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LITHUANIA

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Section 1: The concept of “emergency” and other associated notions in the legal orders of the Member States

Question 1

In Lithuania, the legal framework does indeed distinguish between concepts such as “emergency,” “crisis,” and “necessity.” These concepts are embedded in Lithuanian law, specifically within the context of national security, public safety, and civil protection. Each term is associated with specific legal definitions, procedures, and authorities to handle such situations. Below is an explanation of each category and their differences, along with other closely related concepts.

Emergency situation (lt. Ekstremali situacija)

An “emergency situation” in Lithuania refers to circumstances that arise suddenly, requiring immediate action to prevent harm to the population, the environment, or property. These situations typically involve natural disasters (like floods, fires, or pandemics), technological accidents, or other sudden dangerous events. The concept is regulated by **Law on Crisis Management and Civil Protection** (lt. Lietuvos Respublikos krizių valdymo ir civilinės saugos įstatymas).

Definition: A situation arising from an extreme event that may cause or causes a significant threat to the lives or health of the population, their essential living (or operational) conditions, property, the environment, the performance of vital state functions, public order, or result in death, injury, property damage, or other harm to the population.

The government or local authorities can declare an emergency situation, activating various response mechanisms and special legal provisions to protect the public.

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Crisis (lt. Krizė)

Definition: A state-level emergency situation that cannot be resolved or its consequences cannot be eliminated by applying the state-level emergency management measures provided for in this law, as well as a situation caused by a special event, external or internal incidents, or processes that pose a threat to the national security interests of the Republic of Lithuania or the performance of vital state functions. This term does not include situations or events that pose a threat to the sovereignty, territorial integrity, constitutional order, or public peace of the Republic of Lithuania, where a decision may be made to use the military in response to localized armed incidents and violations of the state border that do not equate to acts of aggression, or to impose martial law.

State of Emergency (lt. Nepaprastoji padėtis)

A “state of emergency” is a legal regime introduced in more severe circumstances where public order or national security is under significant threat. This is a more formalized and serious legal regime than an “emergency situation.”

Definition: A special legal regime in the state or part of it, allowing the application of temporary restrictions on the exercise of the rights and freedoms of individuals and temporary restrictions on the activities of legal entities, as provided for by the Constitution and Law on State of emergency (lt. Nepaprastosis padėtis įstatymas).

The declaration of a state of emergency can be made by the Seimas (parliament) or the President with the consent of the Seimas. During a state of emergency, certain civil rights can be restricted, and special measures (like curfews, mobilization of resources) can be enacted.

Constitution (Article 144)

When a threat arises to the constitutional system or social peace in the State, the Seimas may declare a state of emergency throughout the territory of the State or in any part thereof. The period of the state of emergency shall not exceed six months.

In cases of urgency, between sessions of the Seimas, the President of the Republic shall have the right to adopt a decision on the state of emergency and convene an extraordinary session of the Seimas for the consideration of this issue. The Seimas shall approve or overrule the decision of the President of the Republic.

The state of emergency shall be regulated by law.

Constitution (Article 145)

Upon the imposition of martial law or the declaration of a state of emergency, the rights and freedoms specified in Articles 22 [private life], 24 [property], 25 [freedom of self-expression], 32 [freedom of movement], 35 [freedom of as-

sociation], and 36 [freedom of assembly] of the Constitution may temporarily be limited.

Necessity (lt. Būtinasis reikalingumas)

“Necessity” in Lithuanian law is a legal principle related to criminal (administrative offences) and civil responsibility, where entities are permitted to take actions that would otherwise be illegal to prevent greater harm in exceptional circumstances.

Definition

In criminal law: A person is not held criminally liable for an act committed to eliminate a threat to themselves, other individuals or their rights, or to the interests of society or the state, provided that the threat could not have been eliminated by other means and the harm caused is less than the harm that was intended to be avoided. (Criminal Code)

In administrative offenses law: A person is not held liable under this code for an act committed to eliminate a threat to themselves, other individuals or their rights, or to the interests of society or the state, provided that the threat could not have been eliminated by other means and the harm caused is less than the harm that was intended to be avoided. (Code of Administrative Offences)

In civil law: Actions in which a person is compelled to cause harm in order to eliminate a threat to themselves, other individuals or their rights, or to the interests of society or the state, thereby avoiding greater harm to the injured party or another person. This is applicable if causing harm in such circumstances was the only way to prevent greater damage. The court, taking into account the circumstances of the case and the principles of fairness and justice, may require the person whose interests the harm-causing individual acted in to compensate for the damage. (Civil Code)

Courts assess whether the conditions of necessity apply, considering the proportionality of the actions taken in relation to the danger faced.

Other relevant categories

Martial law (lt. Karo padėtis)

This is an extraordinary legal regime that applies in times of war or armed conflict. Under martial law, military authorities may take control of civilian functions, and civil rights may be heavily restricted. It is regulated by the Law on Martial Law (lt. Karo padėties įstatymas).

Martial law is introduced by the Seimas (Parliament) when it is necessary to defend the Homeland or fulfil Lithuania’s international obligations. In the case

of an armed attack, when the sovereignty or territorial integrity of the state is threatened, the President of the Republic immediately makes a decision on defence against armed aggression, introduces martial law, and submits these decisions for approval to the Seimas at the next session. If the Seimas is not in session, the President immediately convenes an extraordinary session. The Seimas then adopts a decision and, by resolution, either approves or revokes the President's decision.

Public Health Emergencies (lt. Visuomenės sveikatos ekstremalioji situacija)

Public health emergency – circumstances in the development of public health where the impact of environmental factors leads to a sudden: (1) emergence of a risk of group or mass health impairments, or (2) occurrence of group or mass health impairments among the population. This issue is regulated by Law on Health System. (lt. Sveikatos sistemos įstatymas).

Quarantine (lt. Karantinas)

Specific provisions are also made in Lithuanian law for public health emergencies, such as pandemics or large-scale health crises. This concept gained significant attention during the COVID-19 pandemic, and it is governed by Law on the Prevention and Control of Infectious Diseases in Humans (lt. Žmonių užkrečiamųjų ligų profilaktikos ir kontrolės įstatymas).

Question 2

In Lithuania, emergency situations are governed by a general constitutional and legislative framework alongside sector-specific laws. This combined approach ensures flexibility and detailed guidance for handling a wide range of emergencies, from national security threats to public health crises and environmental disasters. The general framework provides the legal basis for declaring and managing emergencies, while sector-specific laws provide more detailed procedures for specific types of crises. This system enables Lithuania to respond effectively and in a coordinated manner to various emergency situations, while respecting constitutional principles and safeguarding public safety.

Question 3

In Lithuania, the triggering events that justify the implementation of the legal framework for situations of emergency vary depending on the type and severity of the crisis. These events fall under specific categories such as natural disasters, national security threats, public health emergencies, and large-scale

civil disturbances. Each of these categories has defined criteria that must be met for the state to invoke emergency powers, and the response may involve either emergency situations or a state of emergency. Below are the key triggering events for the implementation of emergency frameworks in Lithuania, along with the relevant legal provisions.

State of Emergency

A state of emergency is the highest form of emergency, triggered by severe threats to the constitutional order, national security, or public order.

Triggering events could be:

- **Threat to national security:** This includes events such as external aggression, terrorist attacks, or large-scale cyberattacks that threaten the sovereignty, independence, or constitutional order of the state.
- **Civil unrest or public order disruption:** Large-scale riots, mass civil disturbances, or any situation where public order is gravely compromised can trigger a state of emergency.
- **Severe internal conflict:** The potential for violent internal conflict, insurgencies, or significant threats to the stability of the government.
- **Natural disasters or technological accidents** (under exceptional circumstances): Although typically managed through civil protection measures, a state of emergency can be declared in extreme cases of natural disasters, technological accidents, or environmental crises when such events seriously threaten national security or disrupt the functioning of the state.

