
LITHUANIAN CONSTITUTIONALISM

THE PAST AND THE PRESENT



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LIETUVOS RESPUBLIKOS KONSTITUCIJA

*Lietuvos Respublikos piliečių
priimta
1992 m. spalio 25 d.
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KONSTITUCIJĄ

The Constitution of the Republic of Lithuania
adopted on 25 October 1992 and its Preamble



FOREWORD

In 2017, Lithuania marks the 25th anniversary of the Constitution. Although the history of the statehood of Lithuania has been recorded for almost eight centuries, the Constitution of the Republic of Lithuania, adopted on 25 October 1992, has remained longest in force in the State of Lithuania. This shows a long and difficult path of Lithuanian constitutionalism, the natural development of which was often interrupted by external forces seeking to destroy the statehood of Lithuania.

The long-established traditions of Lithuanian constitutionalism form the basis of the Constitution of the Republic of Lithuania and are a source of inspiration to its drafters. It is no coincidence that the Preamble of the Constitution refers to the centuries-old history of Lithuania, the centuries-long fight for freedom and independence, and the legal foundations of the state based on the Lithuanian Statutes and the Constitutions.

The publication *Lithuanian Constitutionalism: The Past and the Present* aims precisely to concisely present the foreign reader with the development of Lithuanian constitutionalism from the beginning of the general codification of laws in the 16th century – the First Statute of Lithuania – to the Constitution of the Republic of Lithuania, which is in force in the 21st century and which can be described as a modern jurisprudential Constitution, combining the centuries-old traditions with the current requirements. In this publication, distinguished historians of Lithuanian law and constitutionalists review the most important milestones in the development of the country's constitutionalism, its sources, and the features of the modern jurisprudential Constitution. The analysis provided in their articles makes it easier to understand the texts of the sources of Lithuanian constitutional law (i.e. their translations into English) that are contained in the annexes to this book: from the most significant excerpts taken from the Lithuanian Statute of 1529 to the text of the Constitution of the Republic of Lithuania in force. The publication also includes the texts of the following fundamental constitutional acts of the modern State of Lithuania (i.e. their translations into English): the Act of Independence of 16 February 1918 of the Council of Lithuania, the Declaration of the Council of the Lithuanian Freedom

Fight Movement of 16 February 1949, and the Act of the Supreme Council of the Republic of Lithuania on the Re-establishment of the Independent State of Lithuania of 11 March 1990.

It should be noted that, as is also apparent in this book, Lithuanian constitutionalism emerged and was developed as part of the western legal tradition. The most important sources of western legal thought influenced the content of Lithuanian law. On the other hand, the contribution made by the sources of Lithuanian constitutional law to the development of the western legal tradition is also noteworthy. In this respect, it can be mentioned that, for example, the Lithuanian Statutes of the 16th century are among the best examples of the tendency to codify European law; the Constitution of the common Polish and Lithuanian State – the Commonwealth of Two Nations – of 1791 is the second written Constitution in the world (after the Constitution of the United States of America) and the first written Constitution in Europe; Lithuania was one of the first states in the world to grant women the right to vote (under the Provisional Constitution of 1918); even without being a member of the United Nations, under the fierce Soviet occupation, Lithuania committed to the Universal Declaration of Human Rights just a few months after its adoption (under the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949); the Act on the Re-establishment of the Independent State of Lithuania of 11 March 1990 is an excellent example of the continuity of the state affected by aggression and of the rule of law, unique in that it testifies to the restoration of the independence of the State of Lithuania after five decades of foreign occupation. The modern development of the jurisprudential Constitution in Lithuania also has a lot to contribute to the evolution of constitutionalism in Europe and worldwide: examples include the doctrine of constitutionality of constitutional amendments, as developed by the Constitutional Court of the Republic of Lithuania, and the concept of eternal constitutional clauses, the content and a universal character of the constitutional principle of a state under the rule of law, the principle of the geopolitical orientation of the State of Lithuania, the concept of international law as the minimum standard of the constitutional protection of human rights, etc.

A journey through the history of Lithuanian constitutionalism begins with the article by Prof. Dr. Irena Valikonytė on the childhood of Lithuanian constitutionalism – the Lithuanian Statutes. The tendency to codify law did not bypass Lithuania in the 16th century: as noted above, the Lithuanian Statutes (of 1529, 1566, and 1588) are among the best examples of the then European lawmaking. They did not emerge in a vacuum; the Statutes codified and systematised the then customary law, judicial practice, and the acts of the grand dukes of Lithuania. The Lithuanian Statutes have always been a symbol of the statehood of the country because they continued to form the basis of the national legal system for several hundred years even after the Grand Duchy of Lithuania and the Kingdom of Poland merged into a single state. Most importantly, the Statutes, albeit as a constitution of the rights of boyars, established the constitutional tradition of the state governed by the rule of law and of the protection of the rights of citizens.

The tradition was continued in the above-mentioned Constitution of the Commonwealth of Two Nations of 3 May 1791, which belongs to the first wave of global constitutionalism, being the second written Constitution in the world and the first written Constitution in Europe. It is presented to the readers by Prof. Dr. Jevgenij Machovenko. A constituent part of this Constitution was the Mutual Pledge of Two Nations, guaranteeing the statehood of the Grand Duchy of Lithuania. The Constitution was influenced by the ideas of the French Revolution, in particular by the Declaration of the Rights of Man and of the Citizen of 1789. Although it was the Constitution of contrasts, characterised by rather contradictory provisions, it embodied such principles, characteristic of the state governed by the rule of law, as the separation of powers (the legislative and executive powers were separated) and the separateness and independence of the judiciary; the Constitution was also based on the principles of the sovereignty of the nation and the freedom and equality of citizens, it consolidated the traditions of parliamentarism and local self-government. Thus, although the Constitution still consolidated estate democracy (according to it, the civil nation was composed of only free people – the nobility and townspeople), it was, at that time, a document with a particularly progressive content that had the potential to eventually turn the Commonwealth of Two Nations into a modern constitutional monarchy. In other words, the Constitution would have inevitably strengthened the state and helped it to remove the influence of neighbouring countries. It was for this reason that the Constitution was destined to survive only for one year: the pressure from neighbouring states, in particular Russia's military force, made it necessary to revoke the Constitution, and, shortly afterwards (in 1795), the Commonwealth of Two Nations was dissolved following the partition of its territory. A greater part of Lithuania was assigned to Russia, which was a considerable step backwards from the European ideas of freedom and democracy. The development of Lithuanian constitutionalism was suspended for more than 120 years.

Lithuanian constitutionalism was again revived after the country became independent following the First World War. The Act of Independence of 16 February 1918 of the Council of Lithuania (along with the Resolution of the Constituent Assembly (Seimas) of 15 May 1920 defining Lithuania's form of government as a republic) forms the constitutional foundation of the modern State of Lithuania – the Republic of Lithuania, on which all Constitutions of the Republic of Lithuania must be built on. These two acts have never lost their legal effect and comprise the constitutional foundation of the continuity of the State of Lithuania, on the basis of which the independence of the Republic of Lithuania was restored on 11 March 1990. It is no coincidence that the Constitutional Court of the Republic of Lithuania declared the Act of Independence of 16 February 1918 as a supra-constitutional act, the cornerstone principles of which – the independence of the State of Lithuania and democracy – cannot be repealed even by referendum, i.e. they have the status of eternity clauses.

The Act of Independence of 16 February 1918 and the Resolution of the Constituent Assembly (Seimas) on the Re-established Democratic State of Lithuania of 15 May 1920 are analysed by Prof. Habil. Dr. Mindaugas Maksimaitis in his article on the declaration of Lithuania's independence in 1918. Another article by Prof. Habil. Dr. Mindaugas Maksimaitis looks at all the Constitutions that were in force during the first period of independence from 1918 to 1940. The 1922 Constitution of the State of Lithuania stands out from all of them in that it was the only permanent Constitution of that period which was adopted in a democratic way and which fully implemented both principles of the Act of Independence of 16 February 1918, namely the independence of the state and democracy. Despite its shortcomings (for example, the Constitution did not provide sufficient grounds for ensuring its supremacy and the separation of powers), it was this Constitution that enabled Lithuania to become one of the most modern European democracies. Therefore, it comes as no surprise that the influence of the provisions of precisely the 1922 Constitution, especially of the tradition of a parliamentary republic, is most noticeable in the present Constitution of 1992.

Unfortunately, there was apparently too much democracy under the 1922 Constitution and the country's political elite did not learn to value the Constitution and to live according to it: four years afterwards, in December 1926, the coup d'état took place, resulting in the abolition of the 1922 Constitution and the imposition of the authoritarian regime, consolidated by two subsequent constitutions of 1928 and 1938. The events in Lithuania, however, were not a unique phenomenon in Europe (especially in Central Europe), where, before the Second World War, many countries witnessed democracy to be replaced by authoritarian or even totalitarian regimes.

In any event, the development of Lithuanian constitutionalism was soon interrupted again by external forces for 50 years. Having agreed on the division of Europe (under the so-called Molotov–Ribbentrop Pact), Nazi Germany and the Soviet Union started the Second World War in September 1939 by committing aggression against Poland. Lithuania was also quickly pulled into the maelstrom of this war: having been assigned to the USSR under the Molotov–Ribbentrop Pact, it fell victim to the Soviet aggression in 1940. The occupation and annexation of Lithuania, as well as the resistance against the Soviet occupation, are discussed in the article by Assoc. Prof. Dr. Algirdas Jakubčionis, Prof. Dr. Vytautas Sinkevičius, and Prof. Dr. Dainius Žalimas. This article also examines a unique and one of the fundamental constitutional acts of the Republic of Lithuania – the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949, which was adopted by the resistance leadership – the sole legitimate authority in the occupied Republic of Lithuania at that time. This Declaration is based on the continuity of the state, i.e. on the fact that, according to the principle *ex injuria jus non oritur*, the Soviet aggression could not end the existence of the Republic of Lithuania as a state and as a subject of international law. The Declaration consolidated the principles of the restoration

of the independence of the Republic of Lithuania, of which two are at the heart of today's Constitution. The first principle is the commitment to the democratic constitutional order and a parliamentary republic by declaring adherence to the spirit of the 1922 Constitution. The second principle is the western geopolitical orientation of the Republic of Lithuania by declaring adherence to freedom, democracy, and human rights and by appealing to the whole western democratic world for assistance. The Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 also attests that Soviet law is alien to Lithuanian constitutionalism and that the occupation regime of the USSR and the Lithuanian SSR, which embodied the occupation regime, have nothing in common with the statehood of Lithuania.

The history of Lithuania shows that Freedom and Democracy should not be taken for granted, they have to be struggled for. The spirit of resistance against the Soviet occupation survived even after the armed fight against the USSR faltered and Lithuania lost hundreds of thousands of citizens. A new opportunity for its revival appeared in the late 1980s, when, due to the weakening Soviet Union, mass national liberation movements emerged in Central Europe and in countries occupied by the Soviets. The Lithuanian *Sąjūdis*, whose name usually is not even translated into other languages, has become a well-known symbol of the successful fight for Freedom worldwide. Its beginnings and activities are analysed in the article by Assoc. Prof. Dr. Algirdas Jakubčionis.

It was unique that *Sąjūdis* succeeded in carrying out its activities through the Lithuanian SSR structures that functioned in Lithuania at that time. They were used to prepare the ground for the future restoration of the independence of Lithuania and for the future Constitution of the country. This is the focus of the article by Prof. Dr. Juozas Žilys.

Thus, eventually, *Sąjūdis* openly declared the objective to restore the independence of the Republic of Lithuania rather than serve the Soviet occupation regime. Having set up the programme for the restoration of the country's independence, *Sąjūdis* won the first democratic elections to the Supreme Soviet of the Lithuanian SSR in 1990 with an overwhelming majority of votes. Therefore, to implement such a mandate of the Nation and being the representation of the Nation, on 11 March 1990, this Supreme Soviet transformed itself into the Supreme Council of the Republic of Lithuania and restored the independence of the Republic of Lithuania by adopting the Act on the Re-establishment of the Independent State of Lithuania (also known as the Act of 11 March). This Act is based on the continuity of the Republic of Lithuania, which means that, from the viewpoint of international law, the Soviet aggression could not end the existence of the State of Lithuania; Lithuania was a state occupied by the Soviets rather than part of the USSR. Therefore, the restoration of the independence of Lithuania was not the secession (from the Soviet Union), but the liberation from the occupation – the restitution of the rights of the State of Lithuania affected by aggression. The restoration of the independence of the Republic of Lithuania is analysed in the article by Prof. Dr. Vytautas Sinkevičius.

Of course, the restoration of the country's independence and its legal system in particular was not a one-day process. Lithuania had to transform the Soviet administrative apparatus taken into its jurisdiction and to create new institutions and law of the modern democratic state. The last effective Constitution of 1938 did not satisfy these needs. Therefore, it was decided to draw up a new Constitution of the Republic of Lithuania, which, by consolidating the democratic constitutional traditions of Lithuania and taking account of the painful lessons of history, would also make it possible to look into the future – global and European integration trends, challenges to human rights and democracy. The articles by Prof. Dr. Juozas Žilys look at the provisional constitution – the Provisional Basic Law – of the transitional period (1990–1992), the drafting of the present 1992 Constitution, and its main features.

A specific feature of the Constitution of the Republic of Lithuania in force is that it includes, as constituent parts, two constitutional acts passed before the adoption of the Constitution and consolidating the fundamental constitutional principles. The first one is the Constitutional Law of the Republic of Lithuania on the State of Lithuania of 11 February 1991 that, according to the general poll (plebiscite) of 9 February 1991, consolidated the fundamental provision, which is also contained in Article 1 of the Constitution, that the State of Lithuania is an independent democratic republic. This plebiscite was a response of the citizens of Lithuania to the aggression of the USSR in January 1991 in an attempt to destroy the restored independence of the Republic of Lithuania. The results of the plebiscite also form the basis for another constitutional act – the Constitutional Act of the Republic of Lithuania on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions of 8 June 1992. It expresses the geopolitical orientation of the State of Lithuania to never associate with organisations formed on the basis of the former USSR, which are considered to be hostile to the independence, freedom, and democracy of Lithuania. Both these constitutional acts are discussed in the articles by Prof. Dr. Vytautas Sinkevičius.

Yet another constitutional act, which expresses the geopolitical orientation of the State of Lithuania and is a constituent part of the Constitution, is the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union of 13 July 2004. It lays down the constitutional grounds for membership of the Republic of Lithuania in the EU (sharing with the EU the competences of state institutions and the incorporation of EU law into the national legal system), without which the Republic of Lithuania would have been unable to be a fully fledged member of the EU and which adapt the provisions of the Constitution under the conditions for EU membership. The Constitutional Act states the common value-based foundation of the EU – the democratic European constitutional heritage, as well as respect for the national constitutional traditions of European states that are recognised as part of this heritage. The constitutional grounds for membership of the Republic of Lithuania in the EU are explored by Prof. Dr. Egidijus Jarašiūnas.

The Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union is one the few constitutional amendments that were necessary during the 25 years of the existence of the Constitution. The fact that the Constitution is stable and, at the same time, viable, i.e. capable of adapting to the changing social and international challenges, is the merit not only of its drafters, but also of the Constitutional Court having the exclusive powers to officially interpret the Constitution. For the first time in the history of Lithuania, the Constitutional Court was established according to the 1992 Constitution to guarantee the supremacy of the Constitution and the rule of law. Therefore, a specific feature of the Constitution in force is that the official constitutional doctrine, as formulated by the Constitutional Court, makes it possible to perceive the Constitution of the Republic of Lithuania not only as its text, but also as the jurisprudential Constitution – the meaning of this text as disclosed in the jurisprudence of the Constitutional Court. The powers of the Constitutional Court and the jurisprudential Constitution developed by it are examined by Prof. Dr. Dainius Žalimas.

These are the main fragments of the development of Lithuanian constitutionalism that this book reflects. We hope that our joint work will help you to better understand why the tradition of Lithuanian constitutionalism is so closely related to the fight for Freedom, which is perceived as the right of both the Nation and each person to determine their own destiny, and why there cannot be Democracy, human rights, and the rule of law without Freedom. These values and the traditions of constitutionalism steeped in history are the reason why we so cherish our Constitution.

Finally, I would like to express sincere gratitude to the authors of the articles contained in this book – Algirdas Jakubčionis, Jevgenij Machovenko, Mindaugas Maksimaitis, Vytautas Sinkevičius, Irena Valikonytė, and Juozas Žilys – for their determination and professionalism to present, in a concise and interesting manner, the main milestones in the development of Lithuanian constitutionalism. I also extend warm thanks to the staff of the Constitutional Court of the Republic of Lithuania, in particular to Ingrida Danėlienė, Rima Mekaitė, Elona Norvaišaitė, and Valdonė Zubkienė, as well as to the translators of the Court, without whom this book would not have seen the light of day.

Prof. Dr. Dainius Žalimas
President of the Constitutional Court
of the Republic of Lithuania



The first pages of the facsimile of the Laurentius transcription (in Latin)
of the oldest legal code of the Grand Duchy of Lithuania –
the First Lithuanian Statute (1529)

The transcription is held by the library of Schulpforte School
in the town of Naumburg (Germany).

The illustration has been included in the publication *The First Statute of Lithuania*,
Vilnius: Artlora, 2014, p. 36.

THE LITHUANIAN STATUTES: THE CHILDHOOD OF THE CONSTITUTION

Prof. Dr. Irena Valikonytė*

THE ORIGINS AND SOURCES OF THE LITHUANIAN STATUTE

There is a Roman maxim that says, “Ubi societas, ibi jus” (where there is society, there is law). Another saying – law is a mirror of society – is no less true. The latter perhaps best reflects the early periods of the development of society, when the concept of law embraced all social order, since law was understood more broadly at that time. It is obvious that changes not only in political, but also in legal thought are an element that is generally important for the culture of a nation.¹ Therefore, it is not surprising that the conclusions of contemporary historians that the intensive modernisation of the old State of Lithuania – the Grand Duchy of Lithuania (GDL) – in the 16th century is perhaps best revealed by the mature legal system, which was embodied in the Lithuanian Statute the drafting and adoption of which was based on the maxim that a country must be built on the foundations of law. In other words, a very important fact is that this legal code witnessed the development of the society of the GDL of that time, the concept of a law-governed state, the legal consciousness of the nobility (boyars), as well as their mentality and system of values.² Very sweeping changes in the social and political structures of the society of the GDL in the 16th century, the formation of estate monarchy and the fast development of nobility democracy prompted the systematisation of the legal norms found in various sources of law and the legalisation of the privileged status of boyars. On the other hand, the complicated international situation of the GDL at the end of the 15th century and the beginning of the 16th century, which demanded strengthening the political cohesion of the state, as well as the integration of both lands on the periphery of the country and the nobility of various confessions and ethnicities, not only reinforced the need for abolishing the particularism of laws and drafting a single code, but also determined the content of the Lithuanian Statute that was much wider than that of

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¹ It is no coincidence that the historiography of Lithuania sees the Statutes as a certain chronological point in the periodisation of the history and culture of Lithuania. See: Kavolis, V., *Moterys ir vyrai lietuvių kultūroje* [Women and Men in Lithuanian Culture], Vilnius: The Lithuanian Culture Institute, 1992, p. 35; Kiaupienė, J. and Petrauskas, R., *Lietuvos istorija* [The History of Lithuania], Vol. IV: *Nauji horizontai: dinastija, visuomenė, valstybė. Lietuvos Didžioji Kunigaikštystė 1386–1529 m.* [New Horizons: Dynasty, Society, State. The Grand Duchy of Lithuania in 1386–1529], Vilnius: Baltos lankos, 2009, pp. 16, 491; Kiaupienė, J. and Lukšaitė, I., *Lietuvos istorija* [The History of Lithuania], Vol. V: *Veržli Naujųjų laikų pradžia. Lietuvos Didžioji Kunigaikštystė 1529–1588 metais* [The Flying Start of the Modern Ages. The Grand Duchy of Lithuania in 1529–1588], Vilnius: Baltos lankos, 2013, p. 15.

² For details, see Valikonytė, I., Lazutka, S., and Gudavičius, E., *Pirmasis Lietuvos Statutas (1529 m.)* [The First Lithuanian Statute (1529)], Vilnius: Vaga, 2001, pp. 33–43.

a code of ordinary laws. The factor of neighbouring Poland was also important: on the one hand, the liberties of the Polish nobility (*szlachta*) was an example to follow for Lithuanian boyars, but, on the other hand, the ambitions of Poland to establish such union ties with Lithuania that would keep it as close as possible to Poland lead to initiatives to legally formalise the independence of the GDL. In other words, the Lithuanian Statute had to be a real foundation for statehood consciousness. In addition, the conditions and prerequisites for drafting a solid legal code had already been created. Even though Vilnius University had not yet been founded at that time, quite a few sons of not only the higher nobility, but also of ordinary boyars had studied abroad; thus, there were intellectuals capable of carrying out the complex work of systematising law. The state chancellery of the GDL also had no shortage of educated scribes who were considerably experienced in drafting legal documents. The spread of scribal offices and the culture of writing, as well as changes in the value orientation of boyars, nurtured future users of the Lithuanian Statute: society was ready for change.³ The assimilation of the treasures of Christian European culture, the borrowing from Roman law, and an enormous impact of Renaissance and humanistic ideas provided the Lithuanian Statute with the exceptional basis for its systemic framework and conceptuality.

By the way, in the 16th century, whole Europe showed increased interest in the codification of law. This phenomenon was related to the fact that the concept of law as a value *per se*, as well as the doctrine of state sovereignty, an important attribute of which was its own law, became prevalent.⁴ However, in practical terms, the tendency to codify law, which was affected by increased spread of jurisprudence in Europe, did not reach its objective in other countries or, at best, lead only to the initial stage of creating codification doctrine.⁵ For instance, the work “Nine Books concerning Rights in the Czech Country” (*O práviech země české knihy devatery*) written in 1508 by Victorin Kornel (*Victorinus Cornelius*), Professor of the University of Prague and a scribe at the chancellery of the Czech Kingdom, remained a draft code only. *Opus Tripartitum iuris consuetudinarii inclyti Regni Hungariae*, prepared by the famous Hungarian lawyer Istvan Verbőczy in 1514, was not endorsed by the king, since it had been opposed by the nobility. *Constitutio Criminalis Carolina*, which became law in the Holy Roman Empire in 1532, was merely the codification of criminal law.⁶ In neighbouring Poland, there were only modest attempts at codifying law and, in the 16th century, at least several codes of laws were in force. As a matter of fact, 1523 saw a successful attempt at codifying the procedural law (*Formula Processus*); however, the *Sigismundina*, which was prepared at the same time (1522–1523), and the *Correctura iurium* (or Taszycki’s corrections)

³ Ibid., pp. 39–43.

⁴ Bardach, J., *Statuty litewskie a prawo rzymskie*, Warszawa: OBTA, 1999, s. 9–10.

⁵ Salomanowicz, S., “Narodziny nowożytnej myśli kodyfikacyjnej w Europie”, *Czasopismo prawno-historyczne*, Vol. XXIX, z. 1, 1977, s. 99, 102–103.

⁶ Gudavičius, E., “A Short Survey of the First Statute of Lithuania” in *Lietuvos Statutas = The Statute of Lithuania = Statuta Lituaniae 1529*, Vilnius: Artlora, 2002, pp. 36–37.

drawn up in 1532, were rejected by the Polish convention (Polish: *sejm*) in 1534.⁷ Thus, the so-called Łaski's Statute (*Commune incliti Poloniae regni privilegium constitutionum et indultuum publicistis decretorum approbatorumque*), which was printed in 1506, became neither the code of entire Poland nor a basis for such a code. Meanwhile, in Lithuania, an ambitious programme of the general codification of laws was implemented. Moreover, the drafters of the Lithuanian Statute demonstrated phenomenal dynamism of the process of codifying GDL law, which was "rare in the epoch in which laws, once drafted, would remain in force for centuries".⁸ After all, in Vilnius, as many as three statutes were drafted and improved within 60 years (in 1529, 1566, and 1588), which are often simply referred to in historiography as the Lithuanian Statute. The increase in the volume of the code was not the only thing that changed: the First Lithuanian Statute was composed of thirteen sections and 243 articles, and the extended version thereof consisted of 282 articles. The fourteen sections of the Second Lithuanian Statute contained 368 articles, and those of the Third Lithuanian Statute contained 487 articles. However, the important thing is that the content of the code underwent changes and its systematisation was improved, i.e. a logical system of its sections was created, which was basically in line with public and private branches of law: the norms relating to the political order (Sections I–III), legal proceedings (Sections IV), private law (Sections V–X), and criminal law and procedure (Sections XI–XIV). At the same time, the conceptuality of the code (the immunity and privileged status of boyars were legally formalised, peasants were enserfed) and the influence of scholarly jurisprudence became more visible.

It goes without saying, such mature legal codes could not emerge in a vacuum. There is no doubt that, in the pre-statute period, the State of Lithuania had a legal system based, first of all, on customary law. Historians debate whether Lithuanians had a written collection of their customary law (no such collection has been found) or whether customary law remained oral. An answer to this question is not very important, since, on the one hand, the written law of the Balts survived (*Jura Prutenorum* (1340) and the Law of the Livonian Peasantry (13th century); still, it is necessary to have in mind the influence exerted on this law by the Teutonic Order that had conquered parts of the land of the Balts); on the other hand, we have numerous legal norms pertaining to customary law (which were recorded later, in the second half of the 15th century, and are reflected in the documents of the Lithuanian Metrica), on which court decisions in concrete cases are reasoned. It is very important to stress that those court decisions testify that the beginning of the 16th century (at the latest) saw the advent of the concept of Lithuanian law (and that of the law embracing

⁷ Bardach, footnote 4, pp. 11–12.

⁸ Ibid., p. 7.

the entire state – the GDL) (*ordine terrae Lithuaniae*; право литовское, права Великого князства Литовского), which is commonly found in historical sources of the time.⁹

As a rule, the law of feudal states consisted of customary law and written law. Due to certain particularities of the political and cultural development of Lithuania, Lithuanian written law emerged relatively late and its beginning was related to the activity of the monarch (grand duke). The privileges granted to the nobility by Grand Duke Jogaila (*Jagiello*) in 1387 and by other sovereigns in the 15th century and at the beginning of the 16th century served as the basis for GDL written law. Such privileges were somewhat declarative most general grounds of public and civil law of the GDL; however, they also contained the principles of new, Christian, law. Moreover, certain articles of the privileges granted to the nobility by Grand Duke Kazimieras Jogailaitis (*Casimir Jagiellon*) of Lithuania in 1447 and the privileges granted by Grand Duke Aleksandras Jogailaitis (*Alexander Jagiellon*) of Lithuania in 1492, which became respective articles of the First Lithuanian Statutes,¹⁰ recorded and legalised such norms that may be deemed norms of constitutional law.¹¹ The so-called Kazimieras' Code, the first code of laws of the GDL, written in 1468, has an important role in the history of GDL lawmaking. This code mostly regulated criminal proceedings and was largely designed for landowners, who acted as judges in patrimonial courts judging their own peasants. However, this code already reflected the legal consciousness of state power and landowners, which was influenced by the ideas and postulates laid down in Christian jurisprudence. By the way, this code formulated for the first time in GDL legal documents the provision that a crime is not only harm inflicted on a victim, but that it is also detrimental to society. Namely this short code became, at the beginning of the 16th century, the main part of the First Lithuanian Statute or, according to the eminent Lithuanian historian Edvardas Gudavičius, “the Four-Section Statute”.¹²

⁹ *Lietuvos Metrika. Knyga Nr. 8 (1499–1514). Užrašymų knyga 8 [The Lithuanian Metrika. Book No 8 (1499–1514). Book of Records 8]* (prepared by Baliulis, A., Firkovičius, R., and Antanavičius, D.), Vilnius: The House for Publishing Scientific Works and Encyclopaedias, 1995, No 612, p. 449 (1511); No 530, p. 382 (1510); *Lietuvos Metrika. Knyga Nr. 11 (1518–1523). Įrašų knyga 11 [The Lithuanian Metrika. Book No 11 (1518–1523). Book of Entries 11]* (prepared by Dubonis, A.), Vilnius: The Institute for Publishing Scientific Works and Encyclopaedias, 1997, No 18, p. 54 (1517); etc.

¹⁰ Lazutka, S. and Gudavičius, E., “I Lietuvos Statuto šaltinių klausimu” [“On the Sources of the First Lithuanian Statute”], *Lietuvos TSR aukštųjų mokyklų mokslo darbai. Istorija [Scientific Works of Schools of Higher Education of the Lithuanian SSR. History]*, 1970, Vol. XI, pp. 150–165.

