

## The Constitution's Fiasco

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This article provides insights into the Constitutional Court's judgment on the legislation related to the Mažeikiai oil refinery's privatization, discloses the fallacies of major constitutional provisions and advises on where to go from here.

The people of Lithuania rejoiced. The Constitutional Court ruled that some provisions of the Mažeikiai oil legislation contradicted the constitution. However, a closer look at the court's conclusions turned elation into shame and disappointment.

According to the Constitutional Court's decision, the Lithuanian Parliament did not have the right to pass laws enabling the Lithuanian government to accept essential liabilities and commit itself to covering losses of Mažeikiai oil, even those incurred by Williams. The decision is based on the provision of the Lithuanian Constitution, declaring that "the state shall regulate economic activity so that it serves the general welfare of the people". Since the Court used the same provision to justify such actions as adopting special laws for Mažeikiai, naming its buyer in the law (rather than selecting one on the market) or authorizing non-compliance with general laws (among them as important as competition and privatization laws), there is no way to explain why all this is in line with the general welfare, while compensation of the company's losses is not. If people agree that the right to decide what is good for public welfare is given to those in power, they should not question their decisions. Obviously, it is not the job of the Constitutional Court to decide what's good and what's bad.

Other provisions of the laws were found to be at odds with the Constitutions for one minor fact that the law at one point allows the government to protect large investors from changes to tax laws for a period of five years, while permitting it to extend this term up to ten years by other provisions. There is no difference between allowing protection and allowing its extension, but the Court ruled that only the latter provision was against the Constitution's statement that "Lithuania is a democratic state". Other violation of the Constitution was found in restricting the right of shareholders to grant or otherwise transfer their shares in the Mazeikiai oil, but restricting the sale of shares to, and the maximum number of votes of, anybody except the state and Williams appears to be in line with the Constitution.

Another legitimate question is why the court's decision came only today. The problem is that the Constitutional Court is not obligated to see to it that laws do not violate the constitution unless it has received a petition to investigate one or another law. Besides, the rights to file such petitions with the Constitutional Court are very limited.

In order to avoid the Williams syndrome in the future, it is imperative to change the legislative process so that the creation of any law begins with formulating its conception and substantiating its necessity. In addition to that, every law should be subject to independent expert evaluation, and the parliament should be prohibited from adopting laws that contradict other laws or the constitution. It is equally important to change the constitution itself in order to remove its inconsistencies and discrepancies. By allowing the state to interfere in economic affairs and by setting no limits on such interventions, the constitution contradicts its own declarations on free competition, the immunity of private property as well as freedom of individual economic activity.

As to the Mažeikiai deal, it is in force and should not be revised. Any such attempts would harm Lithuania's investment climate. Besides, according to the agreement, the Lithuanian government would have to bear any costs that may arise from modifications of the agreement. Finally, a revision of the agreement would divert the government's time and efforts from long-awaited reforms - for people's sake.