Emergency Situation

An emergency situation is declared in response to more localized but still serious events, such as natural disasters, technological accidents, or public health crises, which require coordinated response efforts to protect the public, the environment, or property.

Triggering events could be:

- **Natural disasters:** Floods, wildfires, severe storms, earthquakes, or any other natural calamity that poses a threat to human life, health, property, or the environment. These events justify the activation of emergency response measures at the national, regional, or local level.
- **Technological or industrial accidents:** Major industrial accidents, such as chemical spills, explosions, or radiation leaks, that create immediate danger to the population or environment.
- **Public health emergencies:** Large-scale epidemics or pandemics, such as the COVID-19 crisis, where public health is severely threatened by the spread of infectious diseases. This category also includes bioterrorism threats.

- **Environmental crises:** Environmental degradation, pollution incidents, or ecological disasters (such as oil spills) that require rapid intervention to prevent long-term harm.
- **Social or economic disasters:** In certain cases, severe economic disruptions (e.g., major financial crises or a sudden collapse of infrastructure) that directly threaten the public may lead to the declaration of an emergency situation.

Public Health Emergency

A public health emergency is a specific form of an emergency situation that can be triggered when there is a significant threat to public health. This may include epidemics or pandemics, like the COVID-19 pandemic, or other serious health threats.

Triggering events could be:

- **Pandemics and epidemics:** The rapid spread of a contagious disease that threatens large segments of the population. The public health response is triggered when infectious diseases, such as COVID-19, measles, or other serious diseases, spread uncontrollably.
- **Bioterrorism threats:** The intentional release of viruses, bacteria, or other biological agents to cause illness or death in humans, animals, or plants.
- **Severe pollution or toxic exposures:** Any event where environmental pollution (e.g., air, water, or soil contamination) causes a serious public health risk.

Martial Law

Although rare, martial law may be declared when the country is under severe external threat, such as during an armed conflict or foreign invasion. Martial law shifts control of civilian governance to military authorities and involves substantial restrictions on civil liberties.

Triggering events could be:

- **Foreign invasion or armed conflict:** When Lithuania is subject to an armed attack or an imminent threat of such an attack, martial law may be declared to defend the state.
- **Large-scale military threats:** Any other serious military threat that endangers the sovereignty and territorial integrity of Lithuania.

Other Crisis Situations

While “crisis” is not always a formal legal category, crisis situations may still trigger emergency management procedures under various laws or governmental decrees. A crisis can be social, economic, environmental, or security-related, and may require a coordinated response without necessarily invoking a state of

emergency. It can trigger crisis management mechanisms at the governmental or institutional level.

Triggering events could be:

- Economic crisis: Severe economic instability, financial collapse, or widespread unemployment that threatens social order.
- Political or social crisis: Mass protests, strikes, or political unrest that disrupts the functioning of government institutions or public services.
- Critical infrastructure failures: Large-scale failures of vital infrastructure (e.g., electricity grids, water supply systems) that impact national security or public welfare.

Question 4

Yes, in Lithuania, there are specific formal and procedural constraints that regulate how emergencies are handled through legal instruments. These constraints ensure that emergency powers are exercised within a legal framework and provide checks and balances to prevent abuse of authority. Different types of emergencies, such as state of emergency and emergency situations each have their own procedural requirements, which may include declarations from specific authorities, approval by the Seimas (Parliament), and judicial review mechanisms.

Question 5

EU law has had a significant influence on the way Lithuania defines and manages emergencies, particularly in areas like public health, cybersecurity, environmental protection, and national security. While Lithuania retains its sovereignty in declaring and handling emergencies, its legal framework is closely aligned with EU directives, regulations, and mechanisms. EU law provides coordination, financial assistance, and common standards that strengthen Lithuania's capacity to manage both domestic and cross-border emergencies, ensuring that it operates within the broader framework of EU crisis management and civil protection policies.

Public Health Emergencies

EU law has significantly influenced how Lithuania addresses public health emergencies, especially in response to cross-border health threats, such as the COVID-19 pandemic.

EU Decision on Serious Cross-Border Health Threats

Lithuania's legal framework for managing public health emergencies, such as pandemics and epidemics, has been shaped by EU Decision No. 1082/2013 on serious cross-border health threats. This decision establishes a legal basis for coordinating responses to health crises across the EU.

EU Vaccination Strategy

During the COVID-19 pandemic, Lithuania's vaccination campaign and public health measures were heavily influenced by the EU Vaccination Strategy, which coordinated the supply, approval, and distribution of vaccines across EU member states. Lithuania followed EU protocols for vaccine distribution and adhered to European Medicines Agency (EMA) approval procedures.

Civil protection and natural disaster response

The EU Civil Protection Mechanism has also had a strong impact on Lithuania's approach to managing emergency situations caused by natural disasters, technological accidents, or other large-scale emergencies.

EU Civil Protection Mechanism (UCPM)

Lithuania is a participant in the EU Civil Protection Mechanism, which provides a framework for coordinating disaster response efforts across EU member states. This mechanism has influenced Lithuania's Law on Crisis Management and Civil Protection and has contributed to the development of its civil protection capabilities.

EU Solidarity Fund (EUSF)

The EU Solidarity Fund have been used to provide financial assistance to Lithuania in the aftermath of natural disasters. This financial support is designed to cover emergency response costs and recovery efforts, such as rebuilding infrastructure and helping affected populations.

National Security and Cybersecurity

In the area of national security, particularly concerning cybersecurity, EU law has been highly relevant in shaping Lithuania's emergency and crisis response frameworks.

EU Directive on Network and Information Systems Security (NIS Directive)

The NIS Directive (Directive 2016/1148) has had a direct impact on Lithuania's approach to cybersecurity and the handling of emergencies related to cyber threats. This directive, which sets minimum security requirements for essential services and critical infrastructure operators, has influenced Lithuania's legal and institutional framework for cybersecurity.

EU Cybersecurity Act

The EU Cybersecurity Act (Regulation 2019/881) has also influenced Lithuania's preparedness for cyber emergencies by strengthening the role of the European Union Agency for Cybersecurity (ENISA) and enhancing cybersecurity certification schemes. These measures help Lithuania maintain robust cybersecurity protocols, reducing vulnerabilities during crises and ensuring coordinated responses to cyber threats across the EU.

Environmental Emergencies

EU law on environmental protection and the management of environmental risks has also shaped Lithuania's legal framework for handling environmental emergencies.

EU Environmental Directives

Several EU environmental directives, such as the Seveso III Directive (Directive 2012/18/EU) on the control of major accident hazards involving dangerous substances, have influenced Lithuania's legal approach to preventing and managing environmental emergencies. These laws ensure that industrial operators in Lithuania follow strict safety protocols to prevent chemical spills, explosions, and other industrial accidents.

EU Climate Adaptation Strategy

The EU Climate Adaptation Strategy has guided Lithuania's efforts to prepare for and manage emergencies related to climate change, such as floods, heatwaves, and droughts. The strategy encourages the integration of climate resilience measures into national planning, which has shaped Lithuania's policies for disaster risk reduction.

Economic and Financial Emergencies

EU law also plays a role in how Lithuania handles economic and financial emergencies, particularly in the context of EU fiscal rules and financial stability mechanisms.

EU Stability and Growth Pact

Lithuania, as a member of the Eurozone, is bound by the rules of the Stability and Growth Pact (SGP), which set fiscal discipline requirements for EU member states. In cases of severe economic crises, such as the 2008 financial crisis or the COVID-19 economic downturn, the EU has provided flexibility by allowing member states, including Lithuania, to temporarily exceed deficit limits to manage economic emergencies.

EU Financial Support Mechanisms

During economic crises, Lithuania has access to EU financial support mechanisms, such as the European Stability Mechanism (ESM) and EU recovery funds (like the Next Generation EU fund). These tools have been essential in helping Lithuania recover from financial and economic emergencies, such as those caused by the COVID-19 pandemic.