¹¹ Recently, the historians of Lithuanian law have referred to these countrywide privileges, granted by the sovereigns of the GDL, as constitutional acts; still, they have added that such assessment is possible “from a formal and legal aspect”. See: Machovenko, J. and Griškevič, L., “Bendravaltstybinės LDK privilegijos kaip Lietuvos konstituciniai aktai” [“The Countrywide Privileges of the GDL as Constitutional Acts of Lithuania”], *Teisė [Law]*, 2014, Vol. 93, pp. 44–66; Machovenko, J., “Modernieji valstybės pamatai bendravaltstybinėse LDK privilegijose” [“The Modern Foundations of the State in the Countrywide Privileges of the GDL”], *Teisė [Law]*, 2015, Vol. 94, pp. 41–58. However, it seems that the conclusions reached by Vaidotas A. Vaičaitis are more cautious. See Vaičaitis, V. A., “Lietuvos statutai kaip Lietuvos konstitucionalizmo šaltinis” [“The Lithuanian Statutes as a Source of Lithuanian Constitutionalism”], *Teisė [Law]*, 2013, Vol. 89, pp. 58.

¹² Only four articles of Kazimieras' Code do not coincide with the topics covered by the four written earliest sections (VIII, IX, XII, and XIII) of the First Lithuanian Statute. See Gudavičius, E., “Ankstesnioji Pirmojo Lietuvos Statuto redakcija” [“The Earlier Version of the First Lithuanian Statute”], *Lietuvos istorijos studijos [Studies of the History of Lithuania]*, 2001, Vol. 9, p. 15.

On the other hand, the drafting and adoption of Kazimieras' Code showed that not only the sovereign of the GDL, but also the Council of Lords of the GDL, which represented the interests of the higher nobility and was the actual Government of the GDL, became a lawmaker. GDL law was also enriched by special regulations (*устава, ухвала*) (passed by the Grand Duke together with the Council of Lords, and, later, adopted at conventions (Lithuanian: *seimai*)), which often particularised the general principles of privileges issued by sovereigns (e.g. regulations on signing away women's dowry, on court fees to judges, on the confiscation of the lands of traitors to the state, on the right of landowners to freely dispose of only one-third of their property, on land statutory limitations, on presenting proof of noble origin, military regulations) and legalised the exceptional situation of boyars in the state. Furthermore, there were very few countries in Europe that experienced such intensive development of lawmaking as Lithuania in the 15th–16th centuries.

Another very important source of the First Lithuanian Statute was judicial practice (or case-law). The sovereign, who often acted as a judge, had not only to consider concrete cases, but also often to establish precedents. Court “notebooks” or “books” (especially those of the court of the sovereign), the systematic compilation of which began in the second half of the 15th century, recording the minutes and decisions of decided cases, became kind of codes of laws. All the above-mentioned sources of law, as well as borrowing the legal principles, some norms, and legal terminology of other countries (especially, Roman law and Polish law), served as the basis for drafting the First Lithuanian Statute, which, it may be stated, created the estate legal system of the GDL.

Besides, according to historical sources, the need for the preparation of “one Statute for everyone” was declared for the first time by Grand Duke Aleksandras Jogailaitis in his privilege for the land of Volhynia.¹³ The text of the First Lithuanian Statute was drafted in the grand-ducal chancellery, perhaps, under the supervision of the brothers Mikalojus Radvila (*Mikołaj Radziwiłł*) (c. 1470–1522), GDL grand chancellor and voivode of Vilnius, and Jonas Radvila (*Jan Radziwiłł*) (1474–1522), grand marshal of Lithuania. The text was discussed and even passed in the summer of 1522 at a convention (Lithuanian: *seimas*), which had been convened in Vilnius. In his edict, Grand Duke Žygimantas (*Sigismund*) the Old pointed out these reasons for drafting the code: in order that, during his “happy ruling, the nobility, both jointly and individually, would be subject to one law and one court rule so that equal justice is served to everyone in this better manner, peace is strengthened by fear for a written law, bad actions of the wicked are restricted, and that the state of affairs of the entire state – Our Grand Duchy – is kept in greater peace, concord, and justice [...], We hereby decide to promulgate and confer on the residents and native population (*indigenis*), both jointly and individually, regardless of their differences in nobility or other dignities,

¹³ *Lietuvos Metrika. Knyga Nr. 25 (1387–1546). Užrašymų knyga 25 [The Lithuanian Metrica. Book No 25 (1387–1546). Book of Records 25]* (prepared by Antanavičius, D. and Baliulis, A.), Vilnius: The Institute for Publishing Scientific Works and Encyclopaedias, 1998, No 36, p. 103.

one charter and one law” forever.¹⁴ However, afterwards, the Statute was further polished and improved, in which Albertas Goštautas (*Olbracht Gasztold*) (? – 1539), the new GDL grand chancellor and voivode of Vilnius, played the most important role. At that time, boyars also tried to take an active part in this process, as they sought to gain the widest possible rights for themselves and make such rights equal with the liberties of the higher nobility with the central aim to abolish the exceptional jurisdiction of the higher nobility and to limit their power. Therefore, drafting and debating the new version of the Statute took a considerable time. Finally, in the summer of 1529, it was adopted and, on 29 September, promulgated by the edict of Žygimantas the Old, King of Poland and Grand Duke of Lithuania, as a code of laws valid in the entire territory of the GDL.¹⁵ The original Statute was written in Ruthenian, which was the language used by the state chancellery of the GDL. The drafters of the Statute named it the Written Rules (*Права писаные*; the 1532 Polish translation titled is as *Prava ziemskie pisane*);¹⁶ however, in the preamble of untitled copies of a Latin translation made soon afterwards (in 1530) it was named as a statute (*statuta seu iura scripta*).¹⁷ This term immediately became prevalent both in legal practice and in everyday life. Since the First Lithuanian Statute (as well as the Second Lithuanian Statute) despite the promise of the sovereign was never printed, while the above-mentioned edict stipulated that, as from 29 September 1529, all state officials must follow the provisions and norms of the Statute, scribes had to make fast its numerous copies, of which only seven survive (nine copies of this Statute are mentioned in historiography).¹⁸

Even though the first codification of Lithuanian law was qualified and successful indeed, the practical application of the code soon revealed its deficiencies and imperfections. At first, judges used to invoke the norm of the First Lithuanian Statute that envisaged the opportunity to rely on customs in cases where courts confronted situations not provided for in the code and to include such a new norm in the text of the Statute after its sanctioning at a convention accordingly: “[...] if judges are faced with something that is not described in this law, then the judgment on such a matter is left to their discretion according to their conscience so that, with God’s help, would decide according to old customs. However, with expedition, at the next convention and in Our presence or in the presence of the council lords must make such articles known. And if We or Our council lords give assent to those articles, they must be included in this law.”¹⁹ Thus, in the fourth decade of the 16th century, an extended version of the First Statute of Lithuania emerged, which was supplemented

¹⁴ Lazutka, S., “Pirmojo Lietuvos Statuto 1522 m. redakcijos mįslė” [“The Mystery of the 1522 Version of the First Lithuanian Statute”] in *Tarp istorijos ir būtovės [Between History and the Past]* (a study on the occasion of the 70th anniversary of Prof. Edvardas Gudavičius), Vilnius: Aidai, 1999, pp. 295–296.

¹⁵ For details, see Valikonytė, Lazutka, and Gudavičius, footnote 2, pp. 53–56.

¹⁶ *Pirmasis Lietuvos Statutas [The First Lithuanian Statute]*, Vol. II, Part One: *Tekstai senąja baltarusių, lotynų ir senąja lenkų kalbomis [Texts in Old Belarusian, Latin, and Old Polish]*, Vilnius: Mintis, 1991, pp. 62–63.

¹⁷ *Ibid.*, p. 63.

¹⁸ For details, see Valikonytė, Lazutka, and Gudavičius, footnote 2, pp. 67–112.

¹⁹ *Ibid.*, p. 192 (Article 25 of Section VI).

with 39 articles. However, the most important thing was that, due to the opposition of the higher nobility, the Statute, in general, did not fulfil the aspirations of boyars, who sought to implement their own agenda of political and legal liberation. Therefore, already at the 1544 convention of Brest, the boyars appealed to the sovereign to *amend* the Statute.²⁰ In 1551, Žygimantas Augustas (*Sigismund II Augustus*), King of Poland and Grand Duke of Lithuania, kept the promise to form, on a confessional parity basis, the commission (composed of ten persons: five Catholics and five Orthodox believers) for drafting the Second Lithuanian Statute.²¹ The work of the commission took a considerable time; therefore, its composition changed. Today, only the Catholic part of the commission is known: Jonas Domanovskis (*Jan Domanowski*), archbishop of Samogitia (a historical administrative unit of the GDL), Stanislovas Narkuskis (*Stanisław Narkuski*), canon of the chapter of Vilnius, Augustinas Rotundas (*Augustyn Rotundus*), vogt of Vilnius, two representatives of the nobility, who were Paulius Ostrovickis and Martynas Valadkavičius,²² as well as Petras Roizijus (*Petrus Roisius*),²³ who joined the commission later. Quality changes in the intellectual atmosphere and the activity of such highly qualified jurists and Roman law experts as Augustinas Rotundas and Petras Roizijus affected the content of the Statute. This is clearly shown by enormous influence exerted on the Second Lithuanian Statute by Roman law and jurisprudence, which was noticed by researchers long ago.²⁴ However, it can be stated with confidence that this Statute, first of all, formalised the reforms gained by GDL boyars during the sixth and seventh decades of the 16th century. In addition, on the eve of the union of Poland and the GDL, which was created at Lublin in 1569, the aspiration of the Lithuanian elite to consolidate the independence of the GDL in the new code required prompt actions.²⁵ Therefore, the sections and articles of the Second Lithuanian Statute, which were debated and adopted at the conventions of Vilnius and Bielsk in 1564–1566, were later improved and amended. The Statute came into force on 11 March 1566 through the privilege issued by Žygimantas Augustas on 1 March;²⁶ however, the work on amending the Statue itself was resumed in the spring of the same year. After the Union of Lublin was created, the composition of the amending commission, formed at the convention of Grodno in 1568,

²⁰ *Русская историческая библиотека*. Т. XXX: *Литовская Метрика. Книги публичных дел*, Юрьев: Императорская археографическая комиссия, 1914, ст. 121.

²¹ *Ibid.*, ст. 183–184.

²² *Lietuvos Metrika. Knyga Nr. 564 (1553–1567). Viešųjų reikalų knyga 7 [The Lithuanian Metrica. Book No 564 (1553–1567). Book of Public Affairs 7]* (prepared by Baliulis, A.), Vilnius: The House for Publishing Scientific Works and Encyclopaedias, 1996, No 4, p. 33; Lappo, J., *1588 metų Lietuvos Statutas [The Lithuanian Statute of 1588]*, Vol. I: *Tyrinėjimas [Investigation]*, Part One, Kaunas: Spindulys Printing House, 1934, pp. 3–39, 41–42.

²³ Lappo, footnote 22, p. 89.

²⁴ Bardach, footnote 4, pp. 33–72; Godek, S., *Elementy prawa rzymskiego w III Statucie litewskim (1588)*, Warszawa: Oficyna naukowa, 2004, s. 35–45, 69–187.

²⁵ Avižonis, K., “Lietuvos statutai” [“The Lithuanian Statutes”] in Avižonis, K., *Rinktiniai raštai [Selected Writings]*, Vol. II, Rome: The Lithuanian Catholic Academy of Science, 1978, p. 72.

²⁶ Błaszczuk, G., *Litwa na przełomie średniowiecza i nowożytności 1492–1569*, Poznań: Wydawnictwo Poznańskie, 2002, s. 127.

had to be changed, although this commission had not even started its work. Therefore, a commission was formed, which was composed of twelve persons on the basis of the principle of estate and territorial representation and was headed by Vilnius Bishop Valerijonas Protasevičius (*Walerian Protasewicz*). It disregarded the demand of the Poles that, “on the basis of the Polish Statute” (despite the fact that there was no consistent law in the Kingdom of Poland!),²⁷ the articles of the Second Lithuanian Statute be harmonised with the law valid in Poland and acted independently. The work of the commission took more than ten years; therefore, its composition changed. GDL Grand Chancellor Eustachijus Valavičius (*Eustachy Wołłowicz*) and Vice-Chancellor Leonas Sapiega (*Lew Sapieha*) (called the Solon of Lithuania) were especially active in the commission. Generally, it can be stated that the drafting of the Third Lithuanian Statute eventually moved to the state chancellery, where the preparation of its text was basically finished in 1584.²⁸ However, local conventions (Lithuanian: *seimeliai*) – institutions of GDL counties (Lithuanian: *pavietai*) through which boyars exercised self-government and in which they initiated laws and actively expressed their wishes to record their rights and liberties in minute detail, played a significant role in perfecting the legal norms of the Statute. Leonas Sapiega himself had to recognise this fact. In one of his letters to a friend, he complained that the boyars “[...] sometimes do not know what they want. Whenever I ask them what they want to be put down [in the Statute – I. V.], they reply: I do not know myself how to express what I think. Ah, deuce take it! How can I know what you think if you are unable to express it yourself.”²⁹ Besides, it was Leonas Sapiega who, together with other members of the higher nobility, by demonstrating remarkable diplomatic skills, took advantage of the complicated political situation in electing the king of the federal state of Poland and the GDL, the so-called Commonwealth of Two Nations (hereinafter referred to as the CTN), and were able to extract the promise that new king Zigmantas Vaza (*Sigismund Vasa*) would approve the Third Lithuanian Statute on 28 January 1588.³⁰ This Statute, which came into effect on the territory of the GDL on 6 January 1589, was printed under the care and sponsorship of Leonas Sapiega at the Mamonich printing-house at Vilnius in 1588. The humanistic and secular content of the Third Lithuanian Statute secured its important place among the legal monuments of the Renaissance³¹ and provided Lithuania with an opportunity to become an undisputed leader

²⁷ For more on this collision, see Zakrzewski, A. B., “Naiwność czy taktyka? Uzasadnianie prób unifikacji prawa Litewskiego i koronnego XVI–XVIII wieku” in *Lietuvos Statutas ir Lietuvos Didžiosios Kunigaikštystės bajoriškoji visuomenė [The Lithuanian Statute and Nobility Society in the Grand Duchy of Lithuania]* (collection of articles; compiled by Valikonytė, I. and Steponavičienė, L.), Vilnius: Vilnius University Press, 2015, pp. 75–83.

²⁸ Lappo, footnote 22, pp. 419–434.

²⁹ Cited from Lazutka, S., *Lietuvos statutai, jų kūrėjai ir epocha [The Lithuanian Statutes: The Drafters and the Epoch]*, Kaunas: Spindulys Printing House, 1994, p. 34.

³⁰ For details, see Bardach, J., “Zatwierdzenie III Statutu litewskiego przez Zygmunta III Wazę”, *Czasopismo prawnohistoryczne*, 1978, t. XXX, z. 2, s. 39–50.

³¹ Bardach, J., “Statuty litewskie w ich kręgu prawno-kulturowym” in Bardach, J., *O dawniej i niedawniej Litwie*, Poznań: Wydawnictwo naukowe Uniwersytetu im. Adama Mickiewicza, 1988, s. 61–66.

in the Central and Eastern Europe in the area of lawmaking.³² The Lithuanian Statutes, which were in effect in the GDL for more than 300 years, had an impact on legal proceedings and lawmaking in neighbouring countries as well. The Statute was effective not only until the collapse of the CTN, but also, with certain exceptions, after a greater part of the GDL was annexed by the Russian Empire,³³ until the tsarist authorities repealed it following the uprising of 1830–1831 against the Russian Empire: in the Vitebsk and Mogilev governorates the effect of the Lithuanian Statute was repealed in 1831 and in the Vilnius, Grodno, and Minsk governorates this was done in 1840.

THE LITHUANIAN STATUTE AS THE CONSTITUTION OF GDL BOYARS

Researchers emphasise that the Lithuanian Statutes have a strong idea of a law-governed state, the purpose of which is the protection of the rights and liberties of all citizens (boyars). It was this reason why the eminent Polish historian and professor of Vilnius University Joachim Lelewel (1786–1861), who, together with the GDL expert Professor Ignas Danilavičius (*Ignacy Daniłowicz*) (1787–1843), issued the First Lithuanian Statute as a publication and named it the GDL Constitution.³⁴ Over the last few decades, Lithuanian historiography not only has deemed the Lithuanian Statutes (and referred to them as) the Constitution of GDL boyars,³⁵ but also has analysed them through the prism of the current Lithuanian constitutionalism.³⁶ By the way, the term “constitution” was well known to GDL boyars; however, in the 16th century, its concept was different from how we understand a constitution today. Both in Poland and the GDL, decisions adopted at conventions on important state matters were called constitutions.³⁷ In the Lithuania of that time, this term became so common that it was sometimes used “retroactively”, for example, to name significant regulations of the sovereign of the GDL that had been adopted before the Union of Lublin was created. The term “constitution” was used a couple of times in the Third Lithuanian Statute (Articles 3 and 29 of Section III); nevertheless, it goes without saying, it had the meaning of “a constitution of a convention”, i.e. that of a law passed at a

³² Gudavičius, footnote 6, pp. 36–37.

³³ See the latest research on this period: Godek, S., *III Statut Litewski w dobie porozbiorowej*, Warszawa: Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, 2012.

³⁴ Lelewel, J., *Dzieła*, Warszawa: Państwowe wydawnictwo naukowe, 1969, t. X, s. 195.

³⁵ Lazutka, footnote 29, p. 6; Valikonytė, I., “Lietuvos Statutas – Lietuvos Didžiosios Kunigaikštystės bajorų Konstitucija” [“The Statute of Lithuania – the Constitution of the Nobility of the Grand Duchy of Lithuania”], *Konstitucinė jurisprudencija [Constitutional Jurisprudence]*, 2012, No 4(28), pp. 276–283; Machovenko, J., *Teisės istorija [Legal History]* (textbook of Vilnius University), Vilnius: The Centre of Registers, 2013, p. 349.

³⁶ Vaičaitis, footnote 11, pp. 55–68.

³⁷ There also were constitutions meant specifically for the GDL. In 1590, they were even gathered into one collection, titled *Sprawy Wielkiego Księstwa Litewskiego*, which was later simply named as *Konstytucje Wielkiego Księstwa Litewskiego* (see Visneris, H., *Lietuvos Didžiosios Kunigaikštystės pavojai [Dangers to the Grand Duchy of Lithuania]* (translated from Polish by Griškaitė, R. and Kulakauskienė, S.), Vilnius: Mintis, 1991, p. 16).

convention. Thus, the question arises whether the comparison of a code of the 16th century with a modern constitution is an anachronism? Quite a few eminent medievalists and philosophers have warned us about dangers lurking in such a chronological comparative approach: “if we compare our epoch and civilisation with others, we risk applying our measure to them”;³⁸ however, people of earlier epochs saw things differently from how “we see them”.³⁹

It is obvious that the GDL feudal society of the 16th century could not create a constitution in its modern sense. However, researchers of the Lithuanian Statutes drew attention long ago to the fact that the First Lithuanian Statute codified not only law, but also the constitutional laws of the GDL, and that the Statute (compared with the codes of the other European countries of that time) gave priority to such sections and articles that could be categorised as belonging to public (constitutional) law.⁴⁰ Actually, constitutional law was systematised in all three Statutes, i.e. they defined the structure and competence of the legislative, executive, and judicial powers, established the functions (and their scope) of state institutions, as well as the rights and duties of subjects.

The independence of the GDL was formalised already in the First Lithuanian Statute in a similar way as in a modern constitution, which, first of all, declares the independence of the state. It even did not mention anything about Lithuania’s union ties with Poland (such ties can be inferred only from the preamble to the Statute for titling Žygimantas the Old as King of Poland). However, the articles of Section III developed such a concept of a sovereign state that, according to Edvardas Gudavičius, “Poland has never witnessed in any of its codes”.⁴¹ Article 1 of this section may generally be regarded as the foundation for the legal status of the GDL statehood, since it emphasised in no uncertain terms that the GDL is a completely sovereign state and that its sovereign who, formally, embodied statehood, pledged to protect it “from any dishonour and humiliation”.⁴² No less important was Article 2 in which the sovereign promised “to expand the Grand Duchy of Lithuania and to restore to the State what is taken illegally”,⁴³ i.e. he proclaimed that he would seek to retain those lands of the former Kievan Rus that were part of the State of Lithuania. In addition, another source of this article was the obligation of the sovereign (which was included as far back as in 1447 in the privilege issued to boyars by Grand Duke Kazimieras

³⁸ Gurevičius, A., *Viduramžių epochos kategorijos [The Concepts of the Medieval Epoch]* (translated from Russian by Nekrašienė, V.), Vilnius: Mintis, 1989, p. 17.

³⁹ Libera de, A., *Viduramžių mąstymas [Thinking in the Middle Ages]* (translated from French by Demkutė, B. J. and others), Vilnius: Logos, 2001, p. 227.

⁴⁰ Юргинис, Ю., “Литовский Статут – памятник истории права и культуры Великого княжества Литовского” in 1529 m. *Pirmasis Lietuvos Statutas [The First Lithuanian Statute of 1529]* (material of a scientific conference on the occasion of the 450th anniversary of the First Statute), Vilnius: The Publishing and Editorial Council of the Ministry of the Higher and Special Secondary Education of the Lithuanian SSR, 1982, pp. 15, 18.

⁴¹ Gudavičius, E., *Lietuvos europėjimo keliais [On a Path to Lithuania’s Europeanisation]* (compiled by Bumblauskas, A. and Petrauskas, R.), Vilnius: Aidai, 2002, p. 272.

⁴² Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 148 (Article 1 of Section III).

⁴³ *Ibid.*, Article 2 of Section III.

Jogailaitis of Lithuania) to preserve the integrity of the GDL and expand its territory.⁴⁴ Article 3 of Section III of the First Lithuanian Statute shows that its drafters attached great importance to formalising the independence of the State of Lithuania, since this article promised not to give “lands and castles, towns, or any kind of inheritance or holdings” to anyone from foreign countries and protected against “aliens”,⁴⁵ i.e. mostly against the Polish nobility, the rights of the natives of the GDL to enter office and receive titles or honours. The following facts show that this right was not a mere declaration: if there was the slightest risk that the Lithuanian sovereign, who was also the King of Poland, could violate GDL interests, the members of the Council of Lords – the vigilant keepers of the sovereignty of the GDL – would, on behalf of “all knighthood”, remind him (as did envoys sent to Grand Duke Žygimantas the Old in 1538) that “he *had granted* the privileged rights not to expand the Crown to the Duchy [...] and the lands of the Grand Duchy expect that Your Highness, as a Christian sovereign, would firmly protect these rights”,⁴⁶ Thus, the First Lithuanian Statute became an important part of strengthening the state and preserving the independence of the political nation.⁴⁷ Because of the looming union with Poland, the problem of the sovereignty of the GDL was persistent. Therefore, as noted above, one of the reasons for the hasty adoption of the Second Lithuanian Statute was the aspiration to consolidate the political and legal sovereignty of the GDL on the eve of the new union of Poland and the GDL. This was done not only by leaving, in the title of Section III, the promise of the sovereign *to expand* the GDL, but also by entering this promise in Articles 1 and 3, the scope of which was widened⁴⁸ compared with that of Articles 1 and 2 of Section III of the First Lithuanian Statute.

The crucial role in protecting the independence of the GDL was played by the Third Lithuanian Statute, which protected a separate structure of the State of Lithuania, whereas “the relations in the confederation were defined by the Treaty of the Union of Lublin, the application of which was harmonised with the Statute, but not vice versa”.⁴⁹ It is evident that, after the Union of Lublin had been formed, the commission for drafting a new Statute made an attempt to create legal obstacles to the inherent incorporation of the GDL into Poland. It is true that the Statute did not sever the union ties with Poland, however, it violated its provisions in substance. The sovereign pledged himself and on behalf of his heirs:

⁴⁴ Законодательные акты Великого княжества Литовского XV–XVI вв. (подготовил Яковкин, И.), Ленинград: Государственное социально-экономическое издательство, 1936, с. 10.

⁴⁵ Valikonytė, Lazutka, and Gudavičius, footnote 2, pp. 148–149 (Article 3 of Section III).

⁴⁶ See footnote 20, сr. 48.

⁴⁷ Kiaupienė, J. and Lukšaitė, I., Lietuvos istorija [The History of Lithuania], Vol. V: *Veržli Naujųjų laikų pradžia. Lietuvos Didžioji Kunigaikštystė 1529–1588 metais* [The Flying Start of the Modern Ages. The Grand Duchy of Lithuania in 1529–1588], Vilnius: Baltos lankos, 2013, p. 125.

⁴⁸ Statut Litewski drugiej redakcyi (1566) in *Archiwum Komisji prawniczej*, Vol. 7, Kraków: Akademia Umiejętności, 1900, s. 41–44.

⁴⁹ Gudavičius, E., “Teisė” [“Law”] in *Lietuvos Didžiosios Kunigaikštijos kultūra* [The Culture of the Grand Duchy of Lithuania], Vilnius: Aidai, 2001, p. 713.

“[...] We shall not reduce, seize, or belittle the lands, honour, titles, the capital, nobility, power, authority, supremacy, other belongings possessed from old times and at present by the glorious state – the Grand Duchy, as well as its boundaries, and We also intend to expand the above.”⁵⁰ In other words, the Statutes consolidated the integrity and inviolability of the territory of the GDL. According to the Polish historian Henrik Wisner, the Third Lithuanian Statute simply “did not notice” the existence of the joint CTN; therefore, it was no accident that, at their local conventions, the Poles demanded that this Statute be repealed as a document adopted *contra privilegium unione*.⁵¹

The first sections of all three Lithuanian Statutes, like a modern constitution, legally formalised the state order of the GDL: they regulated the structure of GDL state institutions and institutes, as well as relations among these institutions and with subjects, and established the functions and prerogatives of state institutions, the competence of central authority and local offices; thus, the rules of the separation and sovereignty of powers were legalised. These norms of constitutional law were not arranged in a separate, special section of the Statute (after all, a code is not a Constitution) – most of them were entered in Section I, which was devoted to the person (majesty) of the sovereign (who, albeit formally, remained on top of the pyramid of power), and in Section III covering both the rights of boyars and the state system. These norms of public law received very much attention in Section III of the Second Lithuanian Statute, whereby the provisions of administrative reform, promulgated in the seventh decade of the 16th century, were legalised. Of course, this code reflected the existing relations between the monarch and his vassals. Both sovereign and patrimonial forms of power were intertwined in the said Statute: the *imperium* defended the political independence and order of the state, while the *dominium* granted to the sovereign all lands and property of the state.⁵² Although the sovereign tried to formalise the granting of the written law as an act of his will or even grace, the First Lithuanian Statute, as well as former privileges issued by grand dukes, was a contract between the sovereign and the nobility.

On the one hand, the content of the Statutes reflected, and, on the other, legalised the GDL social system that existed then. The First Lithuanian Statute was a code of all (albeit heterogeneous) boyars; therefore, it clearly expressed their hierarchy. In fact, ordinary boyars did not have any political rights at that time. Of course, they were able to participate at conventions; however, in the first half of the 16th century, conventions were basically larger congresses of the Council of Lords. The boyars did not have any decision-making powers at such congresses, as laws were passed by the sovereign together with the Council of Lords, which was a state institution representing the higher nobility. GDL Grand Chancellor

⁵⁰ *Статут Вялікага княства Літоўскага 1588. Тэксты. Даведнік. Каментарыі*, Мінск: Беларуская савецкая энцыклапедыя імя Петруся Броўкі, 1989, с. 111 (Article 1 of Section III).

⁵¹ Visneris, footnote 37, p. 9.

⁵² Vasilevskienė, I., “Prigimtinės teisės atspindžiai Lietuvos Statutuose” [“Customary Law as Reflected in the Lithuanian Statutes”], *Lietuvos TSR mokslų akademijos darbai [Scientific Works of the Academy of Sciences of the Lithuanian SSR]*, series A, 1977, Vol. 4(61), p. 35.

Albertas Goštautas clearly wrote to Queen and Grand Duchess Bona Sforza about such a situation, which humiliated the boyars: “In our [state], conventions are held completely differently: whatever His Royal Majesty and the lords decide, our boyars must execute. We invite the boyars to our conventions, partly out of respect, but, on the other hand, in order that everyone knows what we have decided.”⁵³ Due to the fact that, since the second half of the 15th century, the common sovereign of Lithuania and Poland had been residing in Cracow practically all the time, the Council of Lords performed most of the functions of GDL government, all the more so that privileges issued by Aleksandras Jogailaitis in 1492 and those granted by Žygimantas the Old in 1506 legalised the competence of the Council of Lords. For this reason, the dominant role of the higher nobility in the state, which was reaffirmed in the First Lithuanian Statute, lead to the deep dissatisfaction of boyars and prompted the latter to seek equal rights with the higher nobility, which was one of the reasons for drafting the Second Lithuanian Statute. As mentioned above, it legalised the judicial and administrative reforms proclaimed at the time when the Statute was being amended. Those reforms determined the rise of the title of boyar “as exceptional estate quality”.⁵⁴ In the course of implementing the administrative reform, the counties that were established in the GDL were, differently from Poland, not only the grounds for organising courts, but also a form of organising boyars as an estate,⁵⁵ i.e. local self-government of boyars was created. In the opinion of the contemporary eminent Lithuanian historian Mečislovas Jučas, the Second Lithuanian Statute granted citizenship to all boyars, whereas the local conventions of counties, established through the privilege issued on 30 December 1565 by Žygimantas Augustas, became “the main cell of all parliamentary life”.⁵⁶ The whole “nobility nation” could take part in lawmaking namely through delegates to a convention elected at the local conventions of counties. This right was also entered in Articles 5 and 6 of Section III of the Second Lithuanian Statute, which regulated the procedure for forming GDL conventions and their activity and granted them the lawmaking prerogative. All boyars of a county (Lithuanian: *pavietas*) were granted the right to participate at a local convention and to elect two delegates to a convention as the representation of the nobility nation. Thus, the Second Lithuanian Statute legalised such a model of estate monarchy that gave the right to boyars, who had already become rather homogeneous, to become involved in adopting decisions on state matters, lawmaking, law enforcement, and administration, i.e. to become involved in state governance. It can be stated that it was Article 12 of Section III of this Statute that legalised the principle of *nihil novi sine nuntiorum terrestrium* (it is not allowed

⁵³ “Šešioliktojo amžiaus raštija” [“Writings of the Sixteenth Century”] in *Senoji Lietuvos literatūra [The Old Literature of Lithuania]*, Book 5 (compiled by Tamulionis, A., Jurgelėnaitė, R., and Kuolys, D.), Vilnius: Pradai, 2000, p. 56.

