantine. The article is based on analytical (critically analyzed legal regulation), constitutionally oriented (presenting the provisions of the Constitution and the constitutional doctrine), and other research methods.

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Streszczenie**Wpływ pandemii Covid-19 na wolność gospodarczą na Litwie**

Głównym celem niniejszego artykułu jest omówienie, czy decyzje podjęte przez rząd Republiki Litewskiej nie stoją w sprzeczności z gwarancjami wolności gospodarczej zapisanymi w Konstytucji Republiki Litewskiej. Artykuł analizuje cztery zagadnienia: 1. jakie konstytucyjne podstawy wolności gospodarczej są zakorzenione w Konstytucji Republiki Litewskiej oraz w oficjalnej doktrynie konstytucyjnej Sądu Konstytucyjnego; 2. jakie warunki ograniczenia wolności gospodarczej określa Konstytucja Litwy; 3. czy podczas I i II kwarantanny na Litwie nie została naruszona wolność gospodarcza; 4. omówić pierwszą sprawę na Litwie, w której sąd wskazał, czy wolność gospodarcza nie została naruszona podczas I kwarantanny. Artykuł opiera się na metodach analitycznych (krytyczne analizowana regulacja prawna), ukierunkowanych konstytucyjnie (przedstawiających przepisy Konstytucji i doktryny konstytucyjnej) oraz innych metodach badawczych.

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I. Introduction

Almost two years ago, the Covid-19 virus began to spread from the Chinese city of Wuhan. This virus also appeared in Lithuania: since March 2020, public authorities have had measures in place to prevent the spread of the virus. However, the most important factor for economic freedom was the announcement of quarantine in Lithuania. Quarantine completely suspended the activities of some sectors of the country's economy. Certain areas of the economy, such as international tourism, beauty services, restaurants, cafes, have stopped working or worked only in a minimal model. Many businesses have simply withdrawn from the market. Such consequences have led to a debate on the legitimacy of legal acts adopted by state authorities. Also, this article aims to discuss whether the decisions adopted by the authorities of the Republic of Lithuania are not in conflict with the guarantees of economic freedom enshrined in the Constitution.

II. Economic freedom in the Constitution of the Republic of Lithuania

Economic freedom is enshrined in the 1992 Constitution of the Republic of Lithuania in Chapter IV “National Economy and Labour”². This chapter is devoted to the protection of a person’s socio-economic rights as well as the economic and environmental interests of the state. Economic freedom is defined in Art. 46 as “freedom of individual economic activity and initiative”. The content of this freedom has often been interpreted by the Constitutional Court of the Republic of Lithuania. In almost thirty years of the validity of the Lithuanian Constitution, the Constitutional Court has adopted 27 rulings dealing with economic freedom. Thus, almost every year, the Constitutional Court developed its doctrine relating to economic freedom³.

The official constitutional doctrine states that the scope of freedom of economic activity cannot be specifically and precisely defined. Economic freedom is a whole complex of legal possibilities, which creates the preconditions for a person to independently adopt decisions necessary for his/her economic activity⁴. The Constitutional Court has held more than once that the notion of economic freedom is abroad one: it implies, *inter alia*, the right of a person to freely choose an occupation or business, the freedom to conclude contracts, freedom of fair competition, etc. Freedom of economic activity is also inseparable from the equality of rights of economic entities⁵.

This freedom is individual and can be defended in court to protect it from the unlawful actions of individuals and of public authorities. An entity of economic freedom may demand that the state take active actions to protect the economic freedom of this entity from illegal actions of other persons (*status positivus*). According to the official doctrine of the Constitutional Court, economic freedom guarantees the right to require of the state institutions and their officials, not to hinder, by any their decisions or actions, any expression

² The Constitution of the Republic of Lithuania (Official Gazette: Valstybės žinios, 1992, no. 33–1014).

³ A. Juškevičiūtė-Vilienė, *Some Aspects of Economic Regulation in Lithuanian Constitutional Law: From Planned Economy to the Fourth Industrial Revolution*, [in:] *Legal Developments During 30 Years of Lithuanian Independence. Overview of Legal Accomplishments and Challenges in Lithuania*, eds. G. Švedas, D. Murauskas, Springer 2020, p. 61.

⁴ The Constitutional Court of the Republic of Lithuania, the ruling of May 13, 2005.