Coordination through the EU'S Integrated Political Crisis Response (IPCR)

The EU's Integrated Political Crisis Response (IPCR) arrangements are designed to coordinate responses to transnational crises, including emergencies that may affect multiple member states. Lithuania, as part of this system, participates in EU-wide coordination efforts during emergencies, such as terrorist attacks, public health threats, or natural disasters. This mechanism facilitates communication and decision-making during emergencies, such as the COVID-19 pandemic or cross-border security threats.

Question 6

Yes, there are notable precedents in Lithuania where situations of “emergency,” “crisis,” and/or “necessity” have been triggered or handled in coordination with EU action. Several key events highlight how EU and Lithuanian authorities have worked together, using both EU and national emergency instruments, to manage these situations. Below are significant examples: Energy Crisis Following the 2022 Russian Invasion of Ukraine; Migration Crisis on the Belarus Border (2021); COVID-19 pandemic (2020–2021).

Section 2: The constitutional framework governing emergency law in the Member States

Question 1

In Lithuania, the constitutional provisions governing situations of emergency are primarily found in Articles 144 and 145 of the Constitution. These provisions allow for the declaration of a state of emergency and outline the specific legal regimes that may be enacted during such periods.

Article 144 of the Constitution

This article empowers the Seimas (Parliament) to declare a state of emergency in the entire country or in part of it when a threat to the constitutional system or social peace arises. The declaration of a state of emergency is limited to six months, ensuring that it cannot be prolonged indefinitely without additional legislative approval.

If an urgent situation arises while the Seimas is not in session, the President of the Republic is empowered to declare a state of emergency. However, the President must immediately convene an extraordinary session of the Seimas to have this decision reviewed and either approved or overturned by the Seimas.

Article 145 of the Constitution

Article 145 specifies that certain constitutional rights may be restricted during the imposition of martial law or the declaration of a state of emergency. These restrictions can affect the rights guaranteed in Articles 22, 24, 25, 32, 35, and 36 of the Constitution, including:

The right to private life (Article 22); The right to property (Article 24); The right to freedom of expression (Article 25); The right to freedom of movement (Article 32); The right to freedom of association (Article 35); The right to freedom of assembly (Article 36).

These constitutional provisions reflect the post-independence legal and constitutional order established in 1992 following the dissolution of the Soviet Union and the reestablishment of Lithuania as an independent state in 1990. The provisions were influenced by the desire to create a democratic legal framework that would allow for the management of crises while safeguarding human rights and preventing the abuse of power that had been prevalent under Soviet rule.

Historically, the concept of emergency situations was present in Soviet-era legislation, but the legal frameworks were more authoritarian, focusing on maintaining control rather than protecting individual rights. During the Soviet period, emergency powers were often used to suppress dissent and ensure state control rather than protect public safety in democratic terms.

The current Lithuanian Constitution draws heavily on democratic principles, influenced by Western legal traditions. The constitutional safeguards in Articles 144 and 145 were introduced to ensure that any imposition of emergency measures would be temporary, proportional, and subject to legislative oversight, reflecting lessons from both Soviet history and Western democratic practices.

Question 2

The distribution of power in Lithuania during emergency situations is designed to ensure a balance between swift executive action and legislative oversight, with the judiciary playing a crucial role in safeguarding constitutional rights. The Seimas holds the authority to declare and oversee the continuation of emergency measures, while the President and Government are responsible for

initiating and managing these measures. The courts act as a check on executive power, ensuring that emergency actions remain within legal bounds and respect the rights of individuals. This system is structured to prevent the abuse of emergency powers while enabling an effective response to crises.

The Seimas (Parliament)

The Seimas holds a central role in the declaration and oversight of emergency measures in Lithuania.

Its powers include:

Declaring a state of emergency: According to Article 144 of the Constitution, the Seimas is the primary body that can declare a state of emergency in the country or in part of its territory when a threat arises to the constitutional system or social peace. This declaration can last for up to six months.

Approval of the President's decision: If the President of the Republic declares a state of emergency when the Seimas is not in session, the President is required to immediately convene an extraordinary session of the Seimas. The Seimas must then either approve or overturn the President's decision.

Oversight: The Seimas exercises oversight of emergency measures through legislation and parliamentary committees to ensure that the executive actions taken during the emergency are appropriate and proportional. This includes monitoring any restrictions placed on civil liberties.

The President of the Republic

The President of Lithuania plays a critical role, particularly in situations where immediate action is required.

Its powers include:

Declaring a state of emergency in urgent cases: If the Seimas is not in session and a threat arises, the President can unilaterally declare a state of emergency. After declaring an emergency, the President is obligated to convene an extraordinary session of the Seimas to review and approve the decision.

Military command during martial law: In cases of external threats or armed conflict, the President is the Commander-in-Chief of the Armed Forces and is responsible for decisions related to martial law and military defence. In such cases, the President can impose martial law and seek subsequent approval from the Seimas.

The Government

The Government of Lithuania plays a vital role in the implementation of emergency measures.

Its responsibilities include:

Crisis management and coordination: The Government is responsible for managing the practical response to emergencies, including natural disasters, technological accidents, public health crises, or threats to national security.

This involves coordinating efforts between different ministries, agencies, and local authorities.

Declaration of emergency situations: In cases that involve public safety, such as natural disasters or public health emergencies, the Government can declare an emergency situation (lt. *extremali situacija*) and activate the relevant legal and administrative mechanisms for managing the crisis.

Enacting special measures: During a state of emergency or emergency situation, the Government is responsible for implementing special measures, such as the mobilization of resources, imposing restrictions (e.g., curfews, quarantines), and managing civil protection and law enforcement actions.

Reporting to the Seimas: The Government is required to report to the Seimas on the progress and effectiveness of emergency measures. It is accountable for the execution of emergency-related policies and must ensure that measures comply with the legal framework established by the Constitution and laws.

The Courts

The judiciary, particularly the Constitutional Court of Lithuania and ordinary courts, plays an important role in ensuring that emergency measures comply with the Constitution and the rule of law.

Their responsibilities include:

Reviewing the constitutionality of emergency measures: The Constitutional Court can review laws and governmental actions taken during a state of emergency to ensure they do not violate constitutional rights or overstep the boundaries of the emergency declaration.

Protection of fundamental rights: Courts ensure that any restrictions on civil rights and freedoms during a state of emergency (as provided for in Article 145 of the Constitution) are proportional, necessary, and legally justified.

Adjudication of disputes: Individuals or entities affected by emergency measures may challenge these actions in court. The judiciary can rule on the legality of specific measures, such as property seizures, restrictions on movement, or other limitations imposed during the emergency.

Question 3

Lithuania is a unitary state, meaning that the central government holds most of the decision-making power, including during situations of emergency. However, regional and local authorities still play a significant role in the implementation of emergency measures, even though Lithuania does not have separate regional legislative frameworks like in decentralized states.

Question 4

In Lithuania, the relationship between domestic law, including constitutional provisions, and EU or international law is shaped by both the Constitution and Lithuania's commitments as a member state of the European Union and international legal order. When a situation of emergency is triggered under domestic law, there could potentially be conflicts between national constitutional provisions and EU law or international obligations. Here's how these conflicts would typically be resolved, including specific constitutional provisions and relevant precedents in Lithuanian case law.

Constitutional Provisions on EU and Supremacy of International Law

The Constitution of Lithuania contains several provisions that outline the status of international and EU law in relation to national law:

- Article 135 of the Constitution states that Lithuania shall comply with universally recognized principles of international law and that the country shall follow its international obligations.
- Article 138 establishes that international treaties ratified by the Seimas (Parliament) form part of the Lithuanian legal system and have the force of law. This means that international agreements, once ratified, must be respected by Lithuanian authorities, even during emergencies.
- Article 149 provides the possibility of temporarily restricting certain constitutional rights during a state of emergency or martial law, but these restrictions must comply with Lithuania's international obligations, particularly regarding human rights protections.