⁵⁴ Petrauskas, R., “Luomai” [“Estates”] in *Lietuvos Didžiosios Kunigaikštijos kultūra [The Culture of the Grand Duchy of Lithuania]*, pp. 323–324.

⁵⁵ Bardach, J., *O Rzeczpospolitą Obojga Narodów: Dzieje związku Polski z Litwą do schyłku XVIII wieku*, Warszawa: Krajowa agencja wydawnicza, 1998, s. 21.

⁵⁶ Jučas, M., *Lietuvos ir Lenkijos unija (XIV a. vid. – XIX a. pr.) [The Lithuanian–Polish Union (from the Mid 14th Century until the Beginning of the 19th Century)]*, Vilnius: Aidai, 2000, p. 213.

to adopt anything new without delegates of lands), which became law in Poland as far back as in 1505 at the convention of Radom. Article 6 of Section III of the Second Lithuanian Statute even granted the right to boyars, if a need arises, to convene a convention,⁵⁷ in which state power was concentrated. Besides, the Statute obligated representatives elected in a county (in the Statute, they are called envoys or sometimes deputies) not only to observe instructions given to them by the local convention of their county and to vote accordingly at a convention (Article 5 of Section III), but also, having returned back from the convention, to inform, at the local convention, the boyars of the county about decisions adopted *in the interest of the general good*,⁵⁸ in other words, to account to voters (delegates were required to proclaim orally decisions adopted at the convention, whereas the written original of the decision of the convention, endorsed by the sovereign's seal, used to be deposited with the County Land Court for safe-keeping).⁵⁹ Thus, it can be stated that the Second Lithuanian Statute granted political rights to boyars. It goes without saying, equal rights of the higher nobility and poor boyars did not mean equal opportunities. Local conventions themselves – the tool for implementing those rights – were not completely independent, since the higher nobility had influence on their decisions. The Polish doctor of theology Andrzej Radawiecki said, “Not everyone, but only someone who is free is a boyar. Not everyone, but only someone who is equal with others is free; not everyone, but only someone who lives in safety is both free and equal.”⁶⁰ This statement reflected the sentiments of a number of GDL boyars. However, namely the Second Lithuanian Statute legalised a convention as the main institution of power and lawmaking representing boyars and conferred the supreme jurisdiction on a convention, i.e. it laid the foundations for the consolidation of parliamentarism in Lithuania. The common convention of Poland and the GDL was approved only in the Third Lithuanian Statute (Articles 6, 7, and 51 of Section III); however, GDL boyars retained a general pre-convention assembly.⁶¹ Thus, the second half of the 16th century saw the legalisation of, tentatively speaking, constitutional norms, which, as mentioned above, were used by boyars by taking an active part in the process of drafting the Third Lithuanian Statute. Thus, the “nobility nation” became a lawmaker. Lithuanian nobles well understood the importance of a law-governed state and were especially aware of their “golden rights” (*aurea libertas*), guaranteed by the Statute and best described by the postulate of *nihil de me sine me* (no matters relating to me may be decided without me), which became another pillar of the liberties and values of boyars.

⁵⁷ See footnote 48, p. 46 (Article 6 of Section III).

⁵⁸ See footnote 50, p. 117 (Article 9 of Section III).

⁵⁹ For details on the competence of the local conventions of counties, see Лаппо, И., *Великое княжество Литовское во второй половине XVI столетия: Литовско-Русский повет и его сеймик*, Юрьев: Типография К. Матиссена, 1911, с. 431–497; Zakrzewski, A. B., *Wielkie Księstwo Litewskie (XVI– XVIII w.): Prawo – ustrój – społeczeństwo*, Warszawa: Campidoglio, 2013, s. 95–102.

⁶⁰ Cited from Visneris, footnote 37, p. 32.

⁶¹ See footnote 50, p. 117 (Article 8 of Section III).

As far back as during the period from the end of the 14th century until at the beginning of the 16th century, the privileges granted by grand dukes to boyars legalised their most important rights, which were, as a rule, named in acts as liberties (*libertas*), but more often were called rights and liberties (*права и вольности*). In all Europe, the ethos of the ruling estate included religion, nobleness, liberty, and rights. Full rights and nobleness were deemed the main criteria of the status of a person in feudal society, since they showed that a person belonged to the ruling estate, whereas property was considered an important but not essential factor.⁶² Still, namely land ownership distinguished landowners from other subjects and placed them among those who belonged to the privileged estate. Therefore, the Statutes guaranteed property (and, first of all, the right to inherit it) to the offspring of both sexes. It is true that the ownership rights of boyars were enshrined in the 1387 privileges of Jogaila, the 1413 Horodło privilege, as well as in subsequent privileges. While the First Lithuanian Statute contained limitations on the right of landowners to dispose of their land freely, authorising *the permanent sale* of only one-third of an estate (Article 16 of Section I), Article 33 of Section III of the Second Lithuanian Statute legalised unrestricted disposal of immovable property: “[...] the whole estate of boyars, as free people, are allowed now and in the future to manage freely their patrimonial, matrimonial, or otherwise acquired estates, and, according to their needs, will, and discretion, they may of their own free will give them away, sell them, give them as a present, sign them away, pawn them in order to return a debt, or put them up as collateral for a certain sum of money.”⁶³ The Third Lithuanian Statute not only once again ensured this right, but also consolidated the domination of boyars over peasants and, in general, guaranteed boyars threefold immunity, i.e. tax, judicial, and administrative immunity (without the consent of boyars, the state could not govern, judge, or collect state taxes from their subjects), which was not provided for in any other European code at that time.⁶⁴ On the other hand, the Statutes retained the so-called *ius indigenatus*, which was legalised by the privilege issued as far back as in 1447 by Kazimieras Jogailaitis, i.e. the tradition to limit the right of anyone from foreign countries to acquire landed properties (and offices), which was also typical of other countries of Central Europe (Poland, Hungary, Czechia). Meanwhile, the right of boyars (which may be categorised as an individual liberty) to leave completely freely from the lands of the GDL to any other lands besides lands of enemies “to find for themselves a better share and training in knighthood”⁶⁵ can be found already in the First Lithuanian Statute. The Second and Third Statutes supplemented their respective articles by granting the right not only to receive

⁶² Gurevičius, footnote 38, p. 233.

⁶³ See footnote 48, pp. 64–65.

⁶⁴ Jučas, footnote 56, pp. 200–201.

⁶⁵ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 150 (Article 8 of Section III).

treatment, but also “to receive education” abroad,⁶⁶ i.e. to study in universities, which was actually used by the sons of GDL boyars.⁶⁷

An individual of the medieval epoch saw “[...] liberty as a privilege and the word itself was mostly used in its plural form. Liberty meant a guaranteed status”.⁶⁸ It goes without saying, in the 16th century, Lithuania was no longer a medieval state. However, both in Poland and in the GDL, the basis of the ideology of nobility society was the cult of liberty. Therefore, it is completely understandable that all three Lithuanian Statutes contained a special section in which the rights and liberties of boyars (*szlachta*) were set out consistently, concisely, and systemically. Attention should be drawn to the fact that the place of the section on the liberties of boyars and its title remained the same in all Lithuanian Statutes, which was “Concerning the Liberties of Boyars and the Expansion of the Grand Duchy”. This is the most important section in which cardinal rights of the GDL feudal lords were formalised. It is possible to regard this section as a code of boyar rights, in which the obligations of the sovereign to the estate of boyars and the state were laid down. It was in this section where the grand duke promised “to preserve completely” all liberties of boyars and legalised the exceptional – highest – status of boyars: “The Sovereign May Not Raise Simple People over the *Szlachta*.”⁶⁹ This obligation was also repeated in the Second (Article 15 of Section III)⁷⁰ and Third (Article 18 of Section III) Statutes: “Also, We may not raise simple people over the *szlachta* or grant them honours or Our offices, since such honours and offices may be granted only to the *szlachta*, every knight, local natives, and the settled population of this state – the Grand Duchy of Lithuania.”⁷¹ However, it goes without saying, not only Section III, but also other sections legalised the inviolability of boyars as a privileged estate, as well as entrenched their rights and liberties in various spheres of public and private life. A privilege issued as far back as in 1434 by Grand Duke Žygimantas Kęstutaitis (*Zygmunt Kiejstutowicz*) guaranteed boyars the presumption of innocence. The pledge of the sovereign not to punish boyars without a public trial was also entered in the First Lithuanian Statute. In addition, whoever by making an accusation without presenting evidence subjected a boyar to punishment had to suffer that same punishment.⁷² This

⁶⁶ See footnote 50, pp. 119–120 (Article 16 of Section III).

⁶⁷ Дзюба, Е., “Право на выезд за границу в литовских статутах и его роль в развитии международных культурных связей украинского народа” in *1588 metų Trečiasis Lietuvos Statutas [The Third Lithuanian Statute of 1588]* (material of a scientific conference on the occasion of the 400th anniversary of the Third Statute), Vilnius: Vilnius University, 1989, pp. 173–180; Subotkevičienė, R., “Lietuvos Didžiosios Kunigaikštystės katalikų dvasininkų studijos užsienio universitetuose: aukštojo mokslo pasirinkimo krypčių ir požymių kaitos tendencijos XIV a. pabaigoje – XVI a. 8 dešimtmetyje” [“The Studies of the Catholic Priests of the Grand Duchy of Lithuania in Foreign Universities: The Trends of Changes in Approaching and Choosing Fields of Studies in Higher Education from the End of the 14th Century until the 8th Decade of the 16th Century”], *Lietuvos istorijos metraštis [The Chronicle of the History of Lithuania]*, 2012(2), Vilnius, 2013, pp. 5–21.

⁶⁸ Ле Гофф, Ж., *Цивилизация средневекового Запада*, Москва: Прогресс-Академия, 1992, с. 262.

⁶⁹ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 151 (Article 10 of Section III).

⁷⁰ See footnote 48, p. 52.

⁷¹ See footnote 50, p. 121.

⁷² Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 125 (Article 1 of Section I).

matter was further clarified in the Second Lithuanian Statute by supplementing it with an additional norm: “[...] neither We, the sovereign, nor any other official may arrest and put to prison a settled boyar who is lawfully summoned to a court, but not yet convicted.”⁷³ An exception was made only for those caught *in flagranti*. The Statute also ensured the right of an accused person to defend himself/herself and the right of parties to a case to conduct the case by proxy, who was called a procurator or spokesperson (*печник*).⁷⁴

There is no doubt that the spread of the concept of the state as a protector of the liberties of citizens lead to the understanding that the state defends those liberties namely through the Statute, which was eloquently pointed out by Leonas Sapiega, emphasising that an honourable man values liberty above all other things. He also referred to the Statute as *the major guardian of universal liberty*.⁷⁵ Not only publicistic writing of that time testifies that “a certain mythology of liberty and rhetoric lauding liberty of boyars”⁷⁶ became widespread in Lithuania, but also documents recording facts of everyday life clearly show that boyars perceived and valued the Lithuanian Statute not only as a code of laws, but, rather, as a key guarantee of their liberties or, in a way, a kind of constitution. There are scores of examples illustrating the pride and joy of boyars in their rights and liberties enshrined in the Statute. For instance, in 1538, while addressing the sovereign, the envoys of the Council of Lords and “all knighthood”, thanked him for *the universal law* (i.e. the Statute) that protected them and stressed several times that “all *szlachta*” enjoyed their liberties and the Statute.⁷⁷ That joy, experienced by all strata of boyars, was boundless – this can also be seen from the dedication written by Leonas Sapiega in the Third Lithuanian Statute. The words “to enjoy the *szlachta* liberties” were even entered in Article 21 of Section III of the Third Lithuanian Statute. This was not mere rhetoric, since words used in legal writing in the Renaissance and the forms of expressing feelings were different from what we use today. But, unlike Leonas Sapiega or the publicist Andrius Volanas (*Andreas Volanus*) (c. 1530–1610), secretary of the Grand Duke of Lithuania, not everyone was educated enough to cite Cicero – “We are slaves of laws so that we can be free”⁷⁸ – or, as GDL Field Hetman Kristupas Radvila (*Krzysztof Radziwiłł*) (1585–1640), albeit in the third decade of the 17th century, to formulate such a view that can be regarded as the credo of all nobility society – “Homeland is not walls,

⁷³ See footnote 48, pp. 46–47 (Article 7 of Section III).

⁷⁴ Valikonytė, I., “Prokuratorius XVI amžiaus pirmojoje pusėje: bylos šalies pavaduotojas, kalbovas ar ‘teisingumo riteris’” [“The Procurator in the First Half of the 16th Century: A Deputy of a Party to a Case, a Spokesperson, or a ‘Knight of Justice’”] in *Pirmasis Lietuvos Statutas ir epocha [The First Lithuanian Statute and Its Epoch]* (collection of articles; compiled by Valikonytė, I. and Steponavičienė, L.), Vilnius: Vilnius University Press, 2005, pp. 135–150.

⁷⁵ See footnote 50, p. 45.

⁷⁶ Kuolys, D., “Laisvės sampratos XVI a. Lietuvos Didžiosios Kunigaikštystės raštijoje” [“The Concepts of Liberty in the Writings of the Grand Duchy of Lithuania in the 16th Century”] in Jokubaitis, A. and Kulakauskas A. (editors), *Seminarai [Seminars]*, Vilnius: Vyturys, 1998, pp. 33–37.

⁷⁷ Footnote 20, cr. 19–20, 26, 39–40.

⁷⁸ See footnote 50, p. 47; Volanas, A., *Rinktiniai raštai [Selected Writings]* (compiled by Ročka, M. and Lukšaitė, I.), Vilnius: The House for Publishing Scientific Works and Encyclopaedias, 1996, p. 26.

boundaries, or wealth, but rights and liberties”.⁷⁹ When signing the act on electing Jonas Kazimieras (*John Casimir*), Kristupas Chodkevičius (*Krzysztof Chodkiewicz*), nephew of the famous GDL Grand Hetman Jonas Karolis Chodkevičius (*Jan Karol Chodkiewicz*), who inflicted a heavy defeat on the Swedes at the battle of Salaspils (Kirchholm) in 1605, even decided to add in Latin: “by preserving the rights of the Catholic Church and the liberties of the Grand Duchy of Lithuania”.⁸⁰ The guarantee of those liberties was the Statute. On the other hand, despite the pledge of Žygimantas the Old written in the preamble to the First Lithuanian Statute *to consider binding* all rights, i.e. privileges, granted by his predecessors to boyars, at conventions the latter always requested the sovereign to incorporate them in the Statute. This is illustrated by the 1545 act of Žygimantas Augustas endorsing, at the request of Samogitian boyars, the *privilegiis iura, libertates et immunitates*⁸¹ previously granted to them. Their fear that their rights would be restricted was revealed by the events that had taken place before the Second Lithuanian Statute became effective in Samogitia: on 1 May 1565, at least 120 boyars convened in Viešvėnai and wrote a petition requesting that Elder of Samogitia Jonas Chodkevičius (*Jan Chodkiewicz*) or the vice-elder continue to decide cases at law according to the First Lithuanian Statute. They explained why they refused to elect judges, as required by amendments to the Statute, stating that “without possessing and having not seen the new Statute” they were anxious about the possibility that the Statute would violate the liberties granted to them by Žygimantas Augustas and his ancestors.⁸² Thus, they agreed to implement the amendments to the Statute adopted at the convention of Bielsk in 1564 only after they were sure that the new order would not violate their liberties. On the other hand, the pride and delight in both the privileges and the Statute did not prevent the higher nobility or boyars from violating that code of laws, since, as they understood it, in such a way they defended their rights. For instance, in 1554, at the convention of Vilnius, the boyars submitted to the sovereign the request, based on their innate right to defend their liberties, to enter “word for word” in the forthcoming Second Lithuanian Statute all their privileges, because “everyone must defend their liberties from their birth”.⁸³ Therefore, the fact that intellectuals of that time reproached boyars comes as no surprise. For instance, Petras Roizijus lectured the unruly boyars, pointing out that “a state is not such society for which laws and certain legal norms are created, but, rather, the one that abides by the law and legal norms”.⁸⁴

⁷⁹ Cited from Visneris, footnote 37, p. 40.

⁸⁰ Ibid., p. 10.

⁸¹ *Žemaitijos žemės privilegijos XV–XVII a. [The Land Privileges in Samogitia in the 15th–17th Centuries]* (compiled by Antanavičius, D. and Saviščevas, E.), Vilnius: Versus aureus, 2010, p. 52.

⁸² The Division of Manuscripts of the Wroblewski Library of the Academy of Sciences of Lithuania, collections of records 16–24, sheet 56.

⁸³ See footnote 20, ct. 224.

⁸⁴ Roizijus, P., *Lietuvos sprendimai 1563 [Lithuania's Decisions 1563]* (compiled by Andriulis, V.; translated from Latin by Dilytė, D.), Vilnius: The Legal Information Centre, 2007, p. 4.

The attitude of society toward law also determines its attitude toward a person: “when law is regarded highly, certain guarantees for an individual’s existence emerge, which are respected by society”.⁸⁵ Even though the view that a crime is an antisocial phenomenon, which violates public (universal) order,⁸⁶ was already prevalent in the statutes, however, it goes without saying, the Statute, which was “created by boyars for boyars”,⁸⁷ ensured first of all their cardinal rights, such as peace of home (the inviolability of property and a person) and the protection of honour (dignity), health, and life. That is why already the First Lithuanian Statute devoted a great deal of attention to the proof of a crime, regulated exhaustively court proceedings dealing with an attacker of a home and a perpetrator of violence, and provided for such big fines and punishments for a perpetrator of violence. Although the Statutes retained the system of damages to be paid in recompense of injuries, however, the application of related fines opened the way to deterring punishments.⁸⁸ Despite the fact that Andrius Volanas was not a member of the commission for drafting the Third Lithuanian Statute, it is quite possible that the editors of this Statute noticed the statements, set out in his work “On Political or Civil Liberty”, that “peaceful life” among people must be consolidated and that human life must be protected and “inaccessible to a murderer”.⁸⁹ One way or another, the length of Section XI “Concerning Violence and Beating, as well as the Killing of Members of the *Szlachta*” was doubled by including up to 68 articles (Section VII “Concerning Land Acts of Violence: The Beating and Killing of Members of the *Szlachta*” of the First Lithuanian Statute was composed of 35 articles). Their purpose was to defend the person of a boyar from attempts on his/her honour, life, and health. It is worth noting that all the Statutes retained the norm of Lithuanian customary law of double compensation for the killing or injuring a woman; however, a comparison between the respective articles of the First and Third Statutes makes it clear that laws already gave priority over the social status of a woman, but not her sex.⁹⁰ It is true that the Statutes also protected the health and life of (both male and female) commoners; nevertheless, such health and life were not only valued less (by establishing lesser monetary compensation), but also the concept “disgrace” was not applied to common people. On the other hand, all researchers of the Statutes (especially, those of the Third Statute) emphasise that their drafters were open-minded about new social phenomena and humanistic ideas and point out some moves to recognise certain rights of members of the unprivileged estate as well. First of all, attention is drawn to a new article that provided for the death penalty for a boyar convicted of intentional murder

⁸⁵ Gurevičius, footnote 38, p. 139.

⁸⁶ See footnote 50, pp. 276–277, 279–280, 283–285, 292–293 (Articles 1, 5, 14, and 28 of Section XI).

⁸⁷ Plateris, A., “I Lietuvos Statutas” [“Lithuanian Statute I”], *Naujoji Romuva*, 1940, Nos 24–26, p. 448.

⁸⁸ Gudavičius, E., “Pirmojo Lietuvos Statuto baudžiamosios teisės bruožai” [“The Features of Criminal Law in the First Lithuanian Statute”], *Lietuvos TSR aukštųjų mokyklų mokslo darbai. Istorija* [Scientific Works of Schools of Higher Education of the Lithuanian SSR. History], 1975, Vol. XV (notebook 2), p. 100.

⁸⁹ Volanas, footnote 78, p. 129.

⁹⁰ For details, see Валиконите, И. и Яксебогайте, Й., “Выкуп за женщину по Литовскому Статуту” in *1588 metų Trečiasis Lietuvos Statutas* [The Third Lithuanian Statute of 1588], footnote 67, pp. 85–95.

of a commoner, as well as to limiting the possibilities of bondage, by leaving only one in the Third Lithuanian Statute, which was war prisoners, and to the stipulation that serfs were to be called “people of the house” or “household” (*целядь*).⁹¹

The expression of the innate right, which was theologised in the Middle Ages, was unacceptable for the drafters of the Statutes and “the form of Christian justice as a symbol of the moral development of an individual did not overshadow the secular character of the Lithuanian Statutes”.⁹² Even though the editors of the Statutes observed the requirements of Christian morality and in the preamble to the First Lithuanian Statute referred to it as Christian law, it did not contain articles of ecclesiastical law that were common among the codes of laws of Byzantine countries,⁹³ it did not define relations between state and church, however, it legalised, albeit formally, religious tolerance, declaring that the sovereign grants Christian law to all society and endorses all previous “church rights and privileges, both for persons of the Latin faith as well as Greek, as well as secular” rights and privileges.⁹⁴ However, the discriminatory restrictions on the political rights of Orthodox believers, which are found in the 1413 Horodło privileges, granted to Lithuanian boyars by King Jogaila of Poland and Grand Duke Vytautas (*Witold*) of Lithuania, were abolished only by the privilege issued by Žygimantas Augustas at the convention of Vilnius on 7 June 1563, which completely equated the political rights of Orthodox believers with those of Catholics.⁹⁵ (Even though, as stated above, the commission for drafting the Second Lithuanian Statute was formed on a confessional parity basis as far back as in 1551). However, at that time the adoption of a law that would confirm the equal rights of boyars of all Christian faiths (including Evangelicals) failed. It was the privilege proclaimed at the convention of Grodno in 1568 that not only endorsed the provisions of religious tolerance, satisfying the requirements of GDL boyars striving for political emancipation, but also several times repeated that “all people of the Christian faith who belong to the knights’ estate and the nobility nation” (thus, including Evangelicals) had equal rights.⁹⁶ Those provisions were confirmed in the special Article 9 of Section III of the Second Lithuanian Statute. The status of a legal person granted to Evangelical communities guaranteed not only legal, but also political

⁹¹ Bardach, footnote 4, p. 80.

⁹² Vasilevskienė, footnote 52, p. 40.

⁹³ Gudavičius, E., *Lietuvos istorija [The History of Lithuania]*, Vol. I: *Nuo seniausių laikų iki 1569 metų [From Ancient Times until 1569]*, Vilnius: The Publishing House of the Lithuanian Writers Union, 1999, p. 419.

⁹⁴ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 124.

⁹⁵ Jevgenij Machovenko has translated this privilege into Lithuanian. See Machovenko, J., “1563 m. birželio 7 d. bendravalstybinės LDK privilegijos vertimas į lietuvių kalbą” [“The Translation of the GDL Countrywide Privilege of 7 June 1563 into Lithuanian”], *Teisė [Law]*, 2014, Vol. 93, pp. 200–204.

⁹⁶ Lukšaitė, I., *Reformacija Lietuvos Didžiojoje Kunigaikštystėje ir Mažojoje Lietuvoje. XVI a. trečias dešimtmetis – XVII a. pirmas dešimtmetis [Reformation in the Grand Duchy of Lithuania and Lithuania Minor (from the Third Decade of the 16th Century until the First Decade of the 17th Century)]*, Vilnius: Baltos lankos, 1999, p. 323.

and economic protection.⁹⁷ It should be pointed out that, at the time when, on the night of St. Bartholomew's Day, an appalling massacre of protestants was carried out at Paris in 1572 as an expression of religious intolerance, Vilnius possibly "became the European capital of tolerance".⁹⁸ Religious tolerance facilitated the formation of the union of the GDL and Poland.⁹⁹ On the other hand, such tolerance was also significant for the adoption of the confessional tolerance act *Pax inter dissidentes in religione*, which was valid in the entire territory of the GDL. This is also confirmed by the Third Lithuanian Statute, which created the legal conditions for religious peace among the multi-confessional population of the GDL after the editors of the Statute included into Article 3 of Section III *in extenso* this 1573 act of the Warsaw Confederation concerning the liberty to choose a faith, which legalised the equality of everyone "who understands and professes the Christian faith in various ways". The Third Lithuanian Statute also no longer contained formal sanctions against "heretics", which had been included in the First and the Second Statutes. In addition, the special Article 3 of Section XI protected churches of "all Christian faiths" from attacks and acts of violence.¹⁰⁰ Thus, in Lithuania, Christian confessions were guaranteed, to use a modern expression, freedom of belief. However, certain rights of non-Christians remained restricted; for example, they were not allowed to hold "Christians in bondage", they were not allowed to act as "witnesses in a case on land and on proving land management", etc.¹⁰¹ In this regard, laws of the GDL, as part of the tradition of all Europe, reflected the reality of the society of the GDL of that time.

One of the most important fundamental values adhered to by boyars was justice. The Lithuanian Statute emphasises the Christian pattern of life and justice, as well as the concept of legal proceedings as searching for and achieving justice. On the other hand, the legal code had to focus namely on the legal system and the institutional judicial structure, which was only natural. In all the Statutes, the largest section was the one concerning courts, which was moved from Section VI (placed by the editors of the First Lithuanian Statute) to Section IV in both the Second and Third Statutes. Thus, the extended version of Section VI "Concerning Judges" of the First Lithuanian Statute was composed of 37 articles, while Sections IV "Concerning Judges and Courts" of the Second and Third Statutes consisted of 70 and 105 articles respectively. These and other sections legalised the system of the law of the nobility estate and corresponding law enforcement: the particularism of laws was abolished, the institutional judicial structure was regulated, and the principles and mechanism of the functioning of courts were established. However,

⁹⁷ Niendorf, M., *Lietuvos Didžioji Kunigaikštystė. Studija apie nacijos formavimąsi ankstyvaisiais naujaisiais amžiais 1569–1795* [The Grand Duchy of Lithuania. A Study about the Formation of the Nation in the Early Modern Ages 1569–1795] (translated from German by Klimkaitė, I. D.), Vilnius: Mintis, 2010, p. 149.

⁹⁸ Bumblauskas, A., *Senosios Lietuvos istorija. 1009–1795* [The History of the Old Lithuania. 1009–1795], Vilnius: R. Paknys Publishing House, 2005, p. 248.

⁹⁹ Bardach, footnote 4, p. 23.

¹⁰⁰ See footnote 50, pp. 252–253.

¹⁰¹ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 210 (Article 5 of Section VIII); p. 237 (Article 5 of Section XI).

after the adoption of the First Lithuanian Statute, which, as mentioned above, consolidated the privileged status of the higher nobility, boyars demanded a court that would be *equal* to all nobility, since, according to Mykolas Lietuvis (*Michalo Lituanus*), secretary of the Grand Duke of Lithuania and a publicist of the 16th century, “it is not fair [...] that my more powerful neighbour, who owns land in the same village as I do, is under the jurisdiction of another court and that he is not as easily brought before a court as I am”.¹⁰² Therefore, the Second Lithuanian Statute, which at last abolished the exceptional jurisdiction of the higher nobility and introduced courts equal to all nobles, was especially important for boyars; this Statute formally consolidated the judicial reform of 1564, whereby the system of courts was changed (bringing it in line with the Polish judicial system) and the estate organisation of courts elected by the nobility was created. The estate judicial system in the GDL was completed following the establishment of an appeal court, the so-called Supreme Tribunal, in 1581. The Western legal tradition, of which Lithuania is a part, has formed the standards of a law-governed state and the rule of law in society. The statement that, in Lithuania, as in all Europe, *the old good law* was regarded as a tremendous value may be substantiated with numerous litigation documents, which recorded demands, put forward by male and female boyars, that justice be administered and that they be judged “according to the custom laid down in law” or “according to the Statute”. The principles of the independence of courts, their impartiality, and the impeccable reputation of judges, which were guaranteed in the Statutes (especially, in the Second and Third Statutes), may also be deemed to be characteristics of a law-governed state.¹⁰³ In addition, it should be mentioned that courts were separated from administration only in the Second Lithuanian Statute. Therefore, the First Lithuanian Statute demanded that only nobles possessing land who were elected judges by the administrators (elders) of counties or the masters of estates had to take an oath (Article 2 of Section VI), whereas the Second and Third Statutes already contained the formula of an oath (called *rota*), which was required to be taken by all judges, sub-judges, and court scribes.