⁵ The Constitutional Court of the Republic of Lithuania, the ruling of May 9, 2014.

or development of the initiative of persons and not to disrupt or preclude their economic efforts, provided that their initiative or economic activities are not harmful to society, even if the usefulness of such initiative or economic efforts to society is not evident. Any decision or actions of state institutions and their officials, as well as municipal institutions and their officials, that do not permit the expression or development of the initiative of persons and that preclude certain economic efforts must be determined by the harmfulness of a particular initiative or economic efforts to society⁶ (*status negativus*).

III. Conditions for Restriction of Freedom of Economic Activity in the Constitution of the Republic of Lithuania

Article 46 sec. 3 of the Constitution of the Republic of Lithuania provides that the state shall regulate economic activity so that it serves the general welfare of the Nation. So the Constitution tells us that economic freedom is not absolute and public authorities have the right to regulate economic relations in such a way that they serve the public interest. The Constitutional Court of the Republic of Lithuania says: regulation of economic activity is the establishment of conditions for economic activity, regulation of certain procedures, control of economic activity, restrictions or prohibitions of certain such activity⁷.

Implementation of this freedom overlaps with various economic and non-economic interests of society, the implementation of the rights and freedoms of others. To restrict economic freedom, it is necessary to take into account the formal and material conditions⁸. In Lithuania, the formal condition of restriction of the freedom of economic activity is not enshrined directly in the Constitution but is named in the jurisprudence of the Constitutional Court. Already in 1994, the Lithuanian constitutional doctrine established that the restriction of the freedom of economic activity is possible only by law⁹.

⁶ The Constitutional Court of the Republic of Lithuania, the ruling of May 13, 2005.

⁷ The Constitutional Court of the Republic of Lithuania, the ruling of October 6, 1999.

⁸ E. Kūris, *Ūkinės veiklos laisvė, sąžininga konkurencija ir bendra tautos gerovė (Konstitucijos 46 straipsnio jurisprudencinis komentaras)*, "Jurisprudencija" 2005, no. 64 (56), p. 63.

⁹ A. Juškevičiūtė-Vilienė, *Asmens ūkinės veiklos laisvės konstituciniai pagrindai Lietuvoje: ekonominės, istorinės ir lyginamosios išvalgos*, Vilnius 2017, p. 204.

In 2006, the Constitutional Court stated that only by law it is possible to establish essential conditions, prohibitions, and restrictions of economic activity that have a significant impact on economic activity, as well as by imposing various sanctions for relevant violations of law. In other cases, economic freedom may be restricted by other lower-level by-laws¹⁰.

The material condition for the restriction of the freedom of economic activity is directly named in the Constitution of the Republic of Lithuania: this is a public interest – “welfare of the Nation” (Art. 46 sec. 3 of the Constitution). According to the constitutional doctrine, this material condition is recognized as a constitutional principle establishing the directions, methods, and limits of economic activity regulation¹¹. The content of the term “general welfare of the Nation” is disclosed in each specific case taking into account economic, social and other relevant factors. The constitutional doctrine says that by regulating economic activity, the state must strive not for the well-being of individuals, but the well-being of the entire nation. Thus, to limit economic activity, it is necessary to prove the general need of the Nation. But in the interests of the welfare of the Nation, the rights and legitimate interests of an economic entity may not be restricted more than to ensure the public interest, unequal conditions of economic activity may not be established¹².

IV. Economic freedom during the First and Second quarantines in Lithuania

The virus was confirmed to have reached Lithuania in February 2020. Because of the situation and the legal framework enshrined in national law, Lithuania has immediately introduced special legal regimes. The 1992 Constitution of the Republic of Lithuania *expressis verbis* provides for only one special legal regime – a state of emergency (Art. 144 of the Constitution). To establish a state of emergency, a certain legal fact must occur: a “threat for the constitutional system or social peace” must arise in the state. Therefore, a state of emergency in Lithuania cannot be imposed when there is an outbreak of a contagious disease. However, the Constitution does not prohibit the legisla-

¹⁰ The Constitutional Court’s ruling of May 13, 2005.

¹¹ The Constitutional Court of the Republic of Lithuania, the ruling of January 26, 2004.

¹² The Constitutional Court of the Republic of Lithuania, the ruling of January 15, 2015.

tor from providing for *other* special legal regimes in *other extreme cases* (Art. 48 of the Constitution). So the Lithuanian government has introduced two other special regimes – the disaster management regime (even on February 26, 2021¹³) and quarantine (on March 14, 2020¹⁴). Two special regimes were introduced in Lithuania, because only in this way, at that time, was it possible, according to the Lithuanian law in force, to introduce extensive restrictions on human rights during the pandemic¹⁵.