While the Constitution does not explicitly state that EU law takes precedence over national constitutional provisions, Lithuania's accession to the EU and its participation in the EU legal order implies adherence to the principle of primacy of EU law, which means that EU law takes precedence over conflicting national laws, including constitutional provisions, where relevant.

Conflict Resolution between Domestic Law and EU Law

If a conflict arises between Lithuanian constitutional provisions and EU law, the following mechanisms would be used to resolve it:

- **Primacy of EU Law:** As a member state of the European Union, Lithuania adheres to the principle of the supremacy of EU law. This principle, established by the Court of Justice of the European Union (CJEU), means that EU law prevails over conflicting national laws, including constitutional provisions, in areas covered by EU competence. Therefore, if the implementation of an emergency measure under domestic law conflicts with an obligation under EU law, the Lithuanian authorities must ensure that EU law is followed.

- **The Role of the Constitutional Court:** The Constitutional Court of Lithuania plays a crucial role in resolving conflicts between national law and Lithuania's obligations under EU or international law. The court reviews national laws, including emergency measures, for compliance with the Constitution, which includes the obligation to respect international agreements and EU law. The Constitutional Court has previously confirmed that Lithuania's participation in the EU requires respect for the supremacy of EU law in its rulings.
- **Preliminary Rulings of the CJEU:** In the case of uncertainty regarding the interpretation of EU law during an emergency, Lithuanian courts may refer questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling. This mechanism helps ensure the uniform application of EU law across member states, including in Lithuania, even in emergency situations.

Conflict Resolution between Domestic Law and International Law

For conflicts between Lithuanian law and international law (outside the scope of EU law), the resolution is guided by the following principles:

- **International Treaty Obligations:** Under Article 138 of the Constitution, international treaties that Lithuania has ratified are part of domestic law. During emergencies, the Lithuanian Government is still required to uphold its international treaty obligations, particularly in areas such as human rights (e.g., the European Convention on Human Rights) and humanitarian law.
- **Judicial Review:** Lithuanian courts, including the Constitutional Court, can review whether emergency measures violate international law, particularly in cases involving human rights. International agreements, particularly those related to fundamental rights, must be respected even when domestic emergency powers are invoked.
- **European Court of Human Rights (ECHR):** In cases where emergency measures conflict with human rights obligations under the European Convention on Human Rights (ECHR), affected individuals can bring claims before the European Court of Human Rights (ECtHR). Lithuania is required to implement the judgments of the ECtHR, which can override national law, including emergency measures, if they are found to violate international human rights obligations.

Specific Provisions or Relevant Precedents

While there are no explicit constitutional provisions detailing a procedure for resolving conflicts between constitutional emergency provisions and EU or international law in Lithuania, several court precedents and legal principles help address this issue:

- **Constitutional Court Rulings on EU Law Supremacy:** The Constitutional Court of Lithuania has acknowledged the primacy of EU law over domestic

law in several rulings. For instance, in cases involving EU legal acts and domestic legislation, the court has ruled that Lithuanian authorities must ensure the full and effective application of EU law, even when this involves setting aside conflicting national provisions, including constitutional ones.

- **International Human Rights Obligations:** Lithuania's courts have also recognized that international human rights treaties, such as the European Convention on Human Rights, take precedence over domestic law during emergencies. Courts have struck down emergency measures that violate these international obligations, particularly when they affect fundamental rights such as the right to life, freedom of movement, or freedom of expression.

Precedents in National Case Law

One relevant case involves emergency measures taken during the Covid-19 pandemic. During this crisis, the Lithuanian Government imposed strict measures to contain the virus, including restrictions on movement and public gatherings. These measures were challenged in court on the grounds that they infringed on constitutional rights. The Lithuanian courts reviewed these challenges by assessing the balance between the constitutional right to public health and the right to individual freedoms, while ensuring compliance with Lithuania's international obligations, including the EU Charter of Fundamental Rights.

Question 5

In Lithuania, fundamental rights are protected during emergencies through a combination of constitutional provisions, legislation, judicial review, and non-judicial oversight bodies. The Constitution and laws ensure that restrictions on rights are proportional, necessary, and temporary. Courts, including the Constitutional Court, provide the primary mechanism for ensuring that emergency measures respect these principles, while bodies like the Seimas Ombudsman and the Equal Opportunities Ombudsperson provide additional protection and monitoring.

This system is designed to prevent the abuse of emergency powers while ensuring that the government can respond effectively to crises, safeguarding both public safety and individual freedoms.

Constitutional and Legislative Provisions for Protecting Fundamental Rights during Emergencies

Lithuania's Constitution and specific legislation set clear limits on how far emergency measures can go in restricting fundamental rights. Key provisions are outlined below:

Constitutional Provisions

- **Article 145 of the Constitution:**

- This article specifies that during a state of emergency or martial law, certain fundamental rights may be temporarily restricted. However, these restrictions are subject to strict legal boundaries, ensuring that emergency measures do not completely override fundamental rights.

The rights that may be restricted include: The right to private life (Article 22); The right to property (Article 24); The right to freedom of expression (Article 25); The right to freedom of movement (Article 32); The right to freedom of association (Article 35); The right to freedom of assembly (Article 36)

Restrictions must be proportional, necessary, and temporary in nature, meaning that they can only be applied as long as they are needed to manage the emergency.

- **Article 144 of the Constitution:**

This article allows the Seimas (Parliament) or the President to declare a state of emergency when a serious threat arises to the constitutional system or social peace. However, this declaration must comply with Lithuania's international obligations, including human rights conventions.

Legislative Framework

The Law on State of Emergency and the Law on Crisis Management and Civil Protection provide detailed guidance on how emergencies are handled. These laws include provisions on the scope of powers that can be exercised by the government during emergencies, but they also reinforce constitutional protections for fundamental rights.

- **Necessity and Proportionality:**

Emergency measures must meet the criteria of necessity and proportionality. This means that they should only be implemented to the extent required to deal with the emergency and should be limited in duration and scope.

- **Judicial Review:**

Both laws provide for the review of emergency measures by the judiciary, ensuring that any restrictions on fundamental rights can be challenged in court.

Role of the Courts in Protecting Fundamental Rights

While the Constitution and laws provide the framework, the courts are essential in interpreting and enforcing these protections during emergencies. The Lithuanian courts, including the Constitutional Court, ensure that emergency measures comply with constitutional provisions and fundamental rights.

- **Constitutional Court of Lithuania:**

The Constitutional Court has the power to review the constitutionality of laws and government actions, including those implemented during a state of emergency. It ensures that emergency measures do not violate constitutional rights, especially the principle of proportionality. The Court has previously addressed cases where emergency measures were challenged on the grounds of excessive restrictions on individual freedoms. For example, measures during the COVID-19 pandemic were reviewed to ensure compliance with fundamental rights protections.

- **Ordinary Courts:**

Individuals affected by emergency measures can challenge the legality of these measures in ordinary courts. These courts can assess whether restrictions imposed under emergency law are necessary and proportional in light of the constitutional guarantees of fundamental rights.

- **Right to Appeal to International Courts:**

In cases where domestic legal remedies are exhausted, Lithuanian citizens may appeal to international courts, such as the European Court of Human Rights (ECtHR), if they believe their rights under the European Convention on Human Rights have been violated by emergency measures.

Specific Non-Judicial Bodies Entrusted with Protecting Fundamental Rights

In addition to the courts, several non-judicial bodies in Lithuania are tasked with overseeing the protection of fundamental rights during emergencies. These institutions ensure that the government's actions are subject to independent scrutiny.

The Seimas Ombudsman's Office (lt. Seimo kontrolieriai)

The Seimas Ombudsman's Office is an independent body responsible for investigating complaints of human rights violations by public authorities, including during emergencies. The Ombudsman can investigate whether emergency measures imposed by the government infringe on individual rights and can issue recommendations to ensure compliance with fundamental rights protections. The Ombudsman's Office plays a crucial role in monitoring public in-

stitutions, particularly during states of emergency, to prevent abuses of power and ensure that fundamental rights are respected.