The concept of a law-governed state, propagated in the 16th century by French legists, and, possibly, due to the influence of Renaissance ideas,¹⁰⁴ was clearly noticeable in all Lithuanian Statutes, which, at least formally, consolidated the same law for all residents of the GDL: “Everyone in the Grand Duchy of Lithuania must be tried by one law.”¹⁰⁵ The equality of everyone before the law was not a voice in the wilderness. The sovereign had on more than one occasion to prove this even to the greater nobility, who felt confident about their exclusive privileges. For instance, in his letters written in 1537 to duke Jurgis Sluckis, when defending the right of a Jew – “a certain lowly person” (*так легкая особа*) – to

¹⁰² Mykolas Lietuvis, *Apie totorių, lietuvių ir maskvėnų papročius* [On the Customs of Tartars, Lithuanians, and Muscovites] (translated from Latin by Jonynas, I.), Vilnius: Vaga, 1966, p. 46.

¹⁰³ Vaičaitis, footnote 11, pp. 63–64.

¹⁰⁴ *Ibid.*, p. 61.

¹⁰⁵ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 128 (Article 9 of Section I).

appeal to the sovereign directly, wrote: “However, duke Jurgis, as you well understand, equal justice must be ensured for high and rich nobles, as well as for any pauper.”¹⁰⁶ It goes without saying, decisions adopted in cases considered at the sovereign’s court were substantiated with appropriate norms of the Statute, which would be “opened” (*казали отворити*) by the order of the sovereign. But, probably, the more important thing was the expectations and conviction of society that the Grand Duke himself abides by the same laws; in other words, at least the elite of the GDL perfectly understood the principle of *non rex est lex, sed lex est rex*. This was clearly stated in both dedications (written by Leonas Sapiega) of the Third Lithuanian Statute. Expressing thanks to King Zigmantas Vaza for endorsing the Statute, he spoke of the grand dukes of Lithuania in laudatory terms and called happy his nation “to which the Lord God gave such rulers and the ancestors of Your Royal Majesty who were not only unwilling to impose on us their royal power of their own will and at their discretion, but also pushed us to draft our code of laws as the best guardian of universal liberty so that we would not impose on ourselves the unlimited power of the sovereigns and would establish certain limits, defined by law, on their reign”. In another dedication for all estates of the GDL, Leonas Sapiega even more clearly stressed the submission of the monarch to the law (laws), proposing that boyars be happy and give thanks to God, because “not only a neighbour and an ordinary citizen of our homeland, but also the sovereign himself, our lord, may not exercise any superiority over us except for that allowed by law.”¹⁰⁷ In addition, he did not forget to urge the reader to know and respect “our law” (“shame on the nation unaware of its laws”) or, in other words, to place the Statute among the values of boyars.

In truth, the reforms proclaimed in the mid 16th century and the Second Lithuanian Statute allowed boyars to feel and call themselves GDL citizens with full rights. It goes without saying, this applied only to the stronger sex. Female boyars had most of the rights and liberties granted to landowners; however, their status was far from equal to that of men. Attention should be drawn to the fact that none of the Statutes contained a section about women’s liberties as such; however, there was a special section (the fourth in the First Statute, and the fifth in the Second and Third Statutes) governing their status related to property (as a matter of fact, there was no such thing in other European code of laws). However, it is necessary to emphasise that already the First Lithuanian Statute contained the specific right of a woman to marry a man freely (Article 15 of Section IV). It was true that the pledge of the sovereign not to “force them to marry anyone without their consent” and his permission to “freely marry anyone she pleases” but “with the counsel of her friends” and, what is most important, property sanctions provided for in other articles (Articles 10 and 11 of Section IV) against women who married without the consent of

¹⁰⁶ Бершадский, С. А., *Документы и регесты к истории литовских евреев*. Т. I (1388–1550), С.-Петербург: Типо-Литография А. Е. Ландау, 1882, ст. 212. Besides, reference to a human being as *особа легка* is also used in the Second Lithuanian Statute (Article 30 of Section XIV).

¹⁰⁷ See footnote 50, pp. 45, 47. Cf. the translation into Lithuanian: Koženiauskienė, R., *XVI–XVIII amžiaus prakalbos ir dedikacijos* [Speeches and Dedications in the 16th–18th Centuries], Vilnius: Mokslas, 1990, pp. 102, 105.

parents or relatives show that the right granted to a girl to marry a man was formal and understood differently from the right of a man to marry a woman. Nonetheless, it must be stressed that, in the 16th century, society deemed such a limited right of a woman to choose a spouse not a fiction, but a boyar privilege. Mykolas Lietuvis was sure that this privilege of women existed and tried to remind the sovereign that his ancestors had not granted women “liberty or the rights of inheritance, and married them off according to their own will, but not the wishes of women”.¹⁰⁸ It is important that the editors of the Statute also held the view that the above-stated right of a woman was a privilege. Therefore, the mentioned article was consciously moved from the “women’s” section to Section III designed for liberties of boyars. In addition, this article contained an impressive message that the sovereign would protect the liberties of women “as free people” (*яко людей вольных*).¹⁰⁹ Still, even the largest female landowners did not have any political rights. They were prevented from participating not only in a convention, but also in a local convention. Female boyars could not use all rights of GDL citizens, even though they took part in political life indirectly, since they were also obliged to perform their duties as landowners for the state, which, first of all, included the duty to defend it. It goes without saying, women did not have to join the army or take part in its drills. However, the Lithuanian Statutes obliged all landowners to prepare an established number of equipped horsemen for military service: “[...] every duke and lord, and squire and widow [...], and every other man who has reached majority and who has a land estate, when the necessity arises, is obligated to serve in war [...] and to equip for military service as many people as deemed necessary at that time by a land decree.”¹¹⁰ By the way, in case of violation of this norm, the law was more favourable to a woman: if she had not fulfilled the said obligation without a valid reason, she would have lost her estates, but not her life (a man would have faced the death penalty for such a violation). The fact that military service was mandatory was stipulated by the Third Lithuanian Statute as well.¹¹¹ Thus, generally speaking, all landowners had to take part in the very important mission to defend the country, which was understood by the Statutes and society as a privilege and as a duty.¹¹²

And one more parallel: a constitution is normally adopted by a parliament. Estate-representative institutions in the Middle Ages or in the Early Modern Period were the prototype of the modern parliament. A convention was such an institution in the GDL. By the way, the First Lithuanian Statute was proclaimed rather than actually adopted at the convention of Vilnius, all the more so that the preamble to this code explained that it was

¹⁰⁸ Mykolas Lietuvis, footnote 102, pp. 54–55.

¹⁰⁹ See footnote 50, p. 134 (Article 39 of Section III). For details, see Valikonytė, I., “Lietuvos Didžiosios Kunigaikštystės bajorių teisė laisvai ištekti: realybė ar fikcija?” [“The Right of Female Boyars to Marry Freely in the Grand Duchy of Lithuania: Reality or a Fiction?”] in *Lietuvos valstybė XII–XVIII a.* [The State of Lithuania in the 12th–18th Centuries], Vilnius: The Lithuanian Institute of History, 1997, pp. 147–156.

¹¹⁰ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 139 (introduction to Section II).

¹¹¹ See footnote 50, pp. 101–102, 104–105 (Articles 1, 6, and 7 of Section II).

¹¹² Лазутка, С., *Литовский Статут – феодальный кодекс Великого княжества Литовского*, Vilnius: Vilnius University, 1978, pp. 90–95.

a gift of the monarch bestowed on his loyal subjects: “[...] with good intent and desiring in accordance with our sovereign grace to grant Christian laws [...]”.¹¹³ Meanwhile, the norms and articles of the Second and Third Lithuanian Statutes, drafted by commissions formed for this purpose, were also initiated at local conventions and were debated and adopted at conventions later.

THE SYMBOL OF STATEHOOD AND LIBERTY

In the mid 16th century, Petras Roizijus wrote that “law is like a man: it is born in society of citizens, it matures and dies, weakened by years and old age”.¹¹⁴ However, owing to the circumstances of the political development of Lithuania, the concept of the Statutes as the most important value of boyars not only survived, but even became stronger in the 18th century. At local conventions, Lithuanian boyars demanded that their delegates at conventions defend the “just” Lithuanian Statute, which was “based on centuries of practice”, and resist even the slightest amendment.¹¹⁵ The Lithuanian boyars fiercely standing up for their Statute, instead of a common code with Poland, were in no way conservative.¹¹⁶ They merely defended the foundation of the independence of their state and therefore were intractable. When the convention of 1776 decided by vote of Polish representatives to draft a common code of the CTN, Lithuanian boyars categorically rejected this proposition, i.e. they were against the intended unification of the law. When Poland understood that it was impossible to make Lithuania to waive the Statute, the Four-Year Convention in 1790 decided that the Lithuanian Statute should lie at the foundation of uniform civil law. Furthermore, having submitted a draft criminal code in 1791, the Polish political player Hugo Kołłątaj (1750–1812) praised lavishly the Third Lithuanian Statute, calling it “the best book of law in Europe” in the Renaissance era.¹¹⁷ Unfortunately, the aggression by neighbouring states, which dealt a final blow to the CTN, ended those discussions. After the incorporation of the greater part of Lithuania by Russia in 1795, tsarist authorities started considering the possibility of imposing Russian laws on the annexed provinces; however, the liberty legally established in the Lithuanian Statute encouraged people to fight to keep the Statute. During the Romantic era, which, in Lithuania, was typically characterised by monumental nostalgia for the past,¹¹⁸ patriotic students of Vilnius University, who were organised in the clandestine anti-tsarist Society of Philomaths and Philareths (1817–1823),

¹¹³ Valikonytė, Lazutka, and Gudavičius, footnote 2, p. 123.

¹¹⁴ Roizijus, footnote 84, p. 12.

¹¹⁵ Jučas, footnote 56, pp. 282, 293–294, 301–302; Kuolys, D., *Res Lituana. Kunigaikštystės bendrija [Res Lituana. The Community of the Duchy]*. Book One: *Respublikos steigimas [Establishing the Republic]*, Vilnius: The Lithuanian Institute of Literature and Folklore, 2009, pp. 242–245.

¹¹⁶ Bardach, footnote 4, p. 97.

¹¹⁷ *Ibid.*, pp. 97–98.

¹¹⁸ Kavolis, V., *Žmogus istorijoje [Man in History]*, Vilnius: Vaga, 1994, p. 436.

not only idealised, but also even ecstatically admired the Statute. For instance, the poet Jonas Čečiota (*Jan Czczot*) (1796–1847), a member of this society, admitted in a letter to a friend that he was completely enamoured with the Statute: “[...] I dream of everything with it, I sleep with it [...], I devote all my spare time to it [...]. Once we start singing [...], I sing lines from the Statute.”¹¹⁹ In 1811, as the military confrontation between Russia and France was approaching, Lithuanian activists prepared and submitted to Tsar Alexander I a plan for restoring the GDL under the aegis of Russia, providing a role for the Lithuanian Statute as the fundamental code in effect.¹²⁰ Incidentally, in a letter to Mykolas Kleopas Oginskis (*Michał Kleofas Ogiński*), the key architect of the plan, former grand treasurer of the GDL, and composer of the well-known polonaise “Farewell to My Homeland”, Erazmas Tišinskis (*Erazm Tyszyński*) wrote: “I know for sure that Lithuanians [...] passionately love their country’s independence, laws, and customs. [...] for Lithuanians, their homeland is still Lithuania, their law is still the Statute, and the highest legislative authority is still the Convention.”¹²¹ It goes without saying, at that time, legal authorities already understood that certain norms of the Statute no longer served the needs of the changing society of the 19th century and did not meet the requirements of modern jurisprudence. This was noted by Professor Ignas Danilevičius from Vilnius University, who, in 1817, having compared the principles of the Lithuanian Statute and the Napoleonic Code at the request of Adomas Čartoriskis (*Adam Czartoryski*), curator of the Vilnius Educational District, stated: “once we outdid others by our statutes, but then we fell behind in revising them”.¹²² However, the political situation of Lithuania at that time made patriots cling to the Statute. In the mid 19th century, after the Russian authorities had abolished the effect of the Third Lithuanian Statute, it still remained a symbol of political identity, GDL statehood, and, it can be stated, compensatory pride in Lithuanians’ achievements in the past.¹²³ “An Abridged Lithuanian Catechism”,¹²⁴ prepared by the rebels on the eve of the 1830–1831 anti-tsar revolt and later also found in the flat of an organiser of the 1863–1864 uprising, posed the question “What is a Lithuanian?” and provided the following answer: “One who believes in freedom

¹¹⁹ Cited from Праневич, Г., “Леў Сапера і эпоха нацыянальнага рамантызму ў літаратуры грамадска-палітычнай думцы Беларусі XIX – першай трэці XX стст.” in *Леў Сапера (1557–1633) і яго час*, Гродна: Гродзенскі дзяржаўны ўніверсітэт імя Янкі Купалы, 2007, с. 363.

¹²⁰ Szpoper, D., “Valstybingumo atkūrimo prorusiškos koncepcijos Lietuvos konservatyviųjų sluoksnių politinėje mintyje 1807–1815 metais” [“The Pro-Russian Concepts of Restoring the Statehood in the Thought of Lithuania’s Conservative Circles in 1807–1815”], *Kultūros barai [Sectors of Culture]*, 2003, No 4, p. 82.

¹²¹ Cited from Куль-Сяльверстава, С., “Статут ВКЛ 1588 г. ў святло масці насельніцтва беларускіх зямель ў першай палове XIX ст.” in *Леў Сапера (1557–1633) і яго час*, footnote 119, с. 345.

¹²² Ючас, М., “Игнатий Данилович – профессор Вильнюсского университета” in *Ignas Danilavičius* (major points of the reports at the scientific conference on the occasion of the 200th anniversary of Ignas Danilavičius, professor of the Universities of Vilnius, Kiev, Moscow, and Kharkiv (1 October 1987)), Vilnius: Vilnius State V. Kapsukas University, 1987, p. 7.

¹²³ Kavolis, footnote 118, p. 431.

¹²⁴ Праневич, footnote 119, pp. 365–366.

and follows the Statute.”¹²⁵ Thus, even three centuries after the Lithuanian Statute came into force, it still remained an aristocratic value and represented the old traditions of GDL statehood that prevailed during the revolt in the consciousness of Lithuanian boyars who defied tsarist rule but were already losing their dominant position in the political arena. Hence, when new modern constitutions started taking shape in Europe in the mid 19th century, it was the Lithuanian Statute (but not the CTN Constitution, adopted on 3 May 1791) that was the embodiment of the rights and liberties of the boyars of the State of Lithuania, which had been eliminated from the political map long before. It is true that such legal continuity of the state is lacking in the constitutions of the interwar Republic of Lithuania. But it was hardly a coincidence that, in the autumn of 1918, when the Council of Lithuania was about to adopt a very important document – the Fundamentals of the Provisional Constitution of the State of Lithuania, the newspaper *Lietuvos aidas* printed an article, written by the eminent legal historian and public figure Augustinas Janulaitis, pointing out the importance of the Lithuanian Statutes. Of course, the professor did not suggest reintroducing the validity of the Third Lithuanian Statute, but he assessed it as part of our past and something that “survives in numerous places in our lives”.¹²⁶ Eventually, it can be stated that the 1992 Constitution of the restored Republic of Lithuania constitutionalised the Statute,¹²⁷ since the preamble to the Constitution emphasises that “The Lithuanian Nation, having created the State of Lithuania many centuries ago, [...] based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania”.

¹²⁵ Cited from Aleksandravičius, E. and Kulakauskas, A., *Carių valdžioje: XIX a. Lietuva [Under Tsars: Lithuania in the 19th Century]*, Vilnius: Baltos lankos, 1996, p. 24.

¹²⁶ Janulaitis, A., “Lietuvių Statutai ir jų istorija” [“Lithuanians’ Statutes and Their History”], *Lietuvos aidas [The Echo of Lithuania]*, 1918, No 98(146), p. 2.

¹²⁷ Vaičaitis, footnote 11, p. 55.

Obł. do 3. Maj 1791. 155 35.

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Ustawa Rządowa.

W Imię Boga w Trójcy Świętej Jedynego.

Stanisław August z Bożey Łaski y Woli Narodu
Krol Polski Wielki Xiążę Litewski Ruski,
Pruski, Mazowiecki, Łódzki, Kijowski Wołyński
Podolski, Podlaski, Inflanteki Smoleński, Siewierski
y Żemniechowski wraz z Stanami Skonfederowanemi
w Uchacie podwoyney Narod Polski reprezentującymi

Uznając, iż los Nas rozszkottych do ugruntowania y wydoskonalenia
Konstytucyi Narodowej jedynie zależy, Stągim dozwolaceniem proznan-
wamy załawnione Księga Naszego rodu, o chacie korzystać z pomocy
w iakiemś Europejskim analityce, y z tej dogorywającej chwili, która Nas
Samym sobie wrociła, wochi do hanbiących Obcy proznowy nakazów
ceniaj drożey niż życie, nad faczyliwosci wochi, czysteney politycznej
niepodległości suwerenności y wolności rekonstruowania Narodu, którego los
w ręce nasze jest powierzony, chacie oraż na błogostawieństwo, na
wzruszanie współczesnych y przyszłych pokoleń zasłużyć, mimo pro-
szed, które w Nas namiestności sprawować mogą, dla dobra państwa
chniego, dla ugruntowania wolności, dla ocalenia Dycyzyny Naszej y
ich granic z najwyższą statecnością ducha, niniejszą Konstytucyą, uchwa-
lamy, y to całkowicie za chwistą, za nieustraszoną deklaracyą, dopokidy
Narod w czasie Trawem przepisanym wyraża, Wola swego, nie
wzwał potrzeby odwołania w niej iakiego Artykulu. Dokonany
to Konstytucyi, dalej Ustawy Rymu trzaskiego we wskazywanym
stowodzie si, maie.

I.

Religia państwa.

Religia Narodowa, państwa jest y będzie, Wiara Święta Rymu
ska Katolicka, ze wszystkimi jej prawami, przeciwnie do Wiary
państwa, do iakiegokolwiek Wyznania, jest zabronione, pod karą Apo-
stazy. Kożas też sama Wiara Święta przyskazuje Nam, kożas bli-
żnich Naszych, przede wszystkim ludziom iakiegokolwiek badiowania.

A fragment of the facsimile of the original basic law
of the Commonwealth of Two Nations – the Constitution of 3 May 1791

The original document is held by Warsaw (Poland) in the Central Archives of Historical Records
(Archiwum Główne Akt Dawnych).

THE CONSTITUTION OF THE COMMONWEALTH OF TWO NATIONS OF 1791

Prof. Dr. (HP) Jevgenij Machovenko*

THE COMPOSITION OF THE CONSTITUTION AND THE LEGAL FORCE OF ITS INDIVIDUAL PARTS

As a rule, Lithuanian researchers (lawyers) call the Constitution (hereinafter referred to as the Constitution of 1791 or the Constitution) of the Commonwealth of Two Nations (hereinafter referred to as the CTN; a union consisting of the Grand Duchy of Lithuania and the Kingdom of Poland) as the Constitution of the Polish–Lithuanian State of 3 May 1791, or simply as the 3 May Constitution, and categorise it as belonging to the so-called first wave (first phase) constitutions, which laid the foundations for the further consolidation of constitutionalism¹ in the world, as well as marked the end² of the prehistory of constitutionalism and the beginning of the era of modern constitutions. “Three Constitutions, which were adopted in the USA in 1787, in France on 3 September 1791, and in the Polish–Lithuanian State on 3 May 1791, were the pioneers of this era and paved the way to consolidating the innate rights and the separation of powers in the highest-ranking legal act. Pioneers, as a rule, have to meet the biggest challenges and cannot draw on past experience. Their successes and failures later determine numerous future choices (made in other countries as well).”³

When emphasising in its resolution of 28 April 2011 that the Constitution of 3 May 1791 together with the Mutual Pledge of Two Nations is the first modern written Constitution in Europe and the second written Constitution in the world, the Seimas of the Republic of Lithuania noted that “the 3 May Constitution together with the Mutual Pledge of Two Nations constitute part of the common historical legacy of the States of Lithuania and Poland, which strengthens the historical memory of our nations, inspires

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¹ Constitutionalism is a doctrine of limiting state power by means of a constitution, a movement for this doctrine, and an actual legal order created and functioning on the basis of the said doctrine. See Jarašiūnas, E., “Konstitucionalizmo priešistorė: ištakos ar pirmavaizdis?” [“The Prehistory of Constitutionalism: The Beginnings or the Prototype?”], *Jurisprudencija [Jurisprudence]*, 2009, No 4(118), p. 22.

² The vision of the prehistory and history of constitutionalism is described in more detail in, e.g. Jarašiūnas, footnote 1, pp. 21–46, while the criticism of this vision may be found in, e.g. Machovenko, J., “Nacionalinės teisės tradicijos ir paveldo vaidmuo reguliuojant piliečio ir valstybės santykius 1791 m. gegužės 3 d. Konstitucijoje” [“The Role of the National Legal Tradition and Heritage in Regulating Relations between a Citizen and the State in the Constitution of 3 May 1791”], *Parlamento studijos [Parliamentary Studies]*, 2012, Vol. 13, pp. 158–177.

³ Jarašiūnas, E., “Apie pirmąsias konstitucijas ir jų reikšmę” [“On the First Constitutions and Their Significance”], *Jurisprudencija [Jurisprudence]*, 2010, No 2(120), p. 24.

political wisdom and helps our citizens to gain better knowledge of the history of the Grand Duchy of Lithuania and the Kingdom of Poland”.⁴

The priority of the rights and freedoms of citizens, the centuries-long traditions of electing the Head of State, parliamentarism, and local self-government meant that, if compared with the neighbouring countries – the Austrian Monarchy, the Kingdom of Prussia, and the Russian Empire, the political regime in the CTN was more democratic and its legal system was more modern. However, in order to back their supporters within the CTN, these neighbouring countries, while interfering in CTN internal affairs, skilfully used its democratic institutions. When Prussia, Austria, and Russia occupied and annexed part of the CTN in 1772, the very existence of the CTN and the statehood of its nations in general were threatened. In 1788–1792, patriots of the CTN devoted considerable efforts to bring about substantial reforms aimed at consolidating society and strengthening the state. The Constitution of 1791 served as a legal basis for those reforms.

The Constitution of 1791 is a *composite* document: according to newest research,⁵ it is composed of the following 7 acts (in chronological order):

(1) the Fundamental Unalterable Laws⁶ (better known as the Cardinal Laws, the Cardinal Rights of Boyars, or simply the Cardinal Rights), entered in court books on 8 January 1791;

(2) the Law on Cities⁷ (the official title: “Our Free Royal Cities in the States of the Commonwealth”), entered in court books on 21 April 1791;

(3) the Government Act,⁸ entered in court books on 5 May 1791;

(4) the Declaration of the Convention⁹ (Lithuanian: *Seimas*; Polish: *Sejm*), entered in court books on 5 May 1791;

⁴ Lietuvos Respublikos Seimo rezoliucija “Dėl Gegužės trečiosios Konstitucijos su Abiejų Tautų tarpusavio įžadu 220-ųjų metinių” [The Resolution of the Seimas of the Republic of Lithuania on the 220th Anniversary of the 3 May Constitution and the Mutual Pledge of Two Nations], Official Gazette *Valstybės žinios*, 2011, No 53-2542.

⁵ Machovenko, footnote 2, pp. 158–177; Vaičaitis, V. A., “1791 m. gegužės 3-iosios Konstitucija ir Lietuvos konstitucingumo tradicija” [“The Constitution of 3 May 1791 and the Tradition of Lithuanian Constitutionalism”], *Parlamento studijos* [Parliamentary Studies] (interactive), 2013, Vol. 14, pp. 66–89, www.parlamentostudijos.lt/Nr14/14_teise_1.htm [accessed 28 January 2016]; Griškevič, L. and others, *Lietuvos konstitucionalizmo istorija (istorinė Lietuvos Konstitucija). 1387 m. – 1566 m. – 1791 m. – 1918 m. – 1990 m.* [The History of Lithuanian Constitutionalism (The Historical Constitution of Lithuania). 1387 – 1566 – 1791 – 1918 – 1990], Vilnius: Vilnius University Press, 2016.

⁶ “Prawa kardynalne niewzruszone” in *Volumina legum*: Prawa, Konstytucje y Przywileie Krolestwa Polskiego, Wielkiego Księstwa Litewskiego y wszystkich prowincyi należących. Na walnych seymiech koronnych od seymu wiślickiego roku 1347 do ostatniego seymu uchwalone, Vol. IX, Ab anno 1782 ad annum 1792, Kraków: nakładem Akademii Umiejętności, 1889, s. 203–204.

⁷ “Miasta Nasze Królewskie wolne w państwach Rzeczypospolitej” in *Volumina legum*, footnote 6, s. 215–219; “Mūsų karališkieji laisvieji miestai Respublikos valstybėse” [“Our Free Royal Cities in the States of the Commonwealth”] in 1791 m. gegužės 3 d. Konstitucija [The Constitution of 3 May 1791] (translated and compiled by Raila, E.), Vilnius: The Publishing House of the Vilnius Academy of Arts, 2001, pp. 35–52.

⁸ “Ustawa rządowa” in *Volumina legum*, footnote 6, s. 220–225; “Valdymo įstatymas” [“The Government Act”] in 1791 m. gegužės 3 d. Konstitucija [The Constitution of 3 May 1791], footnote 7, pp. 11–34.

⁹ “Deklaracja stanów zgromadzonych” in *Volumina legum*, footnote 6, s. 225–226.

(5) the Law on Local Conventions¹⁰ (Lithuanian: *Seimeliai*; Polish: *Sejmiki*), entered in court books on 28 May 1791;

(6) the Reciprocal Guarantee of Two Nations¹¹ (sometimes referred to as *the Mutual Pledge of Two Nations*, as in the above-mentioned resolution of the Seimas of 28 April 2011), entered in court books on 22 October 1791;

(7) the Articles of Agreement¹² (better known in their Latin name as *pacta conventa*), signed by the representatives authorised by Stanislovas Augustas (*Stanisław August*), King of Poland and Grand Duke of Lithuania, on 13 September 1764 (the 1791 versions, i.e. containing the provisions of the Reciprocal Guarantee of Two Nations).

The constitutional status of the Government Act is unquestionable. The whole Constitution is called *the 3 May Constitution* according to the day when this act was adopted. In historiography, the Government Act is often identified with the entire Constitution of 1791; thus, the concept of the Constitution is groundlessly narrowed and its research is made more difficult. Possibly, this mistake can be explained by the fact that readers of the Government Act see common constitutional provisions on the rights of citizens and the separation of powers. In other words, the content of the Government Act is in line with the modern idea of a constitution. Besides, the words “Constitution” or “this Constitution” are often found in the text of the Government Act itself; therefore, the impression is created that it is this text that is the Constitution.

The function of the Declaration of the Convention, which was adopted and entered in court books simultaneously with the Government Act, was the same as that of the Republic of Lithuania’s Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania; therefore, this declaration should be deemed a constituent part of the Constitution.

The constitutional status of the Law on Cities is established in its Paragraph 14 of Article II: “We abrogate all previous laws and statutes contrary to the present law on cities, and we proclaim the present law on cities to be a constitutional law”, as well as in Article III of the Government Act: “We desire to maintain in its entirety, and declare to be part of this constitution, the law passed at the present convention under the title *Our Free Royal Cities in the States of the Commonwealth* [...]”

The Law on Local Conventions was adopted as an ordinary law; however, it was given the constitutional status by Article VI of the Government Act, which stated: “We

¹⁰ “Seymiki” in *Volumina legum*, footnote 6, s. 233–240.

¹¹ “Zaręczenie wzajemne obojga narodów” in *Volumina legum*, footnote 6, s. 316–317; “Abiejų Tautų tarpusavio įsipareigojimas” [“The Reciprocal Guarantee of Two Nations”] in *1791 m. gegužės 3 d. Konstitucija [The Constitution of 3 May 1791]*, footnote 7, pp. 53–58.

¹² “Articuli pactorum conventorum” in *Volumina legum: Przedruk zbioru praw staraniem XX. pijarów w Warszawie, od roku 1732 do roku 1782 wydanego*, Vol. VII, Petersburg: nakładem i drukiem Jozafata Ohryzki, 1860, s. 97–103.

solemnly confirm *the Law on Local Conventions*, enacted at the present convention, as a most essential foundation of civil liberty.”¹³

The constitutional status of the Fundamental Unalterable Laws is clearly seen in the title and the content of this act¹⁴ (the provisions of such a character are regarded as fundamental even today and are consolidated in constitutions). The Fundamental Unalterable Laws are directly related to the Government Act by content (for instance, the content of Article I “The Dominant Religion” corresponds to the provisions of Articles I–IV of the Fundamental Unalterable Laws), as well as through Paragraph 1 of Article II of the constitutional Law on Cities: “We extend the cardinal law *neminem captivabimus nisi iure victum* [no one will be imprisoned without a fair court decision] to individuals residing in towns, with the exception of guileful bankrupts who fail to post sufficient bail and are caught *in flagranti*.”¹⁵ Actually, the said paragraph referred to Article X of the Fundamental Unalterable Laws as a cardinal law.¹⁶ The fact that only this cardinal law extended to townspeople is not surprising, since all the rest of the articles of the Fundamental Unalterable Laws enshrined the principles of state governance and the political rights of boyars – the elite of the Grand Duchy of Lithuania (GDL) was not ready to share these rights with townspeople.

