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REFERENCING TO CONSTITUTIONAL PREAMBLE IN THE JURISPRUDENCE OF CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

Summary

The research paper presents the analysis of a long time case-law of the Constitutional Court of the Republic of Lithuania (from the beginning of the Court's activities). The author goes into the heart of references made to the preamble of Constitution of the Republic of Lithuania and statements explaining provisions of the preamble of the Constitution (shortly speaking – referencing). The author seeks to identify features of referencing to constitutional preamble, the development of this referencing, answering to questions about peculiarities, directions of this referencing and limits of interpretation of constitutional preamble. The author implements an idea to start the research from examining scientific doctrine, practice of entrenchment of preambles in various constitutions worldwide, travaux préparatoires of the Constitution of the Republic of Lithuania and only then analyses Lithuanian constitutional case-law.

Results of the research approve the assumption of this research only partly. It is confirmed that referencing to the preamble of Constitution of the Republic of Lithuania arises from the preamble being a structural part of the whole Constitution.

The paper also identifies that since the constitutional preamble is a constituent part of the Constitution, referencing to it by the Court is not smooth and the author of the research notices that constitutional jurisprudence on matter of constitutional preamble is developed into a few directions. After thoroughly analysing the most explicated interpretation of striving of the Lithuanian Nation for an open, just, and harmonious civil society and a State under the rule of law, the author ascertains that interpretation of this striving is furcating into a few ways of interpretation. The striving for an open, just, and harmonious civil society and a State under the rule of law is constructed variously as a whole striving (speaking of it not only in a form of a plural, but also in a form of a singular) and also as objectives detached from this whole striving (for example, the striving for an open, just, and harmonious civil society, the striving for an open society) according to the context of interpretation. It is noticed that the striving for an open, just, and harmonious civil society and a State under the rule of law and other constitutional strivings of the Lithuanian Nation are base for frequent future interpretation in the case-law of the Constitutional Court of the Republic of Lithuania also.

The author of the research concludes that development of net of interpretative connections of the analysed striving of the Lithuanian Nation with other constitutional principles and other constitutional values leads to deeper sphere of interpretation of constitutional principles consolidated in the Constitution raising interesting questions about connections of this striving to other constitutional objectives (entrenched in other parts of the Constitution) and about connections between constitutional objectives and constitutional principles.

Eksplicitinis rėmimas Konstitucijos preambule Lietuvos Respublikos
Konstitucinio Teismo jurisprudencijoje

The analysed constitutional case-law shows that the answer to the question whether by referencing only to provisions of the preamble of the Constitution and not referencing to the other constitutional provisions and connections among them it is possible to decide whether the regulation disputed by petitioners in the cases of constitutional justice is not in conflict with the Constitution of the Republic of Lithuania turns to a more negative one.