The Equal Opportunities Ombudsperson (lt. Lygių galimybių kontrolierius)

The Equal Opportunities Ombudsperson ensures that emergency measures do not lead to discrimination based on gender, age, disability, or other protected characteristics. During emergencies, the Ombudsperson can review complaints about discriminatory practices and ensure that vulnerable groups are not disproportionately affected by emergency measures.

The State Data Protection Inspectorate (lt. Valstybinė duomenų apsaugos inspekcija)

During states of emergency, particularly in public health emergencies such as the COVID-19 pandemic, the Data Protection Inspectorate oversees how personal data is collected and used. This body ensures that emergency measures, such as contact tracing or health surveillance, comply with data protection laws, safeguarding citizens' right to privacy.

International Obligations as a Safeguard

Lithuania is bound by international treaties, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), both of which provide safeguards for the protection of fundamental rights during emergencies.

Article 4 of the ICCPR allows for temporary derogation from certain rights during a state of emergency, but non-derogable rights such as the right to life and freedom from torture must always be protected. Lithuania's international human rights commitments ensure that even during emergencies, fundamental rights are upheld in line with European and international standards.

Question 4

The best-known precedent was emergency situation regarding a mass influx of foreigners on the border of Lithuania. CJEU had also had to issue a preliminary ruling on this emergency. Answers below will describe it in more details.

Section 3: Statutory/executive emergency law in the Member States

Question 1

In the face of increasing national and international challenges, Lithuania has recognized the necessity of a robust and adaptable legal framework to manage emergencies effectively. Recent amendments to various laws reflect a comprehensive approach to addressing public health crises, environmental concerns, cybersecurity, immigration, and national security during emergencies. By integrating lessons learned from past crises, such as the COVID-19 pandemic and the migration crisis, Lithuania aims to create a resilient system capable of responding swiftly to emergencies. The following analysis outlines the essential components of this legal framework, highlighting their significance and any peculiarities that may apply to specific policy-oriented areas.

As mentioned in Section 1, the legal framework for state of emergency (lt. *nepaprastoji padėtis*) is created by the provisions of the Constitution and the Law on State of Emergency. This Law establishes the grounds and procedures for declaring a state of emergency, temporarily restricting the rights and freedoms of individuals, temporarily limiting the activities of legal entities, the temporary powers of state and municipal institutions during a state of emergency, as well as the legality control of these institutions' activities and the procedure for lifting the state of emergency.

The general legal framework for the prevention of crises and emergency situations (lt. *ekstremalioji situacija*), preparedness for such situations, and their management is established in the Law on Crisis Management and Civil Protection. This law defines the concept of an emergency situation and stipulates that, under the conditions and procedures established by the law, during an emergency, a person's rights – such as freedom of movement, property and home inviolability, economic activity freedoms, provision of public and administrative services, and the right to strike – may be temporarily restricted.

Seeking to ensure effective governance across a wide range of sectors, the legal framework is further enhanced by **specialized regulations** tailored to specific policy areas:

Public Health

Management of Emergency Situations and Use of Unregistered Medicines: The Minister of Health is granted the authority to temporarily allow unregistered medicines to be supplied when there are threats from dangerous pathogens, chemicals, toxins, or ionizing radiation. This is particularly

important during emergencies or quarantine. Lessons from the COVID-19 pandemic highlighted the need for rapid use of medicines without adhering to full registration formalities, provided the therapeutic indications and dosages are scientifically justified. The new amendments to the *Pharmaceutical Law* gave the Minister even more flexibility to recommend and mandate the use of medicines in emergency situations.

Management of the Compulsory Health Insurance Fund Resources: The legal framework set out in the *Law on Health Insurance* was amended to establish that the budget of the Compulsory Health Insurance Fund can be utilized for non-reimbursed expenses arising from emergency situations. In cases where funds are inadequate, provisions allow for the withdrawal of resources from the budget reserve designated for risk management. Additionally, during emergencies or quarantine, specific individuals may be excused from paying health insurance contributions, with the requirement that any outstanding amounts are to be paid later in accordance with established regulations.

Employee Health Checks: Under the *Law on the Prevention and Control of Infectious Diseases*, workers engaged in certain activities are required to undergo regular health checks for infectious diseases, especially during a state-level emergency or quarantine. In the event of an outbreak at the workplace, employees may be mandated to undergo health screenings, and employers must implement specified control measures. In addition, when the government declares a state-level emergency or quarantine in Lithuania due to an infectious disease, employees must provide their employers with a document from the Minister of Health. This document must confirm that the employee has either tested negative for the disease, been vaccinated against it, cannot be vaccinated for medical reasons, or has previously recovered from the disease.

Employer and Employee Responsibilities during Emergencies: Under the *Law on the Prevention and Control of Infectious Diseases*, when the government declares a state of emergency or quarantine, employers may require documentation confirming employees' health checks or vaccinations. Employers are permitted to process this information only during the period of the emergency, and they must provide the necessary information to regulatory authorities. In addition, individuals suspected of having or diagnosed with dangerous infectious diseases, cannot continue working in specific jobs or at certain workplaces until they receive permission from their doctor. However, this rule does not apply if they work remotely or if they are reassigned to a different job within the same workplace that is safe for their health.

Social Security

Benefits for Self-Employed Individuals: *Under the Law on Employment*, the benefits for self-employed individuals during emergencies or quarantine aim to provide financial support to those whose economic activities are restricted. Eligible individuals can receive monthly payments equivalent to the minimum consumption needs amount if their income has significantly decreased and they meet specific criteria. This support helps sustain their livelihoods during challenging times while ensuring they can comply with public health measures.

Health and Parental Benefits: The amendments to *the Law on Sickness and Maternity Social Insurance in Lithuania* introduced specific provisions for sickness benefits during emergency situations or quarantines declared by the government. Key changes include provisions for calculating sickness benefits based on a percentage of the employee's compensatory income for individuals engaged in professional activities that require contact with contagious diseases. The law also outlines benefits for caregivers of children or individuals with disabilities during these times, as well as provisions for those affected by mandatory isolation due to travel or exposure to infectious diseases. The updated regulations aim to provide financial support and clarify eligibility criteria for various groups affected by emergencies and health risks.

Social Housing: In the context of social housing, the Lithuanian legislator and government have implemented measures to ensure the stability and accessibility of housing for vulnerable populations during emergencies. *The Law on State Support for the Acquisition or Rental of Housing* sets out that individuals and families, even if their income or asset levels exceed the usual thresholds, can remain on the list of social housing applicants until June 1 of the following year after the declaration of a state-level emergency or quarantine. This provision helps prevent homelessness and ensures that those in need can access affordable housing options.

Disability Protection: The updated legal framework, set out in *the Law on the Fundamentals of Protection of the Rights of Persons with Disabilities*, guarantees the rights of individuals with disabilities, ensuring that their protection cannot be revoked solely due to an emergency. For example, individuals with disabilities are entitled to have a family member or chosen person accompany them during healthcare services, ensuring that this right remains intact even amid emergencies or quarantines.

Environmental Protection

Environmental Protection during the Declaration of an Emergency Energy Situation or Emergency Situation: The legal framework, set out in *the Law on Environment Protection*, establishes critical provisions for managing economic activities during declared energy emergencies. During emergencies, certain exceptions apply to the exploitation of economic activity objects. Specifically, individuals or legal entities involved in operating these objects may temporarily be exempt from the conditions outlined in their permits and environmental regulations. This flexibility is essential for effectively managing and mitigating the impacts of declared emergency energy situations or state-level emergencies. The specific temporary conditions under which economic activity objects may be operated are determined by the relevant crisis management and civil protection provisions. These exceptions are not intended to be applied more broadly or for longer durations than necessary. Operators must still implement all feasible measures to reduce negative effects on the environment and public health. In addition, any decisions regarding the temporary exploitation conditions must be reported to the Ministry of the Environment within ten working days. The Ministry is then responsible for informing the European Commission when required by EU environmental legislation. The amendments to the legal framework, enacted in 2022 and 2024, reflect ongoing legal and administrative adjustments in Lithuania's approach to managing emergency situations effectively.