The constitutional status of the Reciprocal Guarantee of Two Nations arises out of its own provisions: “[...] we shall decide: just as we have the common and uniform Government Act, which serves our state – the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania, we wish to have the common army and treasuries (joining them into one and indivisible treasury) under the following conditions: [...] We, the King, upon the assent of the confederated convention, being aware of the fact that all the matters discussed and enshrined herein are required and useful for both nations – the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania as a united, joint, and indivisible Commonwealth, shall recognise these matters as articles of the unions of these two nations [...]”.¹⁷ The mentioned act of the unions is a constitutive constitutional act of the CTN that was adopted by the representatives of the GDL and the Kingdom of Poland at the town of Lublin on 7 July 1569. It should be noted that the Reciprocal Guarantee of Two Nations is not an amendment to the Government Act, but rather a separate document.¹⁸

¹³ “Mūsų karališkieji laisvieji miestai Respublikos valstybėse” [“Our Free Royal Cities in the States of the Commonwealth”], footnote 7, pp. 17–18, 24.

¹⁴ Griškevič and others, footnote 5, pp. 159–160.

¹⁵ “Mūsų karališkieji laisvieji miestai Respublikos valstybėse” [“Our Free Royal Cities in the States of the Commonwealth”], footnote 7, p. 40.

¹⁶ “*Neminem captivabimus nisi iure victum*: nie bėdnie się godziło ani królui, ani żadney władzy rządowej, zgół nikomu tego prawa naruszać, wyiawszy przypadki prawami wyszczególnione, i wyszczególnić się maiące.” See footnote 6, p. 204.

¹⁷ “Abiejų Tautų tarpusavio įsipareigojimas” [“The Reciprocal Guarantee of Two Nations”], footnote 11, pp. 55–56.

¹⁸ Raila, E., “Gegužės 3-iosios epocha” [“The Epoch of 3 May”] in 1791 m. gegužės 3 d. Konstitucija [The Constitution of 3 May 1791], footnote 7, p. 73.

The constitutional status of the Articles of Agreement is revealed in Article VII of the Government Act: “Every King, on ascending the throne, shall execute an oath to God and to the Nation that he will preserve this Constitution and the *pacta conventa* that shall be drawn up with the present-day Elector of Saxony, as destined to the throne, and shall bind him even as those of the past.”¹⁹ The meaning of the following provision of the Reciprocal Guarantee of Two Nations is even more important: “And since We, the King, consider the aforementioned an article of Our *pactorum conventorum*, then, it is Our wish that the *inter pacta conventa* enshrine the same so that Our heirs, who will have to take an oath, would be bound by the same rules.”²⁰ After King Stanislovas Augustas pledged to observe the Reciprocal Guarantee of Two Nations and to protect its provisions, agreed to by him, as part of the Articles of Agreement, the Articles of Agreement of 1764 were renewed and deemed to be (together with the Reciprocal Guarantee of Two Nations) an act of the highest level.

The idea of regarding the Articles of Agreement as part of the Constitution of 1791 and recognising their status as that of the highest-ranking legal act (compared with other parts of the Constitution) is not entirely new;²¹ however, the inclusion of the Declaration of the Convention²² and the Fundamental Unalterable Laws²³ in the list of parts of the Constitution and further development of what was stated above have led to a new vision of both the composition of the Constitution of 1791 and the legal force of its parts.

Attention should be drawn to the end of the text of the Reciprocal Guarantee of Two Nations: “by this Act, we shall protect, consolidate, and strengthen the stability and inviolability of these provisions under the conditions as stipulated in the Act of the Unions of the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania”.²⁴ The Act of the Lublin Union of 1569 did not envisage any procedure for its amendment or repeal – quite to the contrary, the union of the Kingdom of Poland and the GDL consolidated therein was eternal and unbreakable. After the Reciprocal Guarantee of Two Nations had been equated to the Act of the Lublin Union, the legal status of both acts became the same. On including the provisions of the Reciprocal Guarantee of Two Nations in the Articles of Agreement, the latter acquired the same legal force. It goes without saying, the “eternity” of the Articles of Agreement was relative: they were in force as long as the king who had signed them lived and were not subject to any amendment (true, the eternity of either the Reciprocal Guarantee of Two Nations or the Act of the Lublin Union was also not absolute – e.g. it is obvious that, if one or both of the Nations had died off, these acts would have expired). An heir

¹⁹ “The Government Act”, footnote 8, p. 27.

²⁰ “Abiejū Tautų tarpusavio įsipareigojimas” [“The Reciprocal Guarantee of Two Nations”], footnote 11, p. 57.

²¹ Bardach, J., *Konstytucja 3 maja 1791 r. a Zaręczenie Wzajemne Obojga Narodów*, Warszawa: Wydawnictwo sejmowe, 2001, s. 112.

²² Vaičaitis, footnote 5, pp. 66–89.

²³ Griškevič and others, footnote 5, pp. 158–160.

²⁴ “Abiejū Tautų tarpusavio įsipareigojimas” [“The Reciprocal Guarantee of Two Nations”], footnote 11, pp. 56–57.

to the throne could become king only after signing the Articles of Agreement and taking an oath to observe them. Such Articles of Agreement would have been new ones, since there would have been a new party thereto. Presumably, the said new Articles of Agreement could contain new provisions; however, a certain unalterable part of previous Articles of Agreements would have been transposed directly to new ones, since, in the provision cited above, King Stanislovas Augustas pledged not only on behalf of himself, but also his heirs, to include the provisions of the Reciprocal Guarantee of Two Nations in the Articles of Agreement.

The fact that, in 1791, the provisions of the Reciprocal Guarantee of Two Nations were included in the Articles of Agreement of 1764 does not mean that the latter could be subject to amendment. The Constitution of 1791 established a new CTN.²⁵ Even though this new state and its law continued the CTN and its law that had existed since 1569, however, a new reference point was created. Perhaps, the relation between the Act of the Lublin Union of 1569 and the Constitution of 1791 may be explained by drawing an analogy with Lithuania's Act of Independence of 16 February 1918, the Resolution of the Constituent Assembly (Seimas) of 15 May 1920, and the Constitution of the Republic of Lithuania currently in effect: the first two acts, which form the constitutional foundation of the State of Lithuania, have never lost their legal force; still, the present Constitution of the Republic of Lithuania is an act of a constitutive character, on which the existing state governance is based.

It is obvious that the core of the Constitution of 1791 is the Government Act, which linked and systematised all other constitutional acts, i.e. gathered all of them into the CTN Constitution. However, if compared with the other parts of the Constitution, the Government Act did not bear the supreme legal force, since it was allowed to revise and amend it “every twenty-five years” (Article VI). The same provision should be valid for the Law on Cities and the Law on Local Conventions, and not just because they were “constitutionalised by the 3 May Government Act itself, where it *expressis verbis* proclaimed the former ‘to be part of this Constitution’ (Article III) and confirmed the latter ‘as a most essential foundation of civil liberty’ (Article VI)”.²⁶ In the CTN, which was based on the estate principle, civil rights were enjoyed only by boyars (not all of them, as a matter of fact) and townspeople (also not all of them; besides, their rights were limited), whereas state power was formed “bottom up”. The self-government institutions of boyars and townspeople – local conventions and town councils respectively – played a decisive role. Therefore, if ever made, amendments to the constitutional Law on Local Conventions and the constitutional Law on Cities would have meant changing *de facto* the basis, established in the Government Act, for the organisation of government in the state and the need to legalise *de jure* such a change by amending the Government Act. Thus, the prohibition on amending the Government Act more often than

²⁵ For more details on the constitutive character of the Constitution of 1791, see Griškevič and others, footnote 5.

²⁶ *Ibid.*, p. 159.

once in 25 years should inevitably be widened and applied to the Law on Local Conventions and the Law on Cities, which were constitutional acts.

No established procedure existed for amending the Fundamental Unalterable Laws; therefore, their place in the Constitution may be revealed only by analysing their content. Articles I–IV consolidated Roman Catholicism as the state religion and tolerance for members of other confessions; Articles V–IX enshrined the sovereignty of the nation, the independence of the state, the integrity and inviolability of its territory, and the rule of law; and Articles X–XI entrenched the inviolability of the person and freedom of expression. The level of abstraction of these provisions is much higher than that of the respective provisions of the Government Act. The provisions of the Government Act were created on the basis of the Fundamental Unalterable Laws, and not vice versa. What could be amended or waived in the Fundamental Unalterable Laws? Did they lack anything that necessitated supplementing them? Even from the standpoint of modern constitutional law, it would be difficult to give an answer to these questions. “The Kingdom of Poland and the Grand Duchy of Lithuania, together with all duchies, voivodeships, lands, and counties of which the Commonwealth is and will be comprised, is and will be for ever a free and independent Commonwealth”²⁷ (from Article VI) – this and other provisions are similar to the US Declaration of Independence of 1776, the Resolution of the Constituent Assembly (Seimas) of Lithuania of 15 May 1920, as well as other constitutive acts, which we have never given up or amended, and we do not intend to do so. Thus, the title of the Fundamental Unalterable Laws very accurately reflects the content and legal value of this act.

Consequently, out of the seven acts comprising the Constitution of 1791, three acts – the Reciprocal Guarantee of Two Nations, the Fundamental Unalterable Laws, and the Articles of Agreement – were higher legal acts compared to the rest four acts. As regards the superiority of the Constitution over other laws, as a rule, reference is made to the provision “other laws that the present Convention will pass must be in compliance with this Constitution” of the Government Act; however, the supremacy of the Constitution was also consolidated in its other parts: in the Law on Cities (in the already quoted Paragraph 14 of Article II): “We abrogate all previous laws and statutes contrary to the present law on cities [...]”), Article VII of the Fundamental Unalterable Laws (from the aspect of the protection of the independence of the CTN),²⁸ and Article XX of the Law on Local Conventions.²⁹

²⁷ “Królestwo Polskie i Wielkie Xięstwo Litewskie ze wszystkimi xięstwami, województwami, ziemiami i powiatami, z których się teraz Rzeczpospolita składa, i na potem składać będzie, jest i nazawsze byź ma Rzeczpospolita wolną, i nikomu niepodległą.” See footnote 6, s. 204.

²⁸ “Wszelka cudzoziemska gwarancya rządu Polskiego, przeciwna niepodległości Rzeczypospolitey, i uwłaczająca jey samowładności, jest i nazawsze będzie nieważną, i aby żadna podobna pod iakimkolwiek bądź pretextem od nikogo w Rzeczypospolitey proponowaną, i przyjętą byź nie mogła, tym prawem kardynalnym waruiemy.” See footnote 6, s. 204.

²⁹ “Porządek seymików i wszelkie onych obrządki, iak są w terażniejszym rozdziale przepisane, iedynym prawidłem seymikowania będą, do którego szczególnych, a nie opisanych prawem obrządków przydawać, pod żadnym pretextem, nie wolno. Wszystkie zaś prawa o seymikach poprzednie, a prawem terażniejszym nieobięte, znosimy i za niebyłe deklaruiemy.” See footnote 10, s. 239.

PUBLIC POWER, DEMOCRACY, AND THE PROTECTION OF HUMAN RIGHTS IN THE CONSTITUTION OF 1791

Although it is sometimes stated that “a constitution without a declaration of rights is still a constitution, whereas a constitution whose core and centrepiece is not a frame of government is not a constitution”,³⁰ a different concept of a constitution is more prevalent in Lithuania, according to which “a constitution is understood as supreme law (a written legal act), which is sanctioned by the nation and based on the priority of human rights and the separation of powers”.³¹ According to such a concept of a constitution, the content of a constitution must be composed of provisions comprising two groups: (1) provisions related to the status of a person in the state, and (2) the fundamentals of forming state power and its functioning, while emphasising the principle of the separation of powers. This principle became a harmonious and uniform doctrine in the mid 18th century and, as a constitutional act, was for the first time combined with the recognition of the priority and protection of the rights of an individual in the Virginia Declaration of Rights of 1776: “5. That the Legislative & executive powers of the State shou’d be separate & distinct from the judicial [...]”.³² The same principle was even more prominently expressed in the French Declaration of the Rights of Man and of the Citizen of 1789: “Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution” (*Art. 16. Toute Société dans laquelle la garantie des Droits n’est pas assurée, ni la séparation des Pouvoirs déterminée, n’a point de Constitution*).³³

Viewed from this aspect, the Constitution of 1791 (as a document comprised of seven acts) has big differences.

The part thereof that comprised the formation of state power and its functioning completely corresponded to its epoch and reflected its most modern tendencies. This part is not less in value than the US Constitution of 1787 and the French Constitution of 1791, and, hypothetically, could be in force even at present, since it consolidated such principles that are also the basis of state power in democratic countries nowadays (besides, its contemporary, the US Constitution, with certain amendments is still in effect).

The other part of the Constitution of 1791 was clearly outdated and hardly reflected the development of the philosophical and legal thought, as well as mass social movements and political changes in America and Europe in the second half of the 18th century. The

³⁰ Sartori, G., *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, New York: New York University Press, 1997, p. 196 (also see the Lithuanian translation, Sartori, G., *Lyginamoji konstitucinė inžinerija: struktūrų, paskatų ir rezultatų tyrimas* (translated from English by Kūris, E.), Kaunas: UAB Poligrafija ir informatika, 2001, p. 191).

³¹ Jarašiūnas, footnote 1, p. 28.

³² *The Virginia Declaration of Rights, June 12, 1776*, http://www.virginiamemory.com/online_classroom/shaping_the_constitution/doc/declaration_rights [accessed 21 October 2015].

³³ *Déclaration des Droits de l’Homme et du Citoyen*, <http://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789> [accessed 6 July 2015].

Constitution of 1791 preserved society that was based on legal inequality and separated into the estates of the nobility, the clergy, townspeople, and peasants, whereas the Americans and the French, having revolted against such inequality (of course, against other injustices as well), consolidated civil society based on equality in their Constitutions. A maximally laconic definition of this part of the Constitutions of the USA, France, and the CTN, revealing their spirit by using one word, would be “revolutionary” for the first two of them, and “conservative” for the Constitution of the CTN.

The interdependency of the estates remained unchanged – the classical quaternary construction persisted with the ruling nobility estate: “We recognise the nobility as the foremost defenders of liberty and of this Constitution”³⁴ (from Article II of the Government Act). It can hardly be said that the authors of the text of the Constitution succeeded in widening the concept of a political nation or that such intentions or wishes existed at all. A political nation is the body of citizens – holders of political rights. Boyars who did not have landed property, on which taxes were to be paid to the state treasury, were deprived of political rights under Articles IV–VII of the Law on Local Conventions. According to the previous experience of the CTN, this group of boyars had been dependent on the greater nobility and their votes had been subjected to manipulation in conventions and local conventions; therefore, it comes as no surprise that the Constitution of 1791 treated them as dangerous to justice, civic consciousness, and statehood, which makes it is easy to notice the ideological influence of the moderate proponents of the French revolution.³⁵ Article II, emphatically titled “The Landed Nobility”, of the Government Act, stated: “We charge unto the virtue, civic consciousness, and honour of every [landed] nobleman the reverence of [the] sanctity [of the Constitution] and the safeguarding of its durability, as the sole bulwark of the country and of our liberties.”³⁶ It is possible that the authors of the text of the Constitution held the view that only the individuals of certain origin, great virtue, and who were materially independent could be allowed to be citizens and be responsible for their own homeland. According to such a view, such civic consciousness was natural to well-off nobles, whereas individuals of different origin could be granted citizenship only in recognition of their merit for the state and if their virtue was well known.

The provisions of the Constitution of 1791 by which townspeople were granted partial civil rights are often pointed out as a positive characteristic; however, let us read this provision of Article III of the Government Act more carefully: “We [...] declare [the Law on Cities] to be part of this Constitution [and] as a law that provides new, genuine and effective force to the free Polish nobility for the security of their liberties and the integrity

³⁴ “The Government Act”, footnote 8, p. 17.

³⁵ Kasperavičius, A., “1791 m. Lenkijos ir Lietuvos valstybės ir Prancūzijos konstitucijų lyginamoji analizė” [“A Comparative Analysis of the 1791 Constitutions of the Polish–Lithuanian State and France”], *Mūsų praeitis [Our Past]* (publication prepared by the Lithuanian History Society), 1994, No 4, p. 29.

³⁶ “The Government Act”, footnote 8, p. 17.

of our common country.”³⁷ Consequently, the Law on Cities was adopted and included in the Constitution precisely in order to ensure the interests of the nobility in towns. Under the Law on Cities, civil rights were granted to the townspeople who completed one term of office in state institutions as representatives of their towns, served in the armed forces, or founded a manufactory much needed by the country. The noblemen settled in towns and maintaining manufactories or conducting commerce were no longer deprived of nobility, while top townspeople were granted the possibility of ennoblement. It goes without saying, it is possible to interpret these provisions as widening the concept of the political nation, however, it is obvious that such a small circle of townspeople could not compensate large numbers of landless boyars, who had been eliminated from the political nation.

Even though Article IV of the Government Act admitted that “the agricultural folk” are those people “from under whose hand flows the most copious source of the country’s wealth, and who constitute the most numerous populace in the nation”,³⁸ they were not granted any political rights. Moreover, the Constitution of 1791 preserved and justified serfdom – a phenomenon that disappeared in France as far back as in the second half of the 15th century and did not exist in the American continent at all. True, very few European nations managed to avoid serfdom, which can be regarded as a natural phase in the development of law.³⁹ If compared with other European countries, serfdom emerged later in the Kingdom of Poland and the GDL; consequently, further development of the latter countries would also have led to the disappearance of serfdom at some later point. It was hardly possible to justify serfdom only because it at that time existed in Prussia, Austria, and Russia – as is known, the constitutional reform of 1791 was implemented and other measures were taken, strengthening the CTN, precisely in order to repel the aggression of the mentioned neighbouring states. In the second half of the 18th century, French Enlightenment thinkers simply called serfdom “slavery” and urged, e.g. Empress Catherine II of Russia, to abolish it. Article IV of the Government Act of 1791 guaranteed freedom only for those peasants who had run away from the CTN and encouraged them to come back. As regards other peasants, “we accept [them] under the protection of the law and of the national government” where protection is defined as the inviolability of contractual relations between squires and peasants (“they shall never arbitrarily alter them”) and the mediation of the state. However, European feudal estate law was based on this principle as far back as in the 13th–15th centuries and even earlier.⁴⁰

³⁷ Ibid., p. 18.

³⁸ Ibid.

³⁹ Serfdom is viewed here only from the legal aspect, i.e. merely as a form of bondage in the feudal system where an agricultural labourer and the land farmed by him is an integral and indivisible unit: the agricultural labourer may not move away without his lord’s consent.

⁴⁰ For details on European (including CTN and GDL) estate law and serfdom, see Machovenko, J., *Teisės istorija [Legal History]* (textbook of Vilnius University), Vilnius: The Centre of Registers, 2013.

In the Constitution of 1791, the word “nation” is not always a synonym of “political nation”.⁴¹ The nation “may be understood in its universal sense promoted by J.-J. Rousseau, including all residents of the state”.⁴² “The used term ‘nation’ no longer meant exclusively the ‘boyar nation’. It was a new concept of the nation, which responded to the requirements of that era where boyars, townspeople, and peasants were treated equally.”⁴³

Of course, it must be mentioned that, for example, the above-quoted Article IV of the Government Act said that peasants “constitute the most numerous populace in the nation”. Nonetheless, a systemic analysis shows that, in all cases where “the nation” has a legal value, for instance, where it is a law-making subject (Article VI of the Government Act: “The Chamber of Deputies, as the image and repository of the sovereignty of the nation [...]”), or where it limits the power of the king (Article VII of the Government Act: “[...] having reserved unto the free Polish nation the authority to make laws for itself and the power to keep watch upon all executive authority [...]”), etc., it means “the political nation”, i.e. without peasants and the majority of townspeople. Obviously, it can be assumed that the use of the word “nation” in its broad, humanistic sense reflects the ideas of French Enlightenment thinkers and the fathers of the American Constitution and, generally, shows the progress of the legal thought in the CTN; however, this progress is not impressive compared with the consolidation of these ideas in the Constitutions of the USA and France. Researchers have found that the use of the term “citizen” was even less significant where it meant all townspeople, as they were citizens of their town only, but not of the state. The cities of the Kingdom of Poland and the GDL had used the terms “citizen” and “citizenship” since the time when they received self-government (in the GDL, self-government was conferred on a city for the first time in 1387); therefore, these terms were not a novel in the Constitution.

Consolidated in the Constitution of 1791, the idea of refined (elite) civic consciousness (which was well known in ancient philosophy) was widely discussed in the Kingdom of Poland and the GDL as far back as in the 16th century in the polemics between the ideologist of Polish nobility Stanisław Orzechowski and the Lithuanian humanist Augustinas Rotundas (*Augustinus Rotundus*) (for example, in the latter’s work “Conversations of a Pole with a Lithuanian”, written around 1566). The respective provisions of the Constitution are the synthesis and continuation of the positions expressed by these two disputants.

Abstracting from the narrow concept of the estate nation and ignoring the entrenched inequality of the estates, numerous modern democratic principles and features can be found in the Constitution of 1791. It is also possible to reveal the links of these principles and features with the present constitutional foundations. The sovereignty of the nation, the rule of law, the sovereignty of the state, the inviolability of its territory,

⁴¹ Petrzak, M., *Konstytucja 3 Maja 1791 roku*, Warszawa: Wydawnictwo Sejmowe, 2011, s. 9.

⁴² Griškevič and others, footnote 5, pp. 165.

⁴³ Raila, footnote 18, p. 69.

self-government, elections and parliamentarism, the Convention as the representation of the nation and its special place in the state system, the indemnity of members of parliament, parliamentary control (over executive power), the independence of courts – these are only the most important things enshrined in various parts of the Constitution. Most of them were taken from the preceding (pre-reform) CTN Constitution,⁴⁴ but there were also constitutional novelties, the most important of which was the principle of the separation of powers, implemented as the classic triad of the legislative, executive, and judicial powers, created so “that the integrity of the states [of the Kingdom of Poland and the GDL], civil liberty, and social order remain always in equilibrium” (from Article V “The Government, or Designation of Public Authorities” of the Government Act, which was exclusively aimed at consolidating this principle).

Legislative power was vested in the Convention, composed of the lower Chamber of Deputies, and the upper Chamber of Senators (or simply the Senate). The Constitution defined the lower chamber “as the image and repository of the sovereignty of the nation” and their members were called “*representatives of the entire nation*”, being the repository of the general confidence” (from Article VI of the Government Act); however, these members were elected at local conventions of counties from eligible local residents and were bound by an imperative mandate. The Senate, composed *ex officio* of high-ranking state officials, such as “bishops, voivodes, castellans, and ministers, presided over by the King” (from Article VI of the Government Act), had the right of delaying veto (until the next regular Convention, which had to convene every two years).

“[...] we confer the authority of supreme execution of the laws to the King in his council, which shall be called *the Guardianship of the Laws*”, says Article VII of the Government Act, emphasising that “The executive authority shall not enact or interpret laws, impose taxes or levies by any name”. The king, who “shall not be an autocrat, but the father and chief to the nation, and as such this law and Constitution deems and declares him to be” (from Article VII of the Government Act), appointed ministers while taking no regard to the composition of the Convention and without having heard its opinion. However, this right of the king was limited by the right of the Convention to demand, by a two-third majority of secret votes, that an unacceptable minister be replaced, and the king had to comply with such a demand. Acts of the king, whose person was “sacred and secure from everything”, were countersigned by an appropriate minister; thus, it was not allowed to hold the king liable. For their actions, ministers answered “in their own persons and property” in accordance with the procedure that is very similar to impeachment proceedings applied at present (charges were brought by simple majority vote and cases were decided by a Convention court founded specifically for this purpose). The king had

⁴⁴ This composite Constitution of the CTN was comprised of the Act of the Lublin Union of 1569, the Henrician Articles of 1573, the *pacta conventa* concluded with all previous sovereigns, the Act of *Coequatio Jurium* of 1697, and the Cardinal Laws of 1768 and 1775.

the rights of legislative initiative and delaying veto, and presided over the Senate, whereas the Chairman of the Chamber of Deputies (Marshal of the Convention) was an *ex officio* member of the Council of Guardians (but without decision-making powers).

On the basis of the principle of equality between the Kingdom of Poland and the Grand Duchy of Lithuania, it was stipulated that “the Grand Duchy of Lithuania will have the same number of national ministers and officials who will bear the same titles and hold the same offices as those hereafter established in the Crown”⁴⁵ (from the Reciprocal Guarantee of Two Nations).

For the first time in the history of the CTN, the judiciary was separated *expressis verbis* from the other two branches: “The judicial authority shall not be carried out either by the legislative authority or by the King, but by magistracies instituted and elected to that end. And it shall be so bound to places that every man find justice close by and that a criminal see everywhere over him the formidable hand of the national government.”⁴⁶ It is doubtful whether it is possible to express more vividly, correctly, and laconically, by means of a constitutional provision, the idea of the mission of the judiciary, its accessibility, and its separation from the other two branches. Article VIII “The Judicial Authority” of the Government Act serves to emphasise the separateness and importance of the judiciary. Much attention is given to the judicial branch in other parts of the Constitution as well.

Even though the principle of the separation of powers was laid down *expressis verbis* for the first time namely in the Constitution of 1791, a number of its elements were taken from the preceding CTN Constitution. Therefore, the entire political system was not so remarkably new as it might seem at first glance. In the eyes of the contemporaries, waiving the free election of monarchs at the Convention and establishing a hereditary throne was a constitutional novel that was no less important, or even more important than the separation of powers. Consolidated in the so-called Henrician Articles (a constitutional act of the CTN passed in 1573), the free election of monarchs was an unalterable provision until 1791. It was also confirmed by the Cardinal Laws of 1768 and 1775. Taking into account that this provision was transposed into CTN law from such constitutional sources of the Kingdom of Poland and the GDL that had emerged before these states created the CTN in 1569, it is possible to consider both waiving the free elections of monarchs at the Convention and consolidating a hereditary throne to be a true revolutionary change.

Breaking with the long-established constitutional tradition of the CTN, no less revolutionary were the provisions of Article VI, which abolished certain instruments of nobility democracy that had been deemed unalterable until then – the principle of unanimous voting (*liberum veto*), used in the Convention and local conventions, as well

⁴⁵ “Abiejū Tautų tarpusavio įsipareigojimas” [“The Reciprocal Guarantee of Two Nations”], footnote 11, p. 53.

⁴⁶ “The Government Act”, footnote 8, p. 30.

as confederations and confederated conventions,⁴⁷ “as being opposed to the spirit of this Constitution, subversive of government, and destructive of society” (*iako duchowi niniejszey konstytucyi przeciwnie, rząd obalające, społeczność niszczące*). It is worth noting that this document for the first time mentioned the notion “the spirit of the Constitution”, which is often employed in rulings passed by the Constitutional Court of the Republic of Lithuania.

The Constitution of 1791 was actually the Constitution of contrasts: tolerance toward people of other religions together with Roman Catholicism as the state religion and the prohibition on switching to another religion; independent courts on the one hand and the system of courts organised on an estate basis on the other; territorial self-government, organised, however, on an estate basis; members of the lower Chamber of Deputies of the Convention as representatives of the whole nation and instructions given to them at local conventions and binding them, etc. The objective to strengthen the common state contradicted the attempt to preserve the state sovereignty of the GDL, which resulted in a new *de jure*, but the same *de facto* CTN with slight modernisations. The authors of the text of the Constitution were committed to different ideals with diverse ways of achieving them. In addition, these authors were influenced by interests of various segments of society as well as separate groups. The monk Gratian, who lived in the 12th century, wrote a treatise “The Harmony of the Discordant Canons” (*Concordia Discordantium Canonum*), for which the Church officially proclaimed him Father of Canon Law (*pater scientiae iuris canonici*). The title of this treatise would perfectly match the Constitution of 1791.

The Constitution suffered a tragic fate (if this can be said about a legal act). “The drafters of the Constitution predicted how the ‘soft revolution’ (a term created by Hugo Kołłątaj) must ripen and spread, and which liberties must be promoted and entrenched. However, the Constitution was in effect only for 14 months – until 23 July 1792, when Stanislovas Augustas joined the Targowica Confederation. The 1793 Convention of Grodno and subsequent dissolution of the Commonwealth of Two Nations was a fatal blow on the state reforms.”⁴⁸ The implementation of many objectives was not completed and the practice of applying most of the provisions of the Constitution was not formed;⁴⁹

⁴⁷ “A confederated convention was an extraordinary convention in Lithuania and Poland, convened in the 18th century, where boyars, for the purpose of passing a law or attaining certain political goals, formed an armed group (called a confederation), which had agreed that in this extraordinary convention decisions would be made by a simple majority of votes. A special convention convened by a certain confederation was also called a confederated convention. Sometimes, in order to prevent the disintegration of a regular convention as a result of the system of *liberum veto*, its members, having formed a confederation, made this convention a confederated one. Such confederated conventions played a key role at the time of the collapse and partitions of the Lithuanian–Polish State at the end of the 18th century.” Avižonis, K., *Rinktiniai raštai [Selected Writings]*, Vol. IV, Vilnius: The House for Publishing Scientific Works and Encyclopaedias, 1994, p. 283.