The declaration of quarantine by the government was accompanied by complete restrictions on economic activity. The activities of hotels, recreation centers, beauty services, restaurants, cafe bars, non-food stores, and markets were completely prohibited. It was forbidden to visit culture, leisure, entertainment, sports institutions, and other activities. Thus, most businesses were shut down not by law but by government resolution. This period lasted three months and is usually called the First quarantine in Lithuania. The government has been criticized by the public and the opposition for not having such powers to restrict people's rights and freedoms. However, the government pointed out that the government's resolutions had been passed following two laws that provided such competence on the government, namely the Law on Civil Protection¹⁶ and the Law on the Prevention and Control of Communicable Diseases in Humans¹⁷. Let examine this legislation in detail:

The Law on Civil Protection, in force in March 2020, specified that during a disaster management regime, the government may temporarily restrict a person's freedom of movement, property rights, and the right to inviolabil-

¹³ Government Resolution no. 152 of February 26, 2020, "Dėl valstybės lygio ekstremaliosios situacijos paskelbimo", <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/8feb1a7658a-111eaac56f6e40072e018> (26.10.2021).

¹⁴ Government Resolution no. 207 of March 14, 2020, "Dėl karantino Lietuvos Respublikos teritorijoje paskelbimo", <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/deaf8694663011eaac02cacf2a861120c?jfwid=18vo9gnxug> (26.10.2021).

¹⁵ V.A. Vaičaitis, *Special Legal Regimes and Their Status under the Lithuanian Legal System*, "Teisė" 2021, no. 117, p. 86.

¹⁶ Lietuvos Respublikos civilinės saugos įstatymas (Valstybės žinios, 1998, no. VIII-971), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.69957/yQgGGGTscB?jfwid=33p63d16k> (26.10.2021).

¹⁷ Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas. Official Gazette *Valstybės žinios* 1996. <https://www.e-tar.lt/portal/lt/legalAct/TAR.EE-245B47423C/MultcSBsSQ> (26.10.2021).

ity of housing. However, this law did not give the government competence to restrict the freedom of economic activity. As I have already mentioned, the Constitution allows for the restriction of economic freedom if it is done on the grounds established by law. Thus, the conclusion is that the Law on Civil Protection did not empower the government to restrict economic freedom in March 2020. My conclusion is also confirmed by the fact that the Law on Civil Protection was amended in April 2020 and the parliament has already directly established in it that in the event of an emergency, the government may also restrict the freedom of economic activity¹⁸.

Another law under which quarantine was introduced in March 2020 was the Law on the Prevention and Control of Communicable Diseases in Humans. However, even this law at that time did not directly regulate the government's discretion to restrict economic freedom. This law was also subsequently amended and supplemented. Only later adopted the Seimas a provision allowing the government to impose restrictions on economic activity during quarantine¹⁹.

Thus, it can be concluded that the constitutional framework for the protection of the freedom of economic activity was not observed after the government introduced the First Quarantine and restricted economic freedom in March 2020. The government restricted this freedom without any legal basis. Only the parliament could establish by law the essential conditions, prohibitions, and restrictions of economic activity that have a significant impact on economic activity²⁰.

The Second quarantine in Lithuania was established by the government on November 7, 2020, and lasted for eight months until July 2021. The legal basis for the introduction of quarantine was a government resolution again²¹.

¹⁸ Lietuvos Respublikos civilinės saugos, op.cit.

¹⁹ Lietuvos Respublikos žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas (Valstybės žinios, 1996, no. I-1553) <https://www.e-tar.lt/portal/lt/legalAct/TAR.EE245B47423C/dNqzrTfF5T> (26.10.2021).

²⁰ T. Birmontienė, J. Miliuvienė. *Pandemijos iššūkiai žmogaus teisėms ir laisvėms*, [in:] *Lietuvos teisė 2020. Esminiai pokyčiai I dalis. COVID-19 pandemijos sprendimai: teisiniai, valdymo ir ekonominiai aspektai*, eds. L. Jakulevičienė, V. Sinkevičius, Vilnius 2020, p. 55.

²¹ Government Resolution no. 1226 of February 4, 2020, "Dėl valstybės lygio ekstremaliosios situacijos paskelbimo", <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/a2b5da801f4a-11eb9604df942ee8e443> (26.10.2021).