Air Quality Management: *The Law on Air Quality Protection* states that when pollutant concentrations in the air reach or exceed threshold levels, this is classified as an emergency event. The public is promptly warned and informed about the potential threats to health and the environment, and necessary actions are taken to manage the situation according to the provisions of the Law on Crisis Management and Civil Protection. This proactive approach to environmental management underscores the importance of maintaining ecological integrity and public health, particularly in crisis situations where operational flexibility may be needed. The law mandates swift communication and action to address air quality concerns, reflecting Lithuania's commitment to environmental protection, even amidst emergencies.

Emergency Energy Situation

Declaration of an Emergency: An emergency energy situation is declared when there is a significant reduction in the supply of electricity, natural gas, oil products, or heat, posing threats to public safety, health, or the functioning of the national economy. This situation necessitates a coordinated response from various entities, including energy companies and government authorities, to

ensure effective management and communication during crises. In such emergencies, the government or designated authorities may impose restrictions on the supply of energy resources to consumers. As provided for by *the Law on Energy*, energy companies are protected from liability for damages incurred by consumers due to these supply limitations. It is essential that these restrictions minimally disrupt the domestic market's functioning and are only applied as necessary to manage the emergency. The government is obligated to inform other EU member states and the European Commission about the measures implemented in response to the emergency. The European Commission may recommend modifications to these measures to avoid distorting competition or adversely affecting trade.

Responsibilities of Energy Companies: *The Law on Energy* sets out that when faced with an emergency, energy companies must notify the Ministry of Energy and local government authorities about any supply reductions and the measures being taken to restore energy services. These companies are expected to prioritize domestic consumers' needs, particularly those critical to national security, such as civil safety forces.

Natural Gas: *The Law on Natural Gas* mandates that gas companies prepare for supply disruptions and implement preventive management plans, allowing the government to enforce the use of gas storage facilities during emergencies. Gas companies must also assess future demand and provide security reports, and they have the right to interrupt supply without notice if consumer actions threaten system safety or if an emergency arises.

Nuclear Energy: Emergency management provisions, set out in *the Law on Nuclear Energy*, stipulate that the operation of a nuclear energy facility can be suspended in the event of emergencies, such as a nuclear or radiological accident, initiated by the operating organization, the State Nuclear Power Safety Inspectorate, or the government. Accident management mandates that the license holder is responsible for managing nuclear and radiological accidents and mitigating their consequences, while the government and other state institutions are accountable for alleviating the effects beyond the sanitary protection zone. Protection measures require state and municipal authorities to implement the requirements set by the Ministry of the Interior for the protection of residents.

Cybersecurity

Under *the Law on Cybersecurity, Privacy & Data Protection* (effective from October 18, 2024), a robust framework has been established to ensure crisis management in cybersecurity. The National Cyber Security Center (NCSC) is

tasked with overseeing the preparedness of cybersecurity entities, various institutions, and economic operators. In the event of a cybersecurity incident, these entities will be assigned critical tasks to manage the situation effectively. The NCSC is also responsible for developing a cybersecurity exercise plan aimed at preparing organizations for potential crises. These exercises, alongside regular training sessions, ensure that both public and private sector entities are well-prepared to respond to emergencies in the cyber domain, thereby safeguarding national security and mitigating the risks of significant data breaches or service disruptions. The legal provisions, while addressing national-level cybersecurity preparedness, also contribute to the broader implementation of Directive (EU) 2022/2555 (NIS2), enhancing the overall resilience of essential services across Europe.

Taxes

While the typical legislative process for tax laws includes a waiting period to allow taxpayers to adjust, exceptions are made in emergencies to facilitate prompt action in response to urgent national needs as provided for in *the Law on Tax Administration*.

Immigration

The Law on Legal Status of Aliens includes a significant separate Section X2, specifically addressing its application during states of war, extraordinary situations, or emergencies caused by mass migration. In response to a declared national emergency due to a mass influx of foreign nationals, the Government of Lithuania, upon the National Security Commission's recommendation, may prohibit entry to individuals attempting to cross the state border at unauthorized locations or violating established border-crossing procedures. This restriction applies individually to each foreign national, but exceptions are made for those fleeing armed conflict, persecution (as defined by the Refugee Convention), or seeking humanitarian entry, reflecting the state's commitment to international human rights obligations. Individuals in the border area who violate these rules are not considered to be within Lithuanian territory, and for those denied entry, an assessment of their need for assistance must be conducted, ensuring they receive necessary immediate medical or humanitarian aid.

Public Information

The Law on Public Information establishes a duty to disseminate warning messages during impending or existing emergency situations, such as mobilization, war, or extraordinary circumstances. In such cases, public information pro-

ducers and disseminators are required to promptly publish warning messages from state and municipal institutions free of charge or provide opportunities for these institutions to broadcast warnings directly. The Fire and Rescue Department under the Ministry of the Interior is responsible for determining the protocol for disseminating these warnings, ensuring accessibility for individuals with disabilities. Additionally, during wartime or extraordinary situations, the Seimas (Parliament) may impose restrictions and obligations on public information providers to protect the interests of citizens and society. Failure to comply with these obligations may lead to legal consequences. Furthermore, in emergencies, the government prioritizes funding projects aimed at enhancing public information security and resilience, as outlined in the rules established for projects financed by the special fund.

Electronic Communications

The Law on Electronic Communications outlines essential provisions for ensuring communication during extraordinary circumstances that pose threats to human life, health, or security. Under special circumstances, mobile communication service providers must supply the Ministry of Foreign Affairs with information necessary for consular assistance, including the number of users present in the foreign state. Furthermore, the government has the authority to mandate electronic communications providers to maintain and secure communication networks crucial for public safety and order during emergencies, including preparing for national mobilization. Providers must prioritize emergency communications and ensure uninterrupted access to emergency services while also being responsible for maintaining the flow of public warnings. Additionally, the Law stipulates that electronic communications networks must support emergency communications involving international authorities and organizations, thereby underscoring the importance of reliable communication systems in crisis situations. It is explicitly forbidden to transmit false or misleading emergency signals, and information classified as state or service secrets must not be transmitted over unsecured radio communications.

State Information Resources

The Law on Management of State Information Resources establishes crucial guidelines for the use of data centers, particularly in the context of emergencies such as wartime, states of emergency, or other crises. According to Article 45, entities must maintain copies of state information resources, which are designated for accessibility during such emergencies, not in data centers located within Lithuania but rather in private data centers situated in other EU member states, EEA countries, or NATO member states, as approved by government resolution. In cases where access to these resources is compromised

or their functionality is disrupted within Lithuania, recovery procedures must be implemented using the copies stored in these designated foreign data centers, following the state's information resource continuity management plans. Additionally, Article 10 grants the government the authority to approve a list of state information resources that must be available during crises and to outline the procedures for maintaining and restoring these resources from copies kept in foreign data centers. This legal framework emphasizes the importance of safeguarding state information in times of crisis and ensuring its swift recovery to maintain operational continuity.

Public Procurement

The Law on Public Procurement outlines specific provisions for handling procurement during crises, such as mobilization or emergencies, emphasizing national security. It allows public contracting authorities to reject proposals if suppliers are linked to high-risk countries or if the goods originate from these territories. The law also permits non-public negotiation methods in urgent situations where standard timelines are impractical, ensuring timely access to necessary resources. Suppliers must comply with national security assessments to remain eligible for procurement, reflecting the law's aim to balance efficient procurement practices with the imperative of safeguarding national security.