⁴⁸ Raila, footnote 18, pp. 72–73.

⁴⁹ For certain aspects, see Šmigelskytė-Stukienė, R., “Už ar prieš reformas: Ketverių metų seimo nutarimų įgyvendinimas Lietuvos Didžiosios Kunigaikštystės pavietuose 1789–1792 metais” [“For or against Reforms: The Implementation of the Four-Year Convention at GDL Counties in 1789–1792”], *Istorija [History]*, 2009, Vol. 74, http://www.istorijoszurnalas.lt/index.php?option=com_content&view=article&id=194&Itemid=61 [accessed 5 February 2016].

therefore, it is possible to assess certain matters only on the basis of the text of the composite Constitution. The monarchs of Austria, Prussia, and Russia – representatives of “enlightened absolutism” – saw to it that the constitutional heritage of the CTN was destroyed as soon as possible. When restoring the statehood of Lithuania, Poland, Belarus, and Ukraine at the end of the First World War, the direct link with the CTN and its constitutional continuity was emphasised only by Poland – it called itself the Second Republic (*II Rzeczpospolita*), considering the CTN to be the First Republic. Elsewhere, such a legal route was not chosen for political reasons.

At present, four states – the Republic of Lithuania, the Republic of Poland, the Republic of Belarus, and Ukraine – have the same grounds for considering the Constitution of 1791 to be part of their constitutional tradition; however, only the first three regard it as such. As for the historical constitutional acts of Ukraine, at the official website of the Verkhovna Rada of Ukraine (chapter “The Constitutional Process in Ukraine. Historical Documents”), we find the Constitution of Hetman Pylyp Orlyk at the top of the presented list, followed by the First Universal Law passed by the Central Rada of Ukraine on 10 (23) June 1917 (together with seven more Ukraine’s constitutional acts adopted in the 20th century – three universal laws and four constitutions).⁵⁰ Thus, regrettably, the Constitution of 1791 (as well as the Lithuanian Statutes) is not regarded as a historical source of Ukraine’s constitutionalism.

⁵⁰ “Конституція гетьмана Пилипа Орлика; I-й Універсал Української Центральної Ради; II-й Універсал Української Центральної Ради; III-й Універсал Української Центральної Ради; IV-й Універсал Української Центральної Ради; Конституція Української СРР 1929 р.; Конституція Української РСР 1937 р.; Конституція Української РСР 1978 р.; Конституція Української РСР 1978 р. (зі змінами, що діяла до 1996 р.)”, *Верховна Рада України: офіційний веб-сайт*, <http://gska2.rada.gov.ua/site/const/index.html> [accessed 29 July 2016].



The signatories of the Act of Independence of Lithuania of 16 February 1918 – the members of the Council of Lithuania, which restored Lithuanian statehood

Seated from left to right: Jonas Vileišis, Jurgis Šaulys, Justinas Staugaitis, Stanislovas Narutavičius, Jonas Basanavičius, Antanas Smetona, Kazimieras Šaulys, Steponas Kairys, Jonas Smilgevičius. Standing from left to right: Kazimieras Bizauskas, Jonas Vailokaitis, Donatas Malinauskas, Vladas Mironas, Mykolas Biržiška, Alfonsas Petrulis, Saliamonas Banaitis, Petras Klimas, Aleksandras Stulginskis, Jokūbas Šernas, Pranas Dovydaitis.

Photo taken on 25 September 1917 by Aleksandra Jurašaitytė.
The photo is held by the National Museum of Lithuania.

Nutarimas.

Lietuvos Taryba savo posėdyje vasario 16 d. 1918 d. vienu balsu nutarė kreiptis: į Rusijos, Vokietijos ir kitų valstybių vyriausybės šiuo pareiškimu:

Lietuvos Taryba, ^{visu} vienintelė lietuvių tautos atstovybė, remdama pripažintą tautų apsisprendimo teisę ir lietuvių Vilniaus konferencijos nutarimu rugpjūčio mėn. 18-23 d. 1917 metais, skelbia atstatanti nepriklausomą demokratiniiais pamatais sutvarkytą Lietuvos valstybę su sostine Vilniuje ir tą valstybę atakirianti nuo visų valstybinių ryšių, kurie yra buvę su kitomis tautomis.

Drauge Lietuvos Taryba pareiškia, kad Lietuvos valstybės pamatai ir jos santykiai su kitomis valstybėmis privalo galutinai nustatyti tiek galima greičiau sutanktas steigiamasis seimas, demokratinis būdu visų jos gyventojų išrinktas.

Lietuvos Taryba pranešdama apie tai
vyriausybei, prašo pripažinti nepriklausomą Lietuvos valstybę.

Vilniuje, vasario 16 d. 1918 m.

Dr. J. Basanavičius
I. Pankajevs
U. Dabulskis
K. Burauskas
A. Barysėvichy
I. Radvila
K. J. Klys
J. Šernas
A. Antanas
J. Čiurlionis
J. Kanga
V. Stankus
J. Vaitiekaitis
J. Mikšius
P. K. Burauskas
M. Karonas
P. Narutovicius
Edmund Petkus
K. Laušys

Lietuvos nepriklausomybės paskelbimo aktas.

The Act of Independence of Lithuania – the Resolution of the Council of Lithuania (16 February 1918)

Šapoka, A. (ed.), *Lietuvos istorija [History of Lithuania]*, Kaunas: The Book Publishing Commission of the Ministry of Education, 1936, p. 544.

LITHUANIA'S ACT OF INDEPENDENCE OF 16 FEBRUARY 1918

Prof. Habil. Dr. Mindaugas Maksimaitis*

The Resolution of the Council of Lithuania of 16 February 1918, also called Lithuania's Act of Independence (hereinafter referred to as the Act of Independence or the Act of 16 February), is considered the most important act of the State of Lithuania, restored in the first half of the 20th century, and has become the basis and programme for Lithuanian constitutionalism. This act declared the resolve of the Lithuanian nation to restore its own independent state and announced to the world that all state ties imposed on Lithuania by force by other countries were terminated. The Act of Independence basically consolidated the existence of the modern State of Lithuania.

TOWARDS THE ACT OF INDEPENDENCE

For Lithuania, which was one of the corners of the Russian Empire and fell into the hands of Germany during the First World War, the restoration of its independent state was an enormous geopolitical problem, since both empires had not given up claims on Lithuania. This problem was made even more difficult by aspirations for Lithuania's territory proclaimed from time to time in the re-emerging State of Poland. However, first of all, Lithuania's destiny depended, in one way or another, on the results of the war; therefore, with the war continuing and its conclusion uncertain, the German occupants did not force this decision even though they had taken a principled position of their own on this issue.

Under such circumstances, sanctioned by the German military authorities (who hoped to create from the locals a "council of trust" that would have been favourable towards them), the Vilnius National Conference (hereinafter referred to as the Conference), convened through the efforts of Lithuanian political figures and composed of the most authoritative members of the Lithuanian nation who remained on the occupied territory, on 18–23 September 1917, passed a political resolution¹ that the free development of Lithuania demanded creating a democratic state within the ethnographic boundaries of the Lithuanian nation, by ensuring ethnic minorities appropriate conditions for their cultural needs. The Conference, not considering itself to be the representation of the nation in the formal sense of this word and not deeming itself to have a direct mandate, pointed out that the final decision on establishing the foundations of the independent Lithuania and

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¹ *Lietuvos Valstybės Tarybos protokolai: 1917–1918 [Minutes of the State Council of Lithuania: 1917–1918]* (compiled by Eidintas, A. and Lopata R.), Vilnius: Mokslas, 1991, p. 76.

its relations with neighbouring states had to be made by a Constituent Assembly (Seimas), which was to be elected in a democratic manner by all the inhabitants of Lithuania.

Responding to the categorical demand of the Germans, yielding to which made it possible the convocation of the Conference under the occupation, it was recognised in the final words of the resolution that, if Germany agrees to proclaim the State of Lithuania and to support the needs of Lithuania at the Peace Conference, it was possible for the future State of Lithuania “to enter into a certain relationship, still to be determined, with Germany”, without harming its own independent development. In view of realistic policy, the Lithuanians proposed this cautious compromise,² which was seen by many as something less dangerous than being under the rule of the Russian Empire before the war.³

The resolution passed by the Conference became the most important programmatic document establishing further guidelines for the political development of Lithuania. The Conference formed the Council of Lithuania (hereinafter referred to as the Council), in which it was attempted to have a balanced representation of all political forces operating in the country,⁴ and entrusted it with carrying out the set tasks. Even though the voting by secret ballot prevented the wish to have the said balanced representation from coming true, since the political views of many elected members reflected those of the political right, still, the Council represented all the main political forces ranging from the nationalists and Christian democrats on the right to social democrats on the left. Besides, at least at the beginning of the work of the Council, it was the activity of separate individuals that was easily noticed but not that of political parties.⁵ The Council was regarded as one “elected by the society of Lithuania itself”⁶ and “having popular trust”,⁷ and its representativeness and authority was increased by the fact that Lithuanians scattered abroad as a result of the war deemed it the supreme national political institution, which took the restoration of the State of Lithuania in its own hands.⁸

During the first two months, the Council engaged in intensive activities aimed at alleviating difficulties experienced by residents of Lithuania because of the war and occupation and mobilising ethnic minorities present in Lithuania, as well as those

² Klimas, P., “Lietuvos valstybės kūrimas 1915–1918 metais” [“Creating the State of Lithuania in 1915–1918”], *Pirmasis nepriklausomos Lietuvos dešimtmetis 1918–1928* [The First Decade of the Independent Lithuania 1918–1928], Kaunas, 1930, p. 7.

³ Ivinskis, Z., “Lietuvos politinė būklė 1918 metų pradžioje ir vasario 16-tos d. aktas” [“The Political Situation of Lithuania at the Beginning of 1918 and the Act of 16 February”], *Židinys* [Fireplace], 1939, Vol. XXIX, No 2, p. 622.

⁴ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, p. 121.

⁵ Merkelis, A., *Antanas Smetona. Jo visuomeninė, kultūrinė ir politinė veikla* [Antanas Smetona: His Public, Cultural, and Political Activities], New York, 1964, p. 254.

⁶ Kl[imas], P., “Lietuvos Taryba ir apsisprendimo teisė” [“The Council of Lithuania and the Right of Self-determination”], *Lietuvos Aidas* [The Echo of Lithuania], 1918, No 6.

⁷ Merkelis, footnote 5, p. 183.

⁸ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, pp. 189–190; Šaulys, J., “Dėl nepriklausomybės paskelbimo” [“Concerning the Declaration of Independence”], *Lietuvos Aidas* [The Echo of Lithuania], 1918, No 22.

Lithuanians who ended up in Russia, West Europe, and America. Nevertheless, it deemed its political task to be the most important one and used every opportunity to achieve Lithuania's independence. The Council did not lose sight of the forms of government of the future state or the issues of its territory, state borders, etc. In October of the same year, on behalf of the Chairman of the Council Antanas Smetona, the programme of the Council was announced, which, having paid attention to the chief aim of the Conference to establish an independent state, emphasised the connection of the latter with the former State of Lithuania.⁹

The Council directly concerned itself with Lithuania's independence especially at the end of 1917 when the Germans were preparing for separate peace negotiations with the Bolshevik government of Russia, in which the fate of the territories that had belonged to it before the war, thus, including Lithuania, must undoubtedly have been among the main subjects of the dispute. Reasonably expecting the Soviets to oppose the annexation of those territories to the German Empire and to demand at least to let them decide their fate themselves, the Germans, seeking to give a legal basis to the decision of the issue of Lithuania in favour of Germany, began to cherish hopes to obtain a unilateral statement from the Council about the resolve of the Lithuanian nation to detach itself from Russia.

On 1 December, the German administration and representatives of the Council (the latter hoped not only to prevent Russia's claims on the territory of Lithuania and pre-empt the easily predictable ambitions of the Germans to annex Lithuania, but also at least to achieve what was possible in such conditions) agreed that Germany would give its permission to the declaration of the restoration of the independent State of Lithuania, which would state that Lithuania would annul its state ties that had ever bound it to other nations and would simultaneously undertake to form with Germany a firm and permanent alliance.¹⁰

In order not to miss the good opportunity, the Council confirmed the pledges demanded by the Germans and set them out in its resolution of 11 December 1917.¹¹ At the same time, the Council pointed out that, since it was recognised by Lithuanians within country and abroad as the sole authorised representative body of the Lithuanian nation, relying on the right to national self-determination and on the decision reached by the Conference on 18–23 September 1917, it proclaimed “the restoration of the independent state of Lithuania with its capital at Vilnius and the annulment of all state ties that have

⁹ Sm[etona], A., “Lietuvos Tarybos darbų belaukiant” [“Awaiting the Work of the Council of Lithuania”], *Lietuvos Aidas* [The Echo of Lithuania], 1917, No 11.

¹⁰ *Lietuva vokiečių okupacijoje Pirmojo pasaulinio karo metais 1915–1918* [Lithuania under the German Occupation during the First World War 1915–1918] (collection of documents; compiled by Gimžauskas, E.), Vilnius: The Publishing House of the Lithuanian Institute of History, 2006, pp. 223–224; *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, pp. 143–147.

¹¹ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, pp. 155–157; Klimas, footnote 2, p. 11; *Lietuva vokiečių okupacijoje Pirmojo pasaulinio karo metais 1915–1918* [Lithuania under the German Occupation during the First World War 1915–1918], footnote 10, p. 254.

ever bound it to other nations". Hoping for the immediate recognition of Lithuania's independence, the relinquishment of power, and the withdrawal of the occupying troops, "taking into account the vital interests of Lithuania", the Council requested the protection and aid of Germany during upcoming peace negotiations and declared itself in favour of "a firm and perpetual bond of alliance with the German Empire", which was to be achieved on the basis of military and transport conventions and a common system of customs and currency.

Extracted by force, Lithuania's pledge was categorical and final: due to the opposition of the Germans, no mention was made of a Constituent Assembly (Seimas), which was to approve the ties between Lithuania and Germany indicated in the said document. It was feared at the Council that disregarding the German demands could have an impact on the Brest negotiations or even on their results and, in addition, the interest of the Germans towards Lithuania could weaken, which could cause obstacles to the further negotiations, while the continuing negotiations at least raised some hopes.¹² Seeking a compromise with the German authorities, the Council expected an opportunity to proclaim the independence of Lithuania, hoping that it would be officially recognised and the work of creating the state would begin. But these hopes were shattered. In fact, no changes occurred. Furthermore, heavy requisitions and various restrictions imposed by the occupants continued to oppress the population. Even the Russian side was not impressed at the peace negotiations by this statement of the Council, whereas it met with a very hostile reaction both in Lithuania and abroad and even caused a split in the Council itself. The opposition emerged and "thus began frank discussions – marked by grave concern – later turning into a bitter wrangle".¹³ These debates resulted in the decision adopted unanimously by all twenty members of the Council on 8 January 1918, which repeated without change only the first part of the resolution of 11 December 1917 as the basis for formulating the declaration of independence, but supplemented it with the provision to the effect that a Constituent Assembly (Seimas), elected in a democratic manner by all the inhabitants of Lithuania and convened as soon as possible, would define the form of government of Lithuania and its foreign relations (including those with Germany),¹⁴ thus leaving no room for the obligations of the Council taken in favour of the Germans.

The good mood created by finding a solution of a complex problem at the Council was marred in the same evening by disappointing disillusionment when its members received the news that the German authorities continued to reject the demand that a Constituent Assembly (Seimas) should be entrusted with the task of deciding this issue,

¹² B[iržiška], M., "Kritiška valanda Lietuvos istorijoje. Politinės Kalėdos 1917 metais" ["The Critical Hour in the History of Lithuania. The Political Christmas in 1917"], *Lietuvos Aidas* [*The Echo of Lithuania*], 1937, No 584.

¹³ Kairys, S., "Nepriklausomybės akto išvakarėse" ["On the Eve of the Act of Independence"], *Kultūra* [*Culture*], 1938, No 2, p. 88.

¹⁴ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [*Minutes of the State Council of Lithuania: 1917–1918*], footnote 1, pp. 168–169; footnote 10, p. 274.

since they did not expect it to approve the German aggressive ambitions, and forced the Council to repeat in its resolution the pledge to form with Germany a firm and permanent alliance.

After some time, as the contacts with the German representatives did not yield any result, on 26 January, “heart-breaking” discussions broke out at the Council once again.¹⁵ Succumbing to the pressure exerted by the Germans, twelve members of the Council decided to waive the proposal adopted by it on 8 January and accepted the demand for notifying the Russian and German authorities of the independent State of Lithuania by means of different texts. This time, the Germans allowed to additionally include in the text the provision on the possibility of applying to a Constituent Assembly (Seimas) concerning the establishment of the fundamentals of the state and the definition of the relations with neighbouring countries.¹⁶ As a result of this decision, four radicals of the Council accused it of exceeding the powers granted to it by the Conference as well as seizing the prerogative of a Constituent Assembly (Seimas) and declared that they were leaving the Council.¹⁷

As the Germans refused to make any other concessions, with the emerging understanding that they see the issue of Lithuania only through the prism of selfish interests, the Council was more and more inclined towards firm and decisive steps¹⁸ – there emerged a strong commitment to take more radical actions for the cause of the independence of Lithuania.

Having found out the political mood of top level German authorities and having discovered that some of their circles were leaning to offering Lithuania a possibility for deciding its affairs freely, while criticising the efforts of the occupation authorities to annex it,¹⁹ the Council became determined to be more independent in seeking Lithuania’s independence.

First of all, it was decided to review the statement of 26 January, which had undermined the unity of the Council, and to look for such wording that would be acceptable to everyone.²⁰ Namely at this critical moment the members of the Council, including the four radicals who had left it before, were able to find common ground, reject disagreement,

¹⁵ Klimas, P., *Iš mano atsiminimų* [From My Memoirs], Vilnius: The Editorial Office of Lithuania for Publishing Encyclopaedias, 1990, pp. 116–117.

¹⁶ Klimas, P., *Lietuvos valstybės politinė istorija nuo Didžiojo karo ligi šių dienų* [The Political History of the State of Lithuania from the Great War until Today] (manuscript), the Division of Manuscripts of the Wroblewski Library of the Academy of Sciences of Lithuania, collection of records 191–21, sheet 35.

¹⁷ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, pp. 189, 191; Klimas, footnote 2, p. 13.

¹⁸ [Editorial], *Tiesos kardas* [The Sword of Truth], 1919, No 35.

¹⁹ Klimas, footnote 16, sheet 37; “Lietuvos Taryba. 2. Lietuvos Taryba skelbia nepriklausomos Lietuvos valstybės atstatymą” [“The Council of Lithuania. 2. The Council of Lithuania Declares the Restoration of the Independent State of Lithuania”], *Lietuvos Aidas* [The Echo of Lithuania], 1938, No 108.

²⁰ *Lietuvos Valstybės Tarybos protokolai: 1917–1918* [Minutes of the State Council of Lithuania: 1917–1918], footnote 1, p. 203.

become united, and take the next step, which was the most important one in the existing conditions.

On 16 February 1918, the Council adopted the well-known Resolution,²¹ by which, deeming itself the sole representation of the Lithuanian nation, on the basis of the recognised right to national self-determination and of the resolution of the Conference of 18–23 September 1917, proclaimed “the restoration of the independent state of Lithuania, founded on democratic principles, with Vilnius as its capital”, and declared “the termination of all state ties that formerly bound this State to other nations”, stating at the same time that the foundation of the State of Lithuania and its relations with other states were to be finally determined “by the Constituent Assembly (Seimas), to be elected democratically by all the inhabitants of Lithuania, and convoked as soon as possible”.²²

This act of the restored State of Lithuania not only brought back unity at the Council that had been split and faced the danger of collapse, but also showed that even its members holding radically different political views had agreed on positive cooperation aimed at dealing with issues of vital importance to the nation.

THE CONTENT AND SIGNIFICANCE OF THE ACT OF INDEPENDENCE

The text of the Resolution of 16 February 1918 almost completely reiterated the resolution considered by the Council and unanimously adopted on 8 January, which had temporarily lost the support of the majority of the Council as a result of the German pressure – such was the complexity of the task addressed by the Council for entire six weeks under the specific conditions in that particular environment.

The Act of 16 February expressed the resolve of the most important social factor of the country – the Lithuanian nation – to create its own independent state, by making that clear, without any reservations, without dropping hints favourable to other states, and unencumbered by any political duties to other states. In this respect, international law considers this document to be the act founding (to be more precise, restoring) the State of Lithuania.²³ This act has essentially served as the basis for subsequent constitutional documents of the modern State of Lithuania.

From a formal point of view, Act of 16 February was the first public announcement of the Council, directly addressed to Russia, Germany, as well as other foreign governments,

²¹ “Lietuvos Valstybės Nepriklausomybės Paskelbimo Aktas” [“The Act Proclaiming the Independence of the State of Lithuania”], *Lietuvos novelos* [*The Lithuanian Bulletin*] (compiled by Šalkauskis, K.), Kaunas, 1935, p. 3.

²² *Lietuvos Valstybės Tarybos protokoliai: 1917–1918* [*Minutes of the State Council of Lithuania: 1917–1918*], footnote 1, p. 208.

²³ [Romeris] Rėmeris, M., *Lietuvos konstitucinės teisės paskaitos* [*Lectures on Lithuanian Constitutional Law*], Vilnius: Mintis, 1990, pp. 52–53.

and, indirectly, also to the society of Lithuania, to the effect that all state ties imposed formerly or attempted to impose on Lithuania currently by force by other countries were terminated.

Taking this step, the Council once again referred to the universally recognised right to national self-determination, which became popular and, from the political point of view, highly relevant by the end of the First World War, and repeatedly mentioned the above-mentioned resolution of the Conference, according to which creating (“founding”) the independent State of Lithuania within the ethnographic boundaries of the Lithuanian nation was a necessary condition for the free development of Lithuania. Thus, this task was clarified: expressing the Lithuanian nation’s resolve to restore the State of Lithuania, rather than to establish a new one on the ruins of the Russian Empire, the Council considered the restored state to be a continuation of its historical statehood and pointed out its direct ties with the historical State of Lithuania – the Grand Duchy of Lithuania.

True, the latter point formulated by the Council did not at all mean the unrealistic ambition – the desire to resurrect the former state. This was already evident from the fact that the resolution of the Conference underlined the determination to restore the State of Lithuania within the ethnographic boundaries, i.e. the restored independent State of Lithuania, differently from the multinational historical State of Lithuania, was to be a nation state.

The words of the Act of Independence meant that the creation of independence, which had been an idea or a very important aim put forward by the Resolution of the Conference five months before, became real and its direct implementation began. However, the Act of 16 February did not state the fact of the complete legal and political restoration of the State of Lithuania. Expressing the will of the Lithuanian nation, the State Council claimed that it was “re-establishing” the state, or, in other words, that it was performing an ongoing action, i.e. taking the real steps to restore the statehood of Lithuania or the steps whose aim was to restore the independent State of Lithuania. The Act of Independence marked not the complete restoration of the State of Lithuania, but rather the start of this process.²⁴ Even after the declaration of the Act of 16 February, the State of Lithuania did not exist yet, since the state as such lacked the most important element – the government with authoritative powers.²⁵ More specifically, there was a body exercising authoritative powers, but this body had not been created by the Council or elected by the Lithuanian nation, but had been imposed by an alien power. Lithuania was occupied by the German Empire, while the Council, which had proclaimed the Act of Independence, continued as a public institution with no powers to

²⁴ “Lietuvos Taryba. 3. Lietuvos Taryba tiesia pirmąsias gaires atstatomai Lietuvos valstybei” [“The Council of Lithuania. 3. The Council of Lithuania Lays Down the First Guidelines for the Restored State of Lithuania”], *Lietuvos Aidas* [*The Echo of Lithuania*], 1938, No 112.

²⁵ [Romeris] Rëmeris, footnote 23, p. 53.

govern social life, not to mention functions related to state power and governance, and was considered only “a helpless body offering advice to the occupation administration”.²⁶

The work of completing the restoration of the state, declared by the Act of Independence, still involved strenuous efforts of numerous people, and required time and a combination of favourable circumstances.

Formally, the Act of Independence, declared by the Council, did not have properties typical of a legal act. In fact, the most important thing was not the inclusion of this act into the system of positive law, but its moral and political significance. Public opinion, as well as positive law, considers the Act of 16 February to be the act of the restoration of the independent State of Lithuania and its legal basis. Moreover, the text of the Act of Independence, according to Petras Klimas, one of its signatories, was “strictly principled, in other words, eternal”.²⁷ As such, it has become the most important act of constitutional significance of the restored State of Lithuania. Its laconic text not only expressed the will of the Lithuanian nation to restore the independence of its state, but also established “the fundamental constitutional guidelines for the whole period of the independence of Lithuania”²⁸, whereas the terms used in it – “national self-determination”, “the state”, “the representation of the nation”, “the Constituent Assembly (Seimas)”, etc. laid the foundations of the Lithuanian terminology of constitutional law.²⁹

One of the constitutional guidelines directly related to all future constitutional acts of the State of Lithuanian and all future constitutional development of Lithuania was the provision of the Act of 16 February whereby the restoration of the independent State of Lithuania was proclaimed and the termination of all state ties that formerly had bound this State to other nations was declared, since any future constitution of the State of Lithuania or its provisions violating, either directly or indirectly, its sovereignty, would have been in conflict with the above-mentioned provision of the Act of 16 February.

The provision of the Act of Independence whereby the restored State of Lithuania would be founded on democratic principles was undoubtedly of constitutional significance – it meant that the future drafters of the Constitution of Lithuania were obliged to envisage a state solidly built on democratic foundations.

Considering that it did not have a mandate to carry out all initial work of restoring the state, the Council reiterated in the Act of 16 February the position of the Conference that, on the basis of the provisions formulated in the Act of Independence, the foundation of the Lithuanian State and its relations with other states were to be finally determined by the Constituent Assembly (Seimas), to be elected democratically by all the inhabitants of

²⁶ Rutenbergas, G., “Lietuvos, kaip nepriklausomos valstybės, susikūrimas ir jos pripažinimas tarptautinės teisės šviesoje” [“The Creation of Lithuania as an Independent State and Its Recognition in the Light of International Law”], *Teisė [Law]*, 1927, Vol. 11, p. 47.

²⁷ Klimas, footnote 15, p. 118.

²⁸ Račkauskas, K., *Lietuvos konstitucinės teisės klausimais [On Issues of Constitutional Law of Lithuania]*, New York, 1967, p. 11.

²⁹ Vaičaitis, V. A. and Paužaitė-Kulvinskienė, J., “1918 m. vasario 16-osios akto konstitucinė samprata” [“The Constitutional Concept of the Act of 16 February 1918”], *Teisė [Law]*, 2015, Vol. 94, p. 177.

Lithuania, and convoked as soon as possible. Therefore, a constitutional guideline can also be found in the provision of the Act of 16 February concerning the Constituent Assembly (Seimas) – the institution representing the constitutive power of the sovereign nation and having the mandate to complete both the legal formalisation of the restoration of the state and the establishment of its constitutional foundations, which could be reviewed in the future only in accordance with the procedure laid down by the Constituent Assembly (Seimas) itself.

In fact, having convened to its first session on 15 May 1920, it was the Constituent Assembly (Seimas) elected in a democratic election (representing not only the ethnic Lithuanian nation, but the entire so-called civil nation of Lithuania and having the special mandate obtained from all Lithuanian citizens (voters) to fulfil the function of establishing the State) that could solemnly declare with one voice that “the independent State of Lithuania is restored as a democratic republic within its ethnographic boundaries and free from all state ties that formerly bound it to other countries”.³⁰

This short formulation completed the period of national revival, of the re-establishment of the state, and of the provisional constitutions and governments, stated the restoration of the independent State of Lithuania to be a *fait accompli*, as well as solved the most important tasks that the Conference and the Council, limiting themselves to a general statement, entrusted to the Constituent Assembly (Seimas): to establish the foundations of the restored State of Lithuania and the concrete form of state government – a democratic republic. Finally, in order to carry out the commissioning laid down in the Act of 16 February to determine Lithuania’s relations with other countries, the resolution passed by the Constituent Assembly (Seimas) on 15 May 1920 stated that Lithuania became free from all state ties that it ever had with other countries.³¹

Thus, the Act of 15 May with its position expressed shortly and emphatically, as adopted by the Constituent Assembly (Seimas), i.e. a legitimate institution that had constitutive power, could serve as the basis for a significant guideline and one of the starting points for the constitutional development of Lithuania.