However, even in this government resolution, we find doubts: whether the economic activity has been restricted fairly? Article 46 sec. 4 of the Constitution states: “The law shall prohibit the monopolization of production and the market, and shall protect freedom of fair competition”. Thus, the Constitution protects economic freedom from unfair competition, from discrimination against market participants. During the Second quarantine, the government restricted economic freedom more leniently than during the First quarantine and did not completely ban economic activities. However, the number of illnesses has risen, and in December 2020, the government adopted additional restrictions on economic freedom. The activities of non-food shops and markets where were banned. However, the ban did not apply to stores whose main activity was the sale of food, veterinary goods, and medicines. These stores began to sell not only food or medicine but also other goods (such as clothing, technical equipment, electronics). The economic situation in Lithuania was such that these stores – usually big supermarkets – could sell all goods without any restrictions and small non-food shops, markets remained closed and could not do business. In this way, the government unreasonably imposed different conditions of economic activity and different conditions of competition on economic entities. Small and medium-sized businesses, which have been unable to market their goods, have suffered the most from such government regulation. Thus, the government has established unequal market conditions for economic entities, which means a violation of the constitutional principles of equality and freedom of fair competition.

V. The first case in Lithuania concerning Covid-19 measures for economic freedom

After the First quarantine, one Ltd. company, which provides dental implant services, filed a complaint accusing the Lithuanian state of illegally restricting the company’s economic freedom. The company complained that after the First quarantine was announced by the Lithuanian government in March 2020, many restrictions and bans on economic activities were imposed, which caused financial losses to Lithuanian businesses. The government resolution of March 14, 2020 on the introduction of quarantine was adopted in viola-

tion of the Constitution, laws, and the hierarchy of law. The government did not have the power to impose restrictions on economic activity and the restrictions of economic freedom were disproportionate. The applicant asked the state to award almost 70 000 Eur damages incurred (loss of income, wage costs, other necessary operating expenses). The company also asked the court to refer the matter to the Constitutional Court asking whether the government's resolution on the introduction of quarantine conflicted with the provisions of the Lithuanian Constitution²².

In February 2021, the Vilnius Regional Administrative Court examined this complaint in a written procedure. The court found that the Law on the Prevention and Control of Communicable Diseases in Humans provided for the power of the government to establish special conditions for the work, living, economic and other activities. The Law on Civil Protection stipulated that in the liquidation of an emergency situation and elimination of its consequences, the freedom of movement of a person and property rights may be temporarily restricted. Vilnius Regional Administrative Court ruled, that the government had not exceeded its powers and had taken proportionate measures to restrict economic freedom in Lithuania. The Court found that the Lithuanian nation was confronted with an unprecedented spread of a deadly disease and thus an emergency situation arose in the country. Therefore, the government had to take known measures to stop the spread of the disease. It was decided to apply the measures known at the time and applied worldwide – isolation and contact restriction. The suspension of economic activity for three months met the proportionality criterion. In the Court's view, there was no unlawful conduct on the part of the Government and no damages were awarded to the applicants. Thus, the court held that the restrictions on economic freedom during the first quarantine were lawful and proportionate. Otherwise, the court did not grant the company's request and did not apply to the Constitutional Court to find out whether the government's resolution was unconstitutional²³.

²² Teismas atmetė skundą dėl žalos priteisimo pernai Vyriausybei paskelbus karantiną. <https://www.teismai.lt/lt/teismu-pranesimai-spaudai/teismas-atmete-skunda-del-zalos-priteisimo-pernai-vyriausybei-paskelbus-karantina/8481> (26.10.2021).

²³ Ibidem.

The decision of the Vilnius Regional Administrative Court did not satisfy the applicant and was appealed to the Supreme Administrative Court. To the best of my knowledge, the applicant repeatedly requested the court to appeal to the Constitutional Court. It would be a great pity if the Constitutional Court of the Republic of Lithuania did not have the opportunity to rule on this extraordinary economic and health crisis.

VI. Conclusions

The Constitution of the Republic of Lithuania and the constitutional doctrine allow restricting economic freedom only based on law and in the presence of important public interest. However, *lex fundamentalis* prohibits a complete restriction on business freedom. As a study of the legislation in this article has shown, during the First quarantine economic freedom was restricted in violation of the constitutional guarantees of this freedom. This freedom was restricted by government resolution, and such powers have not been transferred by parliament to the government. And the government's resolution during the Second Quarantine was contrary to the constitutional principles of fair competition, as it discriminated against small and medium-sized businesses. The Constitutional Court has not ruled on such resolutions of the government of Lithuania, but it is expected that this court will have an opportunity to comment on the applied Covid-19 measures for economic freedom.

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