EU Structural Funds

Emergency provisions under *the Rules for the Administration and Financing of Projects* approved by the Minister of Finance were established to provide a framework for managing and funding projects during the COVID-19 crisis, ensuring that project implementers can adapt to new conditions while maintaining compliance with legal and financial requirements. The rules emphasize flexibility, remote operations, and the eligibility of specific expenses related to the pandemic.

Question 2

The Constitution establishes a broad framework for safeguarding human rights and ensuring national well-being, including public health and national security. It also outlines key provisions related to states of emergency, while legislative and executive rules provide the detailed procedures and operational measures that authorities must follow during such crises.

While the Constitution and legislative/executive rules are designed to work in harmony, doubts about their compatibility may arise in specific situations, as illustrated by the following constitutional cases regarding the COVID-19 crisis.

One notable example is the ruling by the Constitutional Court of the Republic of Lithuania on June 21, 2022, concerning **the authority of the National Public Health Center (NPHC) to impose mandatory infectious disease control measures**. This case questioned the emergency powers of the government. The Court emphasized that the measures established by the legislator for controlling infectious diseases can be detailed in subordinate legal acts, which aim to outline the implementation procedures. It noted that the establishment and implementation of these measures require specific knowledge and professional competence. By regulating these control measures, the legislator also exercised its discretion to designate a competent state authority responsible for public health, confirming that the NPHC is the designated institution entitled to assign mandatory infectious disease control measures under the specified circumstances. The Court affirmed the necessity of ensuring that any restrictions on individual freedoms align with constitutional rights, such as the constitutional right to suitable, safe, and healthy working conditions.

The same position was reaffirmed by the ruling of the Constitutional Court of the Republic of Lithuania dated October 12, 2022, regarding **the delegation to the government to specify areas where employees confirmed to be free of infectious diseases are allowed to work, as well as the suspension from work** of those who have not been confirmed. In this case, the Constitutional Court ruled that the legislator did not delegate to the government the authority to establish legal regulations that can only be set by law, but instead created conditions to implement the requirement established in the law for employees to undergo mandatory health checks. This included specifying the work and activity areas where this requirement applied due to the higher risk of infectious disease spread, as well as regulating the implementation procedures and procedural relationships related to this requirement.

On January 24, 2023, the Constitutional Court ruled on **the limitation of economic activity freedom following the declaration of quarantine**. The Court emphasized that fundamental conditions and restrictions impacting economic activities must be established by law. The Court stressed that the government must operate within constitutional and legal frameworks and cannot exceed its authority (act *ultra vires*). Any measures must be temporary and subject to continuous review. The Court noted that health protection is a state responsibility, especially during crises like the COVID-19 pandemic. Ultimately, it determined that the government was justified in implementing restrictions to protect public health.

This stance was reiterated in the Constitutional Court's May 31, 2023 ruling, which addressed **government-imposed restrictions on the number of close contacts in indoor spaces during quarantine**. The Court reaffirmed that,

under the Constitution, a legal framework may permit the legislator's measures to control infectious diseases to be further detailed in subordinate legal acts, specifying the scope, duration, and implementation of the chosen measures. The Court also emphasized that the imperative to prevent and control infectious diseases that create an exceptional situation in the state – threatening the health and lives of many – may require urgent and decisive action to safeguard public health interests.

On October 4, 2023, the Constitutional Court of Lithuania ruled on the constitutionality of **the health certificate**, which allowed in-person services, economic activities, and events only for individuals meeting certain criteria. These criteria included vaccination with authorized COVID-19 vaccines, a negative COVID-19 test result, or recovery from the disease, while others faced restrictions to specific services. The Court reaffirmed that emergency measures must be temporary and continuously reviewed for necessity. The Court found the regulation did not violate legal state principles or disproportionately infringe on privacy rights.

The constitutional justice cases discussed did not directly establish incompatibility between the constitutional and executive frameworks. However, they provided significant criteria for how governmental powers should be exercised during emergencies. In Lithuania, it was the migration crisis – not the Covid-19 crisis – that ultimately revealed the conflict between constitutional provisions and legislative measures.

On 7 June 2023 the Constitutional Court ruled on **the temporary accommodation of asylum seekers in the foreigners registration center due to a mass influx of foreigners** under an emergency situation. In this constitutional justice case, the Constitutional Court considered Articles 144 and 145 of the Constitution, which allow for the declaration of a state of emergency and the temporary limitation of certain rights. However, such limitations can only apply to specific rights explicitly listed in the Constitution. The Court established that declaring a state of emergency or extraordinary situation does not automatically warrant the restriction of all individual rights, particularly the inviolability of personal freedom. The Court also took into account the standards established in European Union law and international legal acts concerning the restrictions on the rights of asylum seekers. It noted that the contested legal regulation aimed to ensure public order and border security, but any restriction on personal freedom must be based on individual circumstances and specific conditions. The Court emphasized that simply declaring an emergency due to a mass influx of foreigners cannot justify the application of the strictest restrictive measures on all asylum seekers, as this could be equated to detention. Moreover, there must be a provision for judicial review

of the legality and justification of such restrictions, as required by the Constitution. Under these circumstances, it was ruled that this legal regulation failed to comply with the constitutional requirement not to restrict individual rights more than is necessary to achieve a legitimate goal. The contested legislation was deemed incompatible with the constitutional provision that guarantees the right to freedom.

Question 3

The constitutional framework in Lithuania necessitates establishing a balance between safeguarding individual rights and ensuring national well-being during emergencies. Throughout the constitutional cases discussed in the response to Question 9, the Lithuanian Constitutional Court consistently upheld the principle that emergency measures must align with the Constitution, remain proportional, and be subject to continuous review:

- The underlying principles of proportionality, necessity, and respect for fundamental rights are widely recognized as essential to the exercise of emergency powers in constitutional jurisprudence.
- The Constitutional Court indirectly ruled that a more stringent standard of judicial review applies when the essence of freedom is not merely restricted but fundamentally negated. In assessing whether the contested legal regulation undermined the essence of economic freedom, the Court examined whether the measures are applied for a limited duration. Furthermore, it may require establishing that compensation for losses incurred due to the declaration of quarantine and the implementation of related measures is provided (for further details, see: ruling of 24 January, 2023).
- The principle of the hierarchy of the legal acts must be respected at all times. The fundamental conditions and restrictions impacting respective human rights and economic activities must be established by the law. The government may only elaborate on the measures established by the legislator in the law for managing crisis through subordinate legal acts. These acts can specify various aspects, including the scope and duration of the chosen measures. These government emergency powers are justified by the need for urgency and effective decision-making, as well as the necessity for specific knowledge or professional expertise.
- According to the Constitution, including the principles of the rule of law and responsible governance, emergency measures can only be applied temporarily. The legal regulation establishing them must be continuously reviewed, with the necessity of their continued application reassessed.

In summary, the Constitutional Court reaffirmed that while the government may take urgent actions to protect public health or manage crises, such as infectious disease outbreaks, these measures must remain temporary, carefully tailored, and grounded in law, ensuring the protection of fundamental rights. It is the responsibility of the legislator to establish proportionate measures that uphold the core values of democracy and human rights, thereby reinforcing the principle that, even in times of crisis, the rule of law prevails.

Question 4

The introduction of emergency measures by the European Union can indeed affect the balance and distribution of power among Member States. However, the extent and nature of this impact depend on various factors. The COVID-19 pandemic exemplified how EU emergency measures can lead to shared responses that might limit national autonomy. For instance, vaccine procurement and distribution were coordinated at the EU level, which, while effective, also meant Member States had to conform to EU strategies and priorities.

While EU emergency measures can enhance collective response capabilities and improve efficiency in crisis situations, there are instances when national institutions may wish for more swift and flexible measures that align more closely with their national interests. For these reasons, EU emergency rules are not always activated as a first resort. For example, in Lithuania, national measures implemented during migration crises often prioritized national security considerations over the coordinated approaches advocated by the EU legal framework on migration, as illustrated in the case of ECJ C-72/22 PPU.