These two acts, i.e. the Act of 16 February 1918 and the Act of 15 May 1920, which complement each other, are referred to in the Act of the Supreme Council (Reconstituent Seimas) of Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania as those that “never lost their legal effect and comprise the constitutional foundation of the State of Lithuania”.³²

³⁰ “Lietuvos Valstybės Nepriklausomybės Proklamavimas” [“Proclaiming the Independence of the State of Lithuania”], *Lietuvos novelos [The Lithuanian Bulletin]* (compiled by Šalkauskis, K.), Kaunas, 1935, p. 4.

³¹ Vaitiekūnas, V., “Lietuvos suverenumas Steigiamajame Seime” [“The Sovereignty of Lithuania at the Constituent Assembly (Seimas)”], *Aidai [Echoes]*, 1970, No 10, p. 458.

³² Lietuvos Respublikos Aukščiausiosios Tarybos aktas “Dėl Lietuvos nepriklausomos valstybės atstatymo” [The Act of the Supreme Council (Reconstituent Seimas) of Republic of Lithuania of 11 March 1990 on the Re-establishment of the Independent State of Lithuania], *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania]*, 1990, No 9-222.

[illegible]

Steigiamojo Seimo Darbai

1920 m. gegužės mėn. 15 d.

Lietuvos Valstybės nepriklausomybės proklamavimas

«Lietuvos Steigiamasis Seimas, renkdamas Lietuvos žmonių valią, proklamuoja esant atstatytą Nepriklausomą Lietuvos Valstybę, kaip demokratinę respubliką, etnologinėm sienom ir laisvą nuo visų Valstybinių ryšių, kurie yra buvę su kitom Valstybėm».
(Gyvas priėjimas).

The Resolution of the Constituent Assembly (Seimas) of 15 May 1920

Steigiamojo Seimo Darbai [The Work of the Constituent Assembly (Seimas)], Notebook One, 1920.



The session of the Constituent Assembly (Seimas) of Lithuania. Kaunas, 1920

The photo is held by the Wroblewski Library of the Academy of Sciences of Lithuania.



Vyriausybės Žinios

TURINYS:

799. Lietuvos Valstybės Konstitucija

Pusl.
1

— 799 —

Einąs Respublikos Prezidento Pareigas Steigiamojo Seimo Pirmininkas skelbia 1922 m. rugpjūčio mėn. 1 dieną Steigiamojo Seimo priimtą Lietuvos Valstybės Konstituciją.

Lietuvos Valstybės Konstitucija.

Vardan Dievo Visagallo, Lietuvos Tauta, dėkingai minėdama garbingas savo sūnų pastangas ir kilnias aukas, Tėvynei išvaduoti padarytas, atstačius nepriklausomą savo Valstybę, ir norėdama nutiesti tvirtus demokratingus jos nepriklausomam gyvenimui pagrindus, sudaryti sąlygas teisingumui ir teisėtumui tarpt, ir patikrinti visų piliečių lygybę, laisvę ir gerovę, o žmonių darbui ir dorai tinkamą Valstybės globą, per savų įgaliotus atstovus, susirinkusius į Steigiamąjį Seimą, 1922 metų rugpjūčio mėnesio 1 dieną priėmė šią Lietuvos Valstybės Konstituciją.

I. Bendrieji dėsniai.

1 §.

Lietuvos Valstybė yra nepriklausoma demokratinė Respublika.

Suvereninė Valstybės Valdžia priklauso Tautai.

2 §.

Valstybės Valdžią vykdo Seimas, Vyriausybė ir Teismas.

3 §.

Lietuvos Valstybėje neturi galios joks įstatymas, priešingas Konstitucijai.

4 §.

Lietuvos teritorijos sienos gali būti keičiamos tik įstatymo keliu.

5 §.

Administracinę Lietuvos teritorijos padalinimą nustato įstatymas.

Del vietos gyventojų reikalų ypatingumo iš atskirų Lietuvos sričių gali būti sudaryti autonominiai vienetai, kurių sienas ir teises nustato įstatymas.

6 §.

Valstybės kalba — lietuvių kalba. Vietinių kalbų vartojimą nustato įstatymas.

7 §.

Valstybės spalvos: geltona — žalia — raudona. Valstybės ženklas — baltas Vytis raudoname dugne.

II. Lietuvos piliečiai ir jų teisės.

8 §.

Pilietybės teisė įgyjama ir jos nustojama einant atitinkamą pilietybės įstatymu.

Svetimos valstybės pilietis gali būti priimtas Lietuvos pilietybėn, jeigu jis yra išgyvenęs Lietuvoje ne mažiau kaip dešimt metų.

9 §.

Niekas negali būti kartu Lietuvos ir kurios kitos valstybės pilietis.

10 §.

Visi Lietuvos piliečiai, vyrai ir moters, yra lygūs prieš įstatymus. Negali būti teikiama ypatingų privilegijų nei mažinama teisių piliečiui dėl jo kilmės, tikėjimo, tautybės.

11 §.

Piliečio asmuo neliečiamas. Traukti pilietis tieson galima tik įstatymuose nurodytais atsitikimais ir tvarka. Pilietis gali būti suimtas arba jo laisvė suvaržyta tik užtikus jį nusikalstamąjį darbą bedarant, arba teismo valdžios organo nutarimu. Suimtajam piliečiui turi būti ne ilgiau kaip per 48 valandas įteiktas nutarimas dėl jo suėmimo ir nurodytas suėmimo pagrindas. Negavęs šio nutarimo suimtas tų jau paleidžiamas.

A fragment of the Constitution of the State of Lithuania of 1922
published in the Official Gazette

Official Gazette *Laikinosios Vyriausybės Žinios*, 1922, No 100.

Vyriausybės Žinios

I DALIS

1778. Lietuvos Valstybės Konstitucija

Psl. I

Respublikos Prezidentas, pritariamas viso Ministerių Kabineto — *Ministerio Pirmininko ir Užsienio Reikalų Ministerio prof. A. Voldemaro, Krašto Apsaugos Ministerio gen. leit. T. Daukanto, Finansų Ministerio J. Tubelio, Teisingumo Ministerio A. Žilinsko, Žemės Ūkio Ministerio J. Aleksos, Vidaus Reikalų Ministerio I. Musteikio, Susisiekimo Ministerio S. Čiurlionio, Sveikimo Ministerio K. Šakenio ir Valstybės Kontrolieriaus V. Matulionio* — susirinkusio iškilmingan posėdin kariuomenės šventės dieną, 1928 m. gegužės mėn. 15 d., su padėka paminėti žygių, padarytų per dešimtį metų Lietuvį Tautos, ypačiai jos geriausių vaikų, ginklu apgyvusių nepriklausomą Lietuvos likimą ir nuolat esančių jos sargyboje, nusprendė paskelbti šitokią Lietuvos Valstybės Konstituciją:

Lietuvos Valstybės Konstitucija.

I. Bendrieji dėsniai.

§ 1.

Lietuvos Valstybė yra nepriklausoma demokratinė respublika.
Suvereninė valstybės valdžia priklauso Tautai.

§ 2.

Valstybės valdžią vykdo Seimas, Vyriausybė ir Teismas.

§ 3.

Lietuvos Valstybėje neturi galios joks įstatymas, priešingas Konstitucijai.

§ 4.

Lietuvos plotas susideda iš žemių, kurių sienos aprašytos sudarytomis lig šiol valstybės tarptautinėmis sutartinėmis. Keisti šis plotas galima didinant jį paprastu įstatymų leidimo keliu, o mažinant tautos atsiklausimo keliu.

§ 5.

Lietuvos sostinė — Vilnius. Kitur ji gali būti perkelta taikinau tam tikru įstatymu.

§ 6.

Atskiri Lietuvos kraštai gali gauti tam tikru įstatymu teise autonomiškai tvarkytis. Kiekvieno tokio krašto autonominės teisės turi būti nurodytos jo statute, suteikiamame tam tikru įstatymu.

Autonominių kraštų seimeliai negali leisti įstatymų, kurie liestų visos Lietuvos ar kitų jos kraštų reikalus arba kurie būtų priešingi jos įstatymams.

§ 7.

Valstybės kalba — lietuvių kalba. Vietinių kalbų vartojimą nustato įstatymas.

§ 8.

Valstybės spalvos: geltona — žalia — raudona. Valstybės ženklas — baltas vytiis raudoname dugne.

II. Lietuvos piliečiai ir jų teisės.

§ 9.

Pilietybės teisė įgyjama ir ji nustojama einant atatinamą pilietybės įstatymu.

Svetimos valstybės pilietis gali įgyti Lietuvos pilietybę, jeigu jis yra išgyvenęs Lietuvoje ne mažiau kaip dešimtį metų.

Visos politinės teisės suteikiamos tik natūralizuotųjų vaikams, gimusiems Lietuvos pilietybėje, o patys natūralizuotieji įgyja tik aktyvias politines teises.

§ 10.

Niekas negali būti kartu Lietuvos ir kitos kurios valstybės pilietis.

Lietuvos pilietis tačiau nepraranda savo pilietybės teisių, patapęs kurio Amerikos krašto piliečiu, jei atlieka tam tikras įstatymo nurodytas pareigas.

§ 11.

Visi Lietuvos piliečiai, vyrai ir moterys, yra lygūs prieš įstatymus. Negali būti teikiama ypatingų privilegijų nei mažinama teisių piliečių dėl jo kilmės, tikėjimo, tautybės.

§ 12.

Piliečių asmuo neliečiamas. Traukti pilietis tieson galima tik įstatymuose nurodytais atsitikimais ir tvarka. Pilietis gali būti suimtas arba jo laisvė suvaržyta, tik užtikta nusikalstama darba bedaras, arba teisno valdžios organo nutarimu. Suimtajam piliečiui turi būti ne vėliau kaip per 48 valandas įteiktas nutarimas dėl jo suėmimo ir nurodytas suėmimo pagrindas. Negavus šio nutarimo suimtas toliau paleidžiamas.

§ 13.

Piliečio būtas neliečiamas. Jeiti j būta ir daryti jame krata galima tik nurodytais įstatyme atsitikimais ir tvarka.

A fragment of the Constitution of the State of Lithuania of 1928
published in the Official Gazette

Official Gazette *Vyriausybės Žinios*, 1928, No 275, <http://www.epaveldas.lt>.



Vyriausybės Žinios

I D A L I S

4271. Lietuvos Konstitucija

Psl.
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— 4271 —

Respublikos Prezidentas skelbia šią Seimo 1938 metų vasario 11 dieną priimtą Lietuvos Konstituciją:

Lietuvos Konstitucija

LIETUVIŲ TAUTA, SENOSIOS LIETUVOS DIDINGOS PRAEITIES GAIVINAMA, YRA ATSTACIUSI NEPRIKLAUSOMĄ SUVERENINĘ LIETUVOS VALSTYBĘ IR GINKLO KOVOJE JĄ APGYNUSI TAM KAD, VYKDYDAMA SAVO AMŽINĄJĄ TEISĘ BŪTI LAISVAI IR NEPRIKLAUSOMAI SAVO TĖVŲ ŽEMĖSE, VIENINGA VALIA SERGETŲ, KAS JAI IS AMŽIŲ PRIKLAUSO, TĘSTŲ GARBINGUS LIETUVOS ŽYGIUS IR ESAMOSIOS BEI BŪSIMŲJŲ KARTŲ PASTANGOMIS UGDYTŲ LIETUVOS GALIĄ.

LIETUVIŲ TAUTOS PATYRIMU, KURI JAI YRA DAVĘ JOS SENOVĖ IR VALSTYBINĖ PRAEITIS, JOS ATGIMIMAS IR KOVOS DĖL NEPRIKLAUSOMYBĖS, PRISIKĖLUSIOS LIETUVOS GYVENIMAS IR TAUTINĖS VALSTYBĖS KŪRIMAS, NUSTATOMA LIETUVAI ŠI KONSTITUCIJA:

I SKYRIUS

Bendrieji nuostatai

1 straipsnis

Lietuvos Valstybė yra nepriklausoma suvereninė. Jos suverenumas priklauso Tautai.

2 straipsnis

Lietuvos Valstybės teritorija yra žemė, kurių sienos nustatytos sudarytomis ligi šiol Lietuvos Valstybės tarytutinėmis sutartimis. Jos negali būti atskiriamos.

3 straipsnis

Lietuvos Valstybė yra respublika. Jos priekakyje yra Respublikos Prezidentas. Jis vadovauja Valstybei.

4 straipsnis

Valstybės valdžia yra vienanatė ir nedaloma. Ją vykdo Respublikos Prezidentas, Seimas, Vyriausybė ir Teismai.

5 straipsnis

Valstybės valdžios organai savo veikamuose vadovaujami teisingumu.

6 straipsnis

Lietuvos sostinė — Vilnius. Kitur ji gali būti perkelta laikinai įstatymu.

7 straipsnis

Valstybinė kalba — lietuvių kalba. Įstatymu nustatoma, kuriuose Lietuvos kraštuose ir kuriose viešosiose įstaigose, be lietuvių kalbos, gali būti vartojamos ir kitos kalbos.

8 straipsnis

Valstybės ženklas — baltas Vytis raudoname lauke.

Tautinės spalvos — geltona-žalia-raudona.

Valstybės ženklas, tautinė vėliava ir jų vartojimas nustatomi įstatymu.

Lietuvos kraštai ir miestai gali turėti savo ženklus, nustatamus įstatymu.

9 straipsnis

Valstybės šventės yra:

- 1) vasario šešioliktoji — Lietuvos Nepriklausomybės atstatymui minėti;
- 2) rugsėjo aštuntoji — Senosios Lietuvos Didinai Praečiai minėti.

10 straipsnis

Valstybės šventės, sekmadieniai ir kitos Valstybės pripažįstamos šventės yra poilsio ir dvasinio pailimo dienos. Šventėse gali būti dirbama įstatymu nustatytais atvejais.

II SKYRIUS

Pilietybė

11 straipsnis

Pilietybė įgyjama gimimu, jungtuvėmis ar kitu šeiminiu ryšiu, taip pat jos optavimu arba jos atgavimu.

12 straipsnis

Piliečių gali būti priimtas:

- 1) lietuvis, apsigyvenęs Lietuvos Valstybėje;
- 2) nelietuvis, išgyvenęs Lietuvos Valstybėje bent dešimt metų;
- 3) asmuo, nusipelnęs Lietuvos Valstybei.

A fragment of the Constitution of Lithuania of 1938
published in the Official Gazette

Official Gazette *Vyriausybės Žinios*, 1938, No 608.

LITHUANIA'S CONSTITUTIONS ADOPTED IN 1918–1940

Prof. Habil. Dr. Mindaugas Maksimaitis*

During the short period of the interwar period of its independence, Lithuania followed a remarkably meaningful path of its constitutional development and managed to gain invaluable experience in this area – it “tried on” the constitutional acts, democratic and authoritarian ones, characteristic of the period that is generally considered to belong to the second stage of the development of the constitutions and that provided constitutional law with the so-called middle generation constitutions.

THE FUNDAMENTAL PRINCIPLES OF THE PROVISIONAL CONSTITUTION OF THE STATE OF LITHUANIA

On 20 October 1918, the Chancellor of war-losing Germany assured representatives from the State Council of Lithuania (hereinafter referred to as the Council) that, in accordance with the right to national self-determination, Germany had recognised the right of the Council and of the Government formed by it to manage the affairs of the country, as well as the right of the Lithuanian nation to determine its own constitution and to form its Government.¹ However, with the war and occupation continuing, in the absence of opportunities to immediately implement the provision of the Resolution of the Council of Lithuania of 16 February 1918 (otherwise known as the Independence Act of Lithuania or the Act of 16 February) concerning the Constituent Assembly (Seimas) elected in a democratic manner by all the inhabitants of Lithuania, urgent actions had to be taken by the Council itself, which was reasonably recognised and deemed by the majority of the population to be the sole representation of the nation and the supreme national political institution in charge of the restoration of the State of Lithuania.

Under such circumstances, however, the question of the constitution, despite the fact that it was naturally the most important one, was not included in the agenda of the session of the Council, which convened on 28 October 1918. The Presidium of the Council submitted the question to be considered at the session by formulating it as “the formation of Lithuanian government”:² according to the Presidium, the Council was bound by its own

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¹ Klimas, P., *Istorinė Lietuvos valstybės apžvalga [A Historical Review of the State of Lithuania]*, Kaunas: Vaiva, 1922, p. 22.

² *Lietuvos Valstybės Tarybos protokolai: 1917–1918 [Minutes of the State Council of Lithuania: 1917–1918]* (compiled by Eidintas, A. and Lopata R.), Vilnius: Mokslas, 1991, p. 332.

decisions, adopted in the summer of 1918,³ while opting for the lesser evil, as the German political circles had been devising the plan to annex the occupied Lithuania to Prussia or Saxony; therefore, the Council had proclaimed Lithuania a constitutional monarchy, having elected Wilhelm von Urach, count of Württemberg, as the king.⁴ It was during that time when it was decided that a future constitution of Lithuania would be a result of the joint efforts of the Council and the king.

Thus, when there finally emerged an objective possibility of taking steps to implement independence, a fairly large number of Council members considered the Council bound by its previous monarchy-related decisions, as well as by the promises given to the candidate to the throne. This was confirmed not only by reserved speeches on this issue during the discussions at the meetings of the Council and multiple statements made by its official representatives over the last days for the German top authorities,⁵ but also by the discussion that had taken place not long before between the leaders of the Council and the candidate to the throne himself on the state boundaries, financial affairs, and other most important matters of the State of Lithuania.⁶ In those circumstances, the Council, having considerable doubts on these issues, was able to reach the question of the Constitution during difficult discussions, by agreeing that the execution of the decision on electing the king would temporarily be suspended until the constitutive public institution, which, in Lithuania, was called the Constituent Assembly (Seimas), resolved the question of the form of government of the state.⁷ It was only then when, at last, it was decided to form an official commission for drafting the foundations of a provisional constitution.⁸

The text of the first provisional constitutional act, called the Fundamental Principles of the Provisional Constitution of the State of Lithuania (hereinafter referred to as the Fundamental Principles, the Provisional Constitution), was very short (it consisted of 29 articles).⁹ It was adopted by the Council on 2 November 1918. The preamble

³ *Lietuva vokiečių okupacijoje Pirmojo pasaulinio karo metais 1915–1918 [Lithuania under the German Occupation during the First World War 1915–1918]* (collection of documents; compiled by Gimžauskas, E.), Vilnius: The Publishing House of the Lithuanian Institute of History, 2006, p. 317; Valstybiniai aktai ir dokumentai [State Acts and Documents], *The Lithuanian Central State Archive (Lietuvos centrinis valstybės archyvas; hereinafter referred to as LCVA)*, collection of records 1557, folder 1, file 40, sheet 5; Klimas, P., *Dienoraštis 1915.XII.1–1919.I.19 [Diary 01-12-1915–19-01-1919]*, Chicago, 1988, pp. 262, 443.

⁴ *Lietuva vokiečių okupacijoje Pirmojo pasaulinio karo metais 1915–1918 [Lithuania under the German Occupation during the First World War 1915–1918]*, footnote 3, p. 341.

⁵ *Ibid.*, pp. 463, 498.

⁶ *Lietuvos Valstybės Tarybos protokolai: 1917–1918 [Minutes of the State Council of Lithuania: 1917–1918]*, footnote 2, pp. 336, 341; *Bėgamosios Lietuvos Valstybės Tarybos Žinios [The Current News of the State Council of Lithuania]*, No. 2, *The Division of Manuscripts of the Wroblewski Library of the Academy of Sciences of Lithuania* (hereinafter referred to as *The Wroblewski Library*), collection of records 255–1091, sheet 3.

⁷ *Lietuvos Valstybės Tarybos protokolai: 1917–1918 [Minutes of the State Council of Lithuania: 1917–1918]*, footnote 2, p. 365.

⁸ *Ibid.*, p. 346.

⁹ The Fundamental Principles of the Provisional Constitution of the State of Lithuania, A Supplement to the Official Gazette *Laikinosios Vyrtausybės Žinios*, 1918, No 1-1a.

to the Fundamental Principles stated that it did not arrogate to itself the prerogative of the Constituent Assembly (Seimas) to decide on the form of government of the State of Lithuania and that, only by expressing the sovereign power of the state, its provisional Government was established. Faithful to the principled position, which it itself formulated in the Act of 16 February, concerning the restoration of the independent State of Lithuania founded on democratic principles, the Council formulated in this provisional constitution the basic provisions by which, until the convention of the Constituent Assembly (Seimas), it was attempted, on the basis of the principles of parliamentarism, to organise provisional government, a system of its institutions, as well as their competence and interrelations.

Even without experience in state government, the Council members showed considerable resourcefulness and did not choose what seemed to be the simplest way: they did not use the constitutional experience gained by other countries (in fact, in other countries, there were not any examples of constitutional creation that could meet the circumstances existing at that time) and chose, in the existing conditions, possibly the best government organisation: in the Provisional Constitution, the Council proclaimed itself to be a provisional central governing body – a provisional parliament, whose activities were to be based on the principles of parliamentarism. Attempts to balance its recent monarchy-related resolutions and the increasing strength of republican sentiment resulted in the resolve to entrust the functions of supreme governmental authority to the Presidium of the Council, which, by its composition or delegated functions, was different from the body of the same title that had been functioning from the very beginning of the activities of the Council and had governed it. Staying the same, but with somewhat reduced composition (chairman and two vice-chairmen, renamed as the president and vice-presidents, not including the existing secretaries), the Presidium of the Council was also proclaimed the temporary collegial head of state. It was the institution of namely this composition, where even the signature of which required all three of its members without reservation, that was obliged to exercise state power through the Cabinet of Ministers responsible to the Council.

Thus, the adopted constitutional act declared the issuer of the constitution itself as a provisional parliament and the main state institution, whereas, in the place reserved for the king, by avoiding the establishment of a new institution of the head of state, this act just separated the head of state from the existing structure, the Presidium of the Council, which was in charge of the Council, even by preserving the same name. It made it possible to equally reasonably regard the latter as a regency, operating instead of the formally elected king who had not started performing his functions yet, or as a kind of collegial President of the Republic that had not been proclaimed yet. The form of government of the new state was not mentioned in the constitutional act at all, as this matter was considered the prerogative of the Constituent Assembly (Seimas), while the political entity that it had established was simply called “a state”. This feature of the first constitutional act of the re-established State of Lithuania reflected a compromise reached by the majority of the Council and an attempt

to fill the place officially reserved for the king until the Constituent Assembly (Seimas) took the authoritative decision on the form of government of the state; thus, it was possible to avoid establishing a new institution of the head of state, which would have been inconsistent with that of the king.

The constitutional act in question stated that, in the areas “where the State of Lithuania has not issued new laws, the laws that have been in effect before the war shall apply insofar as they do not contradict the Fundamental Principles of the Provisional Constitution”. This constitutional provision of a general character remained in all Constitutions of Lithuania that were in force during the interwar period, thus creating a legal basis for using temporarily the pre-war laws of foreign countries and filling gaps in the created national law.

The Provisional Constitution proclaimed the equality of all citizens before the law, the absence of estate privileges, the inviolability of home, property, and the person of an individual, freedoms of religion, press, expression, assembly, and associations, which, however, could temporarily be restricted “in time of war, also in order to prevent a revolt or riot against the state”.

Implementing the Fundamental Principles, on 11 November 1918, the Presidium of the Council approved the Provisional Government – the Cabinet of Ministers, which immediately began building a state apparatus at central and local levels.

However, the position of the Council was complicated by the fact that communists, backed by the Soviet Russia, and supporters of the renascent State of Poland began more and more actively to express claims to power in Lithuania. When the occupying German army started leaving Lithuania, the situation became especially critical, since the Russian Red Army units following in the wake of the retreating Germans poured into the country. The military threat posed by the neighbouring states at the end of 1918 and in 1919 to the young sprouts of Lithuania's statehood affected the tendencies in the development of the Constitution of Lithuanian in this initial period of building the state.

After the leaders of the Council and of the Government had prepared to leave the country and to look abroad for more effective aid for the re-emerging state, it became necessary to ensure the activity of the Presidium of the Council even when its composition was incomplete. Therefore, on 18 December 1918, it was decided to formalise the possibility of carrying out the functions of the Presidium by ignoring the constitutional requirement for the signatures of all of its three members.¹⁰ Although this first amendment to the Fundamental Principles was made not by the competent Council and in violation of the established procedure for amending the Constitution, however, under the pressure of the special circumstances, the said amendment created a formal basis for the Provisional Government to undertake the necessary state power reforms without encroaching on the

¹⁰ “Trijų Prezidiumo nutarimas” [“A Decision of the Three-member Presidium”], *Lietuvos Aidas* [*The Echo of Lithuania*], 1918, No 165.

entirety of the fundamentals of the framework laid down in the Provisional Constitution and thus helped to save the image of the constitutional order that was vitally necessary for the fate of the reborn Lithuania at the time.

The real threat to the state survival also highlighted other shortcomings revealed by the existing conditions in the system of the provisional state institutions, which was provided for in the Fundamental Principles. The main of the said shortcomings was clear legal domination of the Council, not flexible enough and working at irregular sessions, over the system of central state institutions: this domination failed to create necessary conditions not only for starting more intensive development work, but also, most importantly, for responding in a timely manner to a rapidly changing political situation. On the other hand, the predominance in the Council of the political right caused the discontent of a considerable part of the public, which led to forming a left wing government as an appropriate counterbalance with greater political weight. All this is reflected in the amendment to the Provisional Constitution of the State of Lithuania, adopted by the Council on 24 January 1919,¹¹ whereby the Cabinet of Ministers was granted the right to issue temporary laws in the period between the sessions of the Council; however, these laws had to be submitted to the next session of the Council. Thus, the Cabinet of Ministers was made a second legislator, which was actually even dominant.

In 1918, at the time when the Fundamental Principles were in effect, these forced, but provisional, steps taken in the circumstances of war and the general emerging tendency to strengthen the powers of the executive power basically did not fall far short of the requirements of parliamentary democracy and, according to Prof. Mykolas Romeris (Römeris), who was the most eminent constitutionalist of the interwar Lithuania, were still clearly inclined to “parliamentarianism dominated by the Seimas”.¹² However, these steps soon proved to be insufficient.

The aggressiveness of Lithuania’s foreign and domestic enemies made Lithuanian political activists continue to mobilise forces. The situation was aggravated by the fact that the composition of a coalition Cabinet of Ministers, reflecting a broad political spectrum and headed by a left-wing representative, did not match the composition of the Council dominated by the political right; thus, the Council’s relationship (which was attempted to be built on the basis of parliamentarism) with the executive power was distorted. As a result, a more serious review of the constitutional act was needed soon, since it was also objectively necessary due to the duality of the composition of the Presidium of the Council when the organisation of routine activities carried out by state authorities became a complex task.

Continuing to accumulate power in the hands of the Government, which was better represented by the then Lithuanian political forces than the Council, since this accumulation

¹¹ A Supplement to the Provisional Constitution of the State of Lithuania, Official Gazette *Laikinosios Vyriausybės Žinios*, 1919, No 4-41.

¹² [Romeris] Römeris, M., *Lietuvos konstitucinės teisės paskaitos [Lectures on Lithuanian Constitutional Law]*, Vilnius: Mintis, 1990, p. 103.

was necessary because of the threat to the survival of the state, on 4 April 1919, the Council once again reviewed the Fundamental Principles, which were then in force: the Council, on the basis of a proposal submitted by a group of its members, prepared a draft “amendment and supplement” to this provisional constitutional act, incorporating this draft in the original text, and made some of its structural changes.¹³ It preserved the official long and awkward title of the new version of the constitutional act, repeated word for word a big part of the text of the Fundamental Principles of 1918, and the preamble continued to have the formulation, characteristic of the first constitutional act, proclaiming the establishment of state government.¹⁴

It was only the system of central state institutions that was substantially changed: the institutions of executive power became the most important, in particular, the collegial Presidium of the Council was replaced by an independent President of the State, who was granted by the new version of the Fundamental Principles the exclusive right to call and dissolve sessions of the Council; thus, the right of the Council to convene at its discretion was abolished. The laws adopted by the Cabinet of Ministers and issued by the President in the period between, or in adjournments of, the sessions of the Council were considered to have the same legal force as those passed by the Council. Disagreeing with a draft law adopted by the Cabinet of Ministers, the President was able to return it back; however, in the case of the repeated adoption of the same law by the Cabinet of Ministers, it was the Council that had to say the last word.

The President was also commissioned to approve laws adopted by the Council, but, if he exercised his veto, the Council could overcome it by adopting the same law once again.

In addition to the alternative legislative right, the Council was instructed to exercise control over the activities of the Cabinet of Ministers, and the latter had to have the trust of the former. However, the right to appoint the Prime Minister, to commission him to form the Cabinet of Ministers, to approve its composition, to appoint high officials, to have the army at his disposal, to represent the state, and to declare amnesties fell under the jurisdiction of the President, whereas the representative of the Cabinet of Ministers only had the right to countersign relevant acts. Having stated that the President of the State was elected by the Council “until a Constituent Assembly (Seimas) convened and decided on both the form of government and the Constitution”, the Provisional Constitution did not regulate the procedure for presidential elections.

Yielding the initiative and leading positions in the state to the executive power, the Council also sanctioned its own turning into a subject dependent on the discretion of the executive power. After appropriate changes had been made, a new institution, the President of the State, became the most important in the organisation of state government.