Ultimately, the overall impact of EU emergency measures is variable, shaped by the specific context of the measures, the legal frameworks invoked, and the prevailing political dynamics.

Section 4: Judicial review of emergency powers in the Member States

Question 1

Different courts in Lithuania have jurisdiction to hear actions challenging situations of emergency. It depends on the applicants and specific applications. In most cases administrative courts would have jurisdiction to hear such cases. The administrative courts hear disputes in the field of public administration. For instance, administrative courts hear many administrative cases concerning state of emergency on the border of Lithuania due to the threat posed by

the mass influx of migrants or heard many administrative cases regarding different restrictions during COVID-19 pandemic.

The Constitutional Court examines a case only when the subjects prescribed by the Constitution address the Constitutional Court with a petition requesting for the determination of the conformity of a law or a legal act with the Constitution. The right to file a petition with the Constitutional Court for an investigation into the constitutionality of a legal act is vested in: (1) the Government, a group of not less than 1/5 of all the members of the Seimas, and courts concerning a law or another act adopted by the Seimas; (2) a group of not less than 1/5 of all the members of the Seimas and courts concerning an act of the President of the Republic; and (3) a group of not less than 1/5 of all the members of the Seimas, courts, and the President of the Republic concerning an act of the Government. The right to file a petition with the Constitutional Court concerning the constitutionality of all above-mentioned legal acts is also granted to every person if he or she believes that a decision adopted on the basis of such a legal act has violated his or her constitutional rights or freedoms, and the person has exhausted all legal remedies. A petition concerning the violated constitutional rights or freedoms may be filed with the Constitutional Court not later than within 4 months of the day that the final and non-appealable decision of the court came into force.

For instance, on 31st of May 2023 the Constitutional Court rendered the ruling on individual petition “On limiting the number of persons having close contacts in enclosed spaces following the declaration of quarantine.” The Court found no violation to the Constitution on this question.

Courts of general jurisdiction have jurisdiction to hear cases concerning criminal or administrative offences during situations of emergency or hear cases out of civil liability or labour disputes which arise out of situations of emergency.

Question 2

In laws on situations of emergency, there are no specific procedural rules. General procedural rules set in the Law on Constitutional Court or Law on Administrative proceedings or Codes on Civil Procedure or Criminal Procedure. There is no general rule that such cases are heard according to the procedure of urgency. The court itself can decide to hear such cases urgently. So far there have not been such cases.

It can be mentioned that Supreme Administrative Court asked CJEU to apply urgent preliminary ruling procedure in a case regarding rights of

aliens during state of emergency. CJEU applied such procedure in a case C-72/22 PPU.

Only the Law on the Legal Status of Aliens state that an alien who has received a decision to withdraw the residence permit issued to him or his right to live in the Republic of Lithuania or to withdraw the refugee status, additional or temporary protection granted to him, has the right to appeal it to the Regional Administrative Court within 14 calendar days from days of service of decision. The hearing of the case regarding the withdraw of the residence permit or the right to reside in the Republic of Lithuania, refugee status, additional or temporary protection in the Administrative Court of Regions must be finished and the judgment must be rendered no later than 2 months from the date of receipt of the complaint. The same rules are applied for the appeal procedure in the Supreme Administrative Court of Lithuania.

Question 3

There is no specific legal regulation and no specific court practice on this question in Lithuania. Usually, the courts review the actions of public authorities taken into account the specific situation at the time of adopting a legal act.

For instance, The Constitutional Court in the ruling of the 24th January 2023 “On the restriction of freedom of economic activity following the declaration of quarantine” was noted that “the contested legal regulation established in the Resolution was established after assessing the general unfavourable epidemic situation of the COVID-19 disease and the threat and trends of the spread of this disease, as well as based on the special information available at the time and taking into account the situation novelty and unpredictability. After assessing this, there was reason to believe that such a situation could arise where, if effective measures were not taken in time, irreparable damage would be caused to the values enshrined in the Constitution, among other things, to people’s health and life.”

It can be noted that in quite many cases related to the COVID-19 emergency, the courts have been lenient with the legislator and interpreted minor flaws in the legislation in favour of the legislator. More flexibility is usually allowed in such cases. For instance, the Constitutional Court in the ruling of the 21st of June 2022 “On the right of the National Public Health Centre to assign binding measures to employees for the control of communicable diseases in humans” said that the powers to impose other measures for the control of communicable disease laid down in the impugned legal regulation may be exercised by the National Public Health Centre only temporarily, that is, until the outbreak of a communicable disease has been contained or the state-level

emergency situation and/or quarantine declared for that disease have/has been lifted. The Constitutional Court made a conclusion that the impugned legal regulation did not violate the requirement, stemming from the provision “Everyone may freely choose a job or business” of paragraph 1 of Article 48 of the Constitution that the right of a person to freely choose an occupation may be restricted by means of a law, as well as the constitutional principles of a state under the rule of law and responsible governance.

Question 4

The principle of proportionality plays an important role during the judicial review of actions of public authorities in situations of emergency. It is also a constitutional principle. The principle of proportionality usually is understood in accordance with EU Law and practice of CJEU. Also practice of ECHR on principle of proportionality is important for courts in Lithuania.

For instance, the Constitutional Court in the ruling of the 7th June 2023 on “On the temporary accommodation of asylum seekers in the event of a mass influx of aliens during a declared extraordinary situation, a state of emergency, or a state of war” was stressed that “[t]he jurisprudence of the CJEU notes that national authorities can detain an applicant for international protection only after verifying in each specific case whether such detention is proportionate to the goals pursued; it is prohibited to detain an applicant for international protection without first examining the necessity and proportionality of this measure and without adopting an administrative or judicial decision specifying the factual and legal grounds for his detention.”

Principle of proportionality was one of the grounds for Supreme Administrative Court of Lithuania to ask CJEU for preliminary ruling in an administrative case concerning rights of aliens during the state of emergency because of the influx of migrants to Lithuania. Later the extended panel of judges stressed that the State retains the right to demand applications to be filled out in person and/or at a required place but it cannot utilise this right to hinder or rush the application process for the foreign nationals. This also applies to cases during a state of emergency due to a mass influx of foreigners. Panel of judges stated that having regard to EU law standards, especially principle of proportionality, the fact that an applicant for international protection is staying in the territory of a Member State illegally does not justify detention. Consequently, a third-country national cannot be detained on that basis alone (Case No. A-1091-822/2022).

In a civil case Supreme Court of Lithuania stated that individuals who are at higher risk of contracting COVID-19 is an important factor that should be taken into account when deciding whether to enforce meetings with the child as prescribed, but the mere fact that the child will meet and interact with a parent who does not live with at the same time, directly, it should not be a risk-increasing circumstance in itself. Not allowing the child to communicate with the father only because of the COVID-19 emergency is a violation of the principle of proportionality (Case No. 3K-3-157-916/2021).

Section 5: Implementation of EU emergency law in the Member States

Question 1

There are no specific principles of national law that could prevent from implementing EU measures. Problems mostly arise out of political or social circumstances. It is not always wished to implement EU measures governing situations of emergency in a full manner because of political situation and opinion of society (best example could be immigration situations). Sometimes national security is prioritized over other EU or national rules.

Question 2

Art. 78 (3) TFEU was invoked for Lithuania. Latvia and Poland in year 2021. Many issues arose out of miscommunication between institutions and different views from national and EU institutions. As it has been already mentioned, EU emergency rules are not always activated as a first resort. For example, in Lithuania, national measures implemented during migration crises often prioritized national security considerations over the coordinated approaches advocated by the EU legal framework on migration. On the other hand, technical help of Frontex was very useful.

Many EU legislative measures in the course of the COVID-19 pandemic worked really well. This emergency situation showed that EU measures can be applied quickly and the whole system can react quite flexible and fast. For instance, vaccine procurement and distribution functioned effectively.