¹³ “Valstybės Taryba” [“The State Council”], *Lietuva [Lithuania]*, 1919, Nos 71, 72.

¹⁴ *The Fundamental Principles of the Provisional Constitution of the State of Lithuania*, adopted in third reading by the State Council of Lithuania on 4 April 1919 [Kaunas, 1919].

He did not convene the Council in the first half of the year, thus creating the prerequisites for the simplification of legislation and ensuring the necessary speed of managing affairs under the conditions of war. During that time, the Lithuanian army drove back across Lithuania's border the Red Army units, which had posed the most serious threat to the restored statehood.

The new focus placed in the provisional constitutional act and the place within the system of state institutions chosen for the Council itself affected the subsequent fate of the latter. Although the direct threat (which was the main reason why it was decided to backtrack on parliamentary governance) to the life of the young independent state later abated, the tendency towards decreasing the role of the Council as a constitutional parliamentary institution in public life persisted, and shifting the centre of gravity of the political life to the executive power proved to be irreversible. Even the rejection of the political coalition and an attempt to combine the composition of the Cabinet of Ministers and that of the Council did not help: the Government remained the official centre where the most important political decisions were adopted and carried out.

On 2 December 1919, in the course of preparing for the election of the Constituent Assembly (Seimas), another law amending the Fundamental Principles of the Provisional Constitution of the State of Lithuania was enacted.¹⁵ It stipulated that the Constituent Assembly (Seimas) was to convene at the place and on the day chosen by the President of the State (as Vilnius, the place of convening the Constituent Assembly (Seimas) that was specified in the law, was in Polish hands). In addition, the Fundamental Principles were supplemented with a new provision allowing the Constituent Assembly (Seimas) to begin work provided more than half of the elected representatives were present.

THE CONSTITUTIONAL CREATIVE ACTIVITIES OF THE CONSTITUENT ASSEMBLY (SEIMAS)

The Provisional Constitution of the State of Lithuania

The most important role in the development of constitutionalism in the independent State of Lithuania fell on the Constituent Assembly (Seimas), which was elected democratically by universal suffrage, as required by the Act of Independence of Lithuania and provided for in the Fundamental Principles. This institution, representing the nation, having started its work by passing the resolution of 15 May 1920 (referred to in the preceding article "Lithuania's Act of Independence of 16 February 1918"), adopted the Provisional Constitution of the State of Lithuania (hereinafter referred to as the Provisional

¹⁵ Įstatymas apie Lietuvos Valstybės Laikinosios Konstitucijos pamatinių dėsnių §§ 32 ir 33 pakeitimą [The Law on Amending Paragraphs 32 and 33 of the Fundamental Principles of the Provisional Constitution of the State of Lithuania], Official Gazette *Laikinosios Vyriausybės Žinios*, 1919, No 16-194.

Constitution) already on 2 June.¹⁶ In carrying out the task set to it by the Act of 16 February, the Constituent Assembly (Seimas) expressed its position for the first time on one of the most important issue of the restored State of Lithuania: it defined Lithuania's form of government, i.e. declared it a democratic republic. This was the main step in determining the foundations of the restored state and became not only a significant milestone, but also one of reference points of the constitutional development of the State of Lithuania, which is also worth remembering, because the Constituent Assembly (Seimas) quietly buried the issue of monarchy (this question had been raised and discussed at the Council just two years before, on which the latter had even adopted a decision, the execution whereof was later postponed, leaving the decision on the monarchical form of government to the discretion of the Constituent Assembly (Seimas)).

The Constituent Assembly (Seimas), having the popular mandate of a constitutive character and exercising the sovereign power unchecked by the Constitution, but wishing not to abuse it and fit it within constitutional frames as soon as possible, especially since the fact of the emergence the Constituent Assembly (Seimas) as such was destroying the constitutional order established in the Fundamental Principles, rushed of its own free will to bind itself by norms of a new constitutional act, the Provisional Constitution of the State of Lithuania, for the period necessary to carry out its key task – to provide the foundation of the State of Lithuania with a new constitutional framework.

With its 18 articles, this constitutional act was the shortest of all constitutional acts of the State of Lithuania.

Representing citizens of Lithuania and, as seen in Article 2 of the Provisional Constitution, considering itself to be the body expressing not only the sovereign power of the ethnic Lithuanian nation, but also that of the people of Lithuania, the Constituent Assembly (Seimas) expanded the concept of the entity exercising supreme state power – the concept of the Lithuanian nation already included the non-Lithuanian inhabitants of the country.

It was only natural for this constitutional act to concentrate the levers of power in the hands of the Constituent Assembly (Seimas) – the elected representatives of the nation – and not only to grant it the exclusive right to pass laws, but also to supervise the enforcement of laws, to approve the state budget and treaties with other countries.

The President of the Republic, elected by the Constituent Assembly (Seimas), was charged with exercising executive power, and was authorised to summon the Prime Minister, instruct him to form the Cabinet of Ministers, approve it, accept its resignation, appoint the Auditor General, represent the Republic of Lithuania, appoint ambassadors and receive accredited representatives from foreign countries, appoint senior officials, and use the right of pardon. In the legislative area, the rights of the President were limited to

¹⁶ *Steigiamoji Seimo Darbai [The Work of the Constituent Assembly (Seimas)]*, sitting 10 (2 June 1920), p. 74; The Provisional Constitution of the State of Lithuania, Official Gazette *Laikinosios Vyriausybės Žinios*, 1920, No 37-407.

the promulgation of laws passed by the Constituent Assembly (Seimas). The Provisional Constitution did not establish the presidential term of office – it was presumed that he would be elected for the whole period of the validity of this Constitution and that the Constituent Assembly (Seimas) had the right to replace him at any time. Until the election of the President, his functions were entrusted to the Speaker of the Constituent Assembly (Seimas), who also had to substitute for the President of the Republic in case of his death, resignation, or sickness.

In the course of considering a draft Provisional Constitution, some political forces strongly opposed the institution of the President; therefore, in order to reach a compromise, as long as this Constitution was valid, the President was not elected at all, and the Speaker of the Constituent Assembly (Seimas) acted as the President of the Republic.

It was stipulated that the Cabinet of Ministers was responsible to the Constituent Assembly (Seimas): if the latter expressed no confidence, the Cabinet had to resign.

In the words of Mykolas Romeris, the Constituent Assembly (Seimas) returned to parliamentarism¹⁷ in its extreme form, which he called parliamentary dictatorship, or parliamentarianism dominated by the Seimas, where “the parliament tended to become a sovereign body”.¹⁸

If compared with the previous Fundamental Principles, the Provisional Constitution extended the list of the democratic rights and freedoms of citizens – it included the inviolability of correspondence, as well as freedom of conscience and of strikes. However, in the context of the preparation of a radical land reform, it did not mention the protection of ownership rights. The Provisional Constitution also declared the abolition of titles and of the death penalty. At the same time, it was stated that, in time of war, in the event of an armed insurrection or another dangerous upheaval, the Constituent Assembly (Seimas) may impose martial law or declare states of emergency during which the declared rights and freedoms were to be suspended.

The Provisional Constitution did not establish the procedure for its own amendment or supplement: this followed logically from the nature and mission of the Constituent Assembly (Seimas).

The adoption of the Provisional Constitution legally completed the period of restoring the State of Lithuania and that of the activity of the Provisional Government.

Drafting and adopting the Constitution of the State of Lithuania

The Constituent Assembly (Seimas) bound itself voluntarily by the norms of the Provisional Constitution, which it itself had adopted; however, this did not prevent the Assembly from taking firmly in its hands the levers of power; still, when necessary, it was able

¹⁷ [Romeris], footnote 12, p. 103.

¹⁸ Römeris, M., *Reprezentacija ir mandatas [Representation and Mandate]*, Kaunas: State Printing House, 1926, pp. 76–77.

to be sufficiently flexible. This can be illustrated by the following fact: on 22 October 1920, as a result of a direct aggression of Poland against Lithuania, the Constituent Assembly (Seimas) delegated without hesitation the passage of routine legislation, the supervision of the enforcement of laws, and some of its other functions to the so-called Small Seimas specially created for this purpose and consisting of the Speaker and six members of the Constituent Assembly (Seimas); thus, the main part of the members of the latter were free to address urgent defence matters.¹⁹

The further constitutional creation of the Constituent Assembly (Seimas) was largely influenced by the political conditions of the then Lithuania and, especially, by the general post-war rise of democratic forces.

This rise was reflected by the results of the preparatory work undertaken as far back as at the beginning of 1919 by the Provisional Government of Lithuania concerning a future permanent Constitution (search for material abroad,²⁰ the formation of the commission for preparing a draft Constitution, which was composed of representatives from all major parties,²¹ the development of such a vision of Lithuania's Constitution that envisaged a democratic parliamentary republic where the parliament would be granted broad powers, such as the complete subordination of the executive power²²), although, as noted above, all of that was envisaged for the nearest future, but the reality prevented achieving these goals for some time.

There were not significant differences in the opinion of the political forces represented at Constituent Assembly (Seimas) regarding the fundamentals of a future Constitution – all of them clearly intended to consolidate a parliamentary regime in the permanent Constitution that they were drafting. The Party of National Progress was the only one leaning towards presidential democracy in Lithuania; however, by the will of the voters, it was not represented at the Constituent Assembly (Seimas). Therefore, in the course of drafting a permanent Constitution at the Constituent Assembly (Seimas), there was only a slight divide between the political forces advocating parliamentary democracy: those who took the left-wing position wanted the Seimas to be the source and implementer of all power, whereas those holding centrist views, in addition to the Seimas, also saw the President of the Republic, exercising control over the executive power and responsible to the Seimas.

When drafting a permanent constitution, the Constituent Assembly (Seimas), reasonably considering itself the sole authorised institution, stressed its complete

¹⁹ *Mažoji Seimo sudarymo įstatymas* [The Law on Forming the Small Seimas], Official Gazette *Vyriausybės Žinios*, 1920, No 50–491.

²⁰ *Ministrų Kabineto kredito leidimo ir asignavimų nutarimai* [The Resolutions of the Cabinet of Ministers Related to Credit and Allocations], LCVA, collection of records 923, folder 1, file 18, sheet 31.

²¹ The minutes of the 3 December 1919 sitting of the Cabinet of Ministers, LCVA, collection of records 923, folder 1, file 57, sheet 218.

²² “Lietuvos Konstitucijos projekto ruošimas” [“Drafting the Constitution of Lithuania”], *Lietuva* [Lithuania], 1920, No 77.

independence from any external influences. It formed a constitutional commission which, according to its Chairman Antanas Tumėnas, did not find any constitutions of other states that could become the basis of the Constitution of Lithuania.²³ This commission also refused to invite specialists as consultants from abroad or to send its members to other countries so that they, consulting with acknowledged experts, would prepare a draft Constitution.²⁴ This commission also stated that it would distance itself from the work made by the commission for drafting the future Constitution, which had been formed by the Government that acted in 1919–1920,²⁵ despite the fact that, in the Constitutional Commission of the Constituent Assembly (Seimas), there were three people (including the Chairman of the Commission) who had prepared a draft Constitution in the commission formed by the Government, while the provisions crystallised in the work of the latter commission – a unicameral parliament (Seimas), elected by proportional system for three years; also the President elected for three years by the Seimas; the President substituted by the Speaker of the Seimas; the right of the President to summon the Prime Minister, to commission him to form the Cabinet of Ministers, and the right of the President to approve its composition; the requirement that the appropriate member of the Cabinet of Ministers countersign all presidential acts; the joint and several responsibility of the Cabinet of Ministers; the expression of no confidence in the Cabinet only by directly using the word “no confidence” in the relevant resolution of the Seimas; etc.²⁶ – were clearly reflected in the permanent draft Constitution prepared by the Commission of the Constituent Assembly (Seimas). But, apparently, it was attempted to show that, from beginning to end, the Constitution had been drafted independently and exclusively by the Constituent Assembly (Seimas) and that the Constitution of the State of Lithuania was a “baby” of the Constituent Assembly (Seimas) itself.

The content of the drafted Constitution was considerably influenced by the then coalition, uniting the main political forces at the Constituent Assembly (Seimas) – the centre-right was represented by the Christian Democrat Bloc, which had a small, but absolute majority of the representatives (59 out of a total of 112), and the centre-left representatives of the bloc of National Farmers (the second largest bloc, uniting two political groups and composed of 28 representatives). Having the absolute majority at the Constituent Assembly (Seimas) as well as two-thirds of its members, the said coalition could easily embody the views of its two blocs, which were basically very similar, in the draft Constitution prepared at the constitutional commission formed by the Assembly. These political forces were united by nationalism, the idea of a nation state, and the democratic and parliamentary rationalism reflected in the constitutional framework of the state,²⁷ while they were divided

²³ *Steigiamojo Seimo Darbai [The Work of the Constituent Assembly (Seimas)]*, sitting 176 (24 February 1922), p. 74.

²⁴ *Ibid.*, p. 80.

²⁵ *Ibid.*

²⁶ *Lietuvos Valstybės Konstitucijos projektas [A Draft Provisional Constitution of the State of Lithuania]*, LCVA, collection of records 383, folder 3, file 28, sheets 274–277.

²⁷ [Romeris], footnote 12, p. 137.

only by worldview matters – an approach towards the relations between the state and the church, as well as educational and religious issues. As they were interested to keep the coalition up and running as long as possible, the Christian Democrats made numerous concessions to demands of their partners,²⁸ while postponing until later the main battle for their own ideas and their implementation. Antanas Tumėnas, the Chairman of the Constitutional Commission, was really justified in describing its work as completed quite in unison and deeming all arisen questions successfully answered;²⁹ the coalition thus helped to consolidate the nation and enhance its confidence in the state, and played a significant role in strengthening the restored national statehood. However, after the deliberation of the draft Constitution had moved into plenary sessions of the Constituent Assembly (Seimas) at the beginning of 1922, when the final stage of the preparation of the draft began, the Christian Democrats sacrificed the coalition and started alone to modify, especially in terms of worldview, some of the provisions proposed on behalf of the Commission. No longer bound by the agreement with the bloc of National Farmers, the Christian Democrats, on their own initiative and independently, began amending the draft on the basis of the proposals submitted by their own members only, which divided the partners of the former coalition.

When voting on the draft Constitution *en bloc* took place on 1 August 1922, this draft was in principle supported only by the bloc of Christian Democrats.³⁰ However, the opposition did not vote against the draft – it only abstained by simply expressing its disapproval of the text of the Constitution that had been modified by the Christian Democrats, because it did not want, mainly because of ideological differences, to assume responsibility to its electorate for the final result, and also in response to the tactics chosen by the Christian Democrats, who had envisaged in the Constitution the teaching of religion in government schools, had failed to ensure civil registration at constitutional level, and had included the mention of the name of God in the preamble. The abstentions of the members of the Constituent Assembly (Seimas) did not mean their negative, let alone hostile, attitude to the whole Constitution, nor did they reflect the genuine position of the remaining representatives concerning the Constitution. After all, the Christian Democrats felt that they had also accepted numerous compromises, e.g. by agreeing not to ensure the continuity of government, which they opposed (every time when the Seimas changed, not only the Cabinet of Ministers, but also the President had to be replaced) and which, in their opinion, would have resulted in the instability of the functioning of the state; conceding to this demand, they had insisted on longer terms of office, especially for the President of the

²⁸ The minutes of the Congress of Representatives from the Cells of the Lithuanian Farmers Union and the Lithuanian Social Democratic Party held on 8–12 October 1921, *The Wroblewski Library*, collection of records 199-24, sheet 76.

²⁹ See footnote 23.

³⁰ *Ibid.*, sitting 234 (1 August 1922), p. 49.

Republic; in addition, they had also expressed their belief that the system of a bicameral parliament would have brought more stability.³¹

Thus, the 1922 Constitution of the State of Lithuania³² was a legal act reached through a compromise, reflecting a certain balance of interests of the majority of society at that time.

The main features of the Constitution of the State of Lithuania

On the basis of the then popular liberal philosophy, the Constitution declared an individual as the centre of social life. Attention should be drawn to the section of the Constitution “Lithuanian Citizens and Their Rights” not only because of its broad content, but also because it was placed at the beginning of the Constitution, thus making it more prominent and valuable even from a formal point of view. Significant provisions regarding the legal situation of citizens could also be found in the chapters of the Constitution titled “The Seimas” (electoral rights), “The Fundamentals of the Economic Policy Pursued by the State”, and “Social Security”. In determining the legal position of citizens, their equal rights were emphasised, a list of democratic rights and freedoms was presented and, in order to avoid the abuse of the said rights and freedoms and by actually recognising their possible limitation, it was declared that such limitation was allowed exclusively on the basis of the law. Some of those rights and freedoms, having been adjusted to conform Catholic social teaching and the socialist ideas held by the National Farmers and the Social Democrats, moved away from the liberal conception: declaring that land management was based on the principles of private ownership, it was stated that the state should remain free to regulate land management and to parcel out manors; having consolidated the protection of ownership as an innate right of a citizen and having pointed out that the property of a citizen could only be expropriated by law and only for public needs, the Constitution was silent about the requirement, universally acknowledged in the liberal legal conception on ownership, for fair compensation paid in advance in this case; having declared freedom of faith and conscience, the teaching of religion in schools was made compulsory.

The implementation of the constitutional democratic rights and freedoms of citizens was directly influenced by the state of emergency regulated at constitutional level, by the possibilities of declaring it, and by the most important consequences of its application. The Constitution stated that, in the event of war or armed uprising, or “after the eruption of other dangerous turmoil”, the President of the Republic was allowed, subject to the subsequent approval of the Seimas, to declare a state of emergency and suspend the constitutional rights and freedoms of citizens – the inviolability of the person of an individual, the inviolability of

³¹ “Pasikalbėjimas su buv. Respublikos prezidentu, Seimo pirmininku p. Aleksandru Stulginskiu” [“A Conversation with Mr Aleksandras Stulginskis, Former President of the Republic and Former Speaker of the Seimas”], *Rytas [Morning]*, 1927, No 88.

³² The Constitution of the State of Lithuania, Official Gazette *Vyriausybės Žinios*, 1922, No 100-799.

home, the confidentiality of correspondence and communications, freedom of expression and of the press, freedoms of assembly, associations, and unions. It should be noted that because of the strained relations with the Poles, as well as the constant threat posed by the communists and other circumstances of the internal political situation, the territory of Lithuania or a certain part thereof practically remained in a state of emergency (martial law or a state of heightened security) during the entire interwar period; therefore, the legal situation of Lithuanian citizens was often determined by the order that was regarded by the Constitution as exceptional: the constant practice of applying a state of emergency distorted the implementation of human rights and prevented democracy from taking root, although it was sincerely hoped that it would be possible to build democracy according to the Constitution.

Having recognised that sovereign state power belonged to the nation, the drafters of the Constitution entrusted the implementation of this power to the Seimas, the dual Government (consisting of the President and the Cabinet of Ministers), and courts. But, in an effort to emphasise and protect the sovereignty of the nation, and by recognising the nation's representatives who were elected to the Seimas as the most ideal expressers of the will of the nation, the drafters showed an obvious preference for the Seimas – a permanent unicameral representative body, elected by inhabitants under the proportional system for three years – in the system of the supreme state power and governance institutions. The most important function (and exclusive right) assigned to the Seimas in the Constitution was the passage of legislation; the Seimas shared the right of legislative initiative with the Cabinet of Ministers and, formally, with 25 thousand citizens who had the right to vote (in fact, in the absence of a law governing the latter procedure, it did not function); the right to promulgate laws passed by the Seimas was vested in the President. The Seimas was also commissioned to approve the state budget and its execution, to ratify key international (peace, territorial, etc.) treaties, to decide the issues of war and peace, and to approve a state of emergency.

A very important prerogative of the Seimas was the supervision of the work of the Government, for the exercise of which the Constitution envisaged the submission of inquiries and the possibility of interpellating ministers, as well as carrying out audits. The Cabinet of Ministers was jointly and severally accountable to the Seimas for the overall policy of the Government, and each minister individually was responsible for his own work. The Cabinet had to have the confidence of the Seimas and, in practice, to be able to work successfully, the composition of the Cabinet had to be coordinated with the main political groups at the Seimas or, at least, with the leadership of the parties that had the majority of seats.

According to the drafters of the Constitution, the parliament, which was called the Seimas, thus confirming the historical links of the restored State of Lithuania with the Grand Duchy of Lithuania, had to ensure that the nation itself would be able to determine

the fate of its state and that no one who managed to get into power could arrogate to himself the sovereignty of the nation. Such a state system, often referred to as French, or continental, parliamentarism, had become established in the Third French Republic and had ensured clear parliamentary hegemony and strict subordination of the institutions of the Government to the Parliament.

The Seimas was considered to be a permanent institution, and an election of its new composition had to take place before the end of the term of office of its former members. The members of the Seimas had to follow only their own consciences and were not restricted by any mandates.

The Constitution placed in front of the executive power the President of the Republic, whose legal status, even his necessity in general, were among the most debated issues in the course of drafting the Constitution, since left-wing representatives of the Constituent Assembly (Seimas) in various contexts strongly advocated against the institution of the President: at the Constituent Assembly (Seimas), the Social Democrats, who argued that the President, as a relic of absolute monarchy, would move the executive power further away from the parliamentary representation of the nation and undermine cooperation carried out by the executive, that the institution of the President would come at a price, which would burden the budget and would fall on the shoulders of the nation, etc., began to gain support from the representatives of the centre left forces, which, just a year before that, in April 1919, had initiated the emergence of the institution of the President in Lithuania at constitutional level.³³

Considerable opposition to the institution of the President was able to determine the role given to it in the Constitution: the importance of presidential powers was diminished by the fact that he had to be elected by the Seimas, his term of office was short (three years) and, in addition, was linked to the functioning of the Seimas that elected him (after a new Seimas had been elected in a regular election upon the expiry of the term of office of the former Seimas or in an early election upon the dissolution of the former parliament, a new President also had to be elected), by the fact that it was required that every act of the President be countersigned, and that he was even denied the right to veto some of the laws passed by Seimas (if the latter declared such laws urgent), as well as by the right of the Seimas to remove by a qualified majority the President from office or to institute a criminal case against him.

The special place of the Seimas in the state system, as defined by the Constitution, gave some grounds to believe that there was the lack of balance in relations between the Seimas and the Government,³⁴ which was particularly felt whenever the Seimas was composed of radically different political forces. The said special place of the Seimas was deemed one of the weakest points of the Constitution and one of its shortcomings. Its drafters

³³ See footnote 28, sheet 40.

³⁴ “Valstybė ir valdžia” [“The State and Power”], *I laisvę [Towards Freedom]*, 1955, No 6, p. 11.

were reproached for failing to find a balance between, on the one hand, authority, which would have guaranteed unity, order, and continuity, and would have led to the fulfilment of the desired objective, and, on the other hand, freedom, necessary for the realisation of an individual's potential. At that time, when monarchs and even presidents were opposed by many, the President defined in Lithuania's Constitution was a figure considerably weakened politically.

Also, little regard was given to isolated voices complaining that the democratic system envisaged in the Constitution was a little too early for Lithuania, since its drafters had not paid “enough attention to the historical and cultural particularities of the Lithuanian land and its inhabitants, and the constitution drafted by them was not in keeping with the traditions and experience of the inhabitants of Lithuania, was inadequate for restoring order, and did not reflect the ideal of a state system pursued by the Lithuanian nation”.³⁵

It is true that the most important provisions of the Constitution – the consolidation of the fundamental rights and freedoms of citizens and the establishment of the legal guarantees of their protection, the freedom of political parties and public organisations to operate, political pluralism, democratic mechanisms of forming state institutions – showed its democratic character. This Constitution, with its “too democratic face and content”,³⁶ not only laid “the democratic foundations of statehood”, but also best reflected “the expectations as well as social and political objectives of the Lithuanian nation”; it is also accepted that it set out “the guidelines for the future development”.³⁷ It was “a rational, philosophically-based, and logical masterpiece”, which attempted to create a “a liberal, individualistic, centralised, and representative democracy with parliamentary-type government”.³⁸ This Constitution – the only one prepared and adopted by the Constituent Assembly (Seimas), which was specifically elected by the nation and was the expresser of its will and authorised exerciser of its sovereignty – is considered an exceptional part of the constitutional heritage of Lithuania. In the literal sense, it was not an act of state authority, but an act of the nation, it was the most important Constitution of the interwar Lithuania, a document directly stemming from the provisions of the Act of 16 February and fully implementing them.

In terms of the legal order, having adopted this Constitution, Lithuania joined the ranks of “the most modern democracies”.³⁹ Our constitutional democratic tradition is

³⁵ Račkauskas, K., *Lietuvos konstitucinės teisės klausimais* [On Issues of Constitutional Law of Lithuania], New York, 1967, p. 91.

³⁶ Šidlauskas, K., *Svarstybos visuomeniniais ir teisiniais klausimais* [Discussions about Societal and Legal Issues] (collection of articles), St. Petersburg, FL, 1987, p. 60.

³⁷ Žilys, J., “Konstitucija – tarp lūkesčių ir tikrovės” [“The Constitution: Between Expectations and Reality”], *Konstitucinė jurisprudencija* [Constitutional Jurisprudence], 2009, No 4(16), p. 217.

³⁸ Račkauskas, K., “Steigiamasis Seimas ir jo dvi Konstitucijos” [“The Constituent Assembly (Seimas) and Its Two Constitutions”], *Tėvynės sargas* [The Guardian of Homeland], 1970, No 1, p. 128.

³⁹ Viliamas, V., “Lietuvos seimai ir jų grupinė diferenciacija. Steigiamasis Seimas” [“Lithuanian Parliaments and Their Group Differentiation. The Constituent Assembly (Seimas)”], *Tėvynės sargas* [The Guardian of Homeland], 1955, No 1(11), p. 100.

based on this Constitution, which had to give rise, if necessary, to possible reforms of the Constitution and their development; thus, any further evolution of the Constitutions of Lithuania had to take place within the framework of the guidelines and in accordance with the procedure laid down in the Constitution of 1922.

Unfortunately, the further development of Lithuanian constitutionalism shows that the political forces ignored the above-mentioned procedure; in legal terms, nobody ever repealed the 1922 Constitution of the State of Lithuania in accordance with the procedure established by the Constituent Assembly (Seimas); therefore, in view of the provision that “changes made to the law in accordance of a different procedure do not create a law and are only acts of violence”,⁴⁰ some people felt that this Constitution remained “the only legitimate Constitution, which is binding on the nation that adopted it”.⁴¹

THE 1928 PROVISIONAL CONSTITUTION OF THE STATE OF LITHUANIA

The foundations of the constitutionality of the State of Lithuania were shaken by the *coup d'état* staged by the right-wing forces on 17 December 1926. The coup resulted in the replacement of the left-wing Government, which had won the regular election of the Seimas and had been formed just a half year earlier, and created numerous constitutional problems. They did not disappear after the results of the coup had been formally legalised, but produced painful echoes that impacted the further development of the country. The coup not only abolished the validity of the 1922 Constitution of the State of Lithuania, which was considered to be permanent, though in reality its life was short, but also directly affected subsequent acts of such a character, not to mention Lithuania's constitutional development itself.

The very fact of the coup ignored the requirement stemming from the letter and spirit of the Constitution to make changes at the top of the state structure only by following democratic principles, since any factor of violence in this process conflicted with these principles. However, with the connivance of the forces that had been removed from power, though technically not violating the procedure laid down in the Constitution, having reshuffled the composition of constitutional political power institutions according to the demands of the coup leaders, it seemed outwardly that the coup was liquidated. However, the constitutional consequences of the coup became fully visible only after the Seimas had expressed no confidence in the Cabinet of Ministers,⁴² while the latter, instead of resigning,

⁴⁰ Raulinaitis, P. V., “Tautos suverenumas” [“The Sovereignty of the Nation”], *Lietuva [Lithuania]*, 1954, No 5, p. 28.

⁴¹ Raulinaitis, P. V., “Lietuvos Valstybės Konstitucija (Piliečių teisės ir valstybės valdžios galios)” [“The Constitution of the State of Lithuania (The Rights of Citizens and the Powers of State Institutions)”], *Tėvynės sargas [The Guardian of Homeland]*, 1953, No 1(10), pp. 39–40; Raulinaitis, P. V., “Okupanto įsakymų teisinė vertė” [“The Legal Value of Orders Given by Invaders”], *ibid.*, 1954, No 1(11), p. 137.

⁴² *The Shorthand Records of the Seimas*, The Third Seimas, sitting 78 (12 April 1927), pp. 21–22.

as imperatively demanded by a relevant constitutional provision, which was regarded by Mykolas Romeris as an imperative of the Constitution and, in this case, as a constitutional obligation of the Cabinet,⁴³ dissolved the Parliament and never called a new election, which was in clear violation of the requirement laid down in the Constitution to call the election of a new Seimas within sixty days.

After, as a result of the coup, the power had been seized by the Lithuanian Nationalist Union (formed on the basis of the above-mentioned Party of National Progress, which supported presidential rule and emphasised the importance of a strong personality), the Government bluntly rejected the Seimas, which led to the disappearance of, undoubtedly, the main constitutional institution and the creation of an awkward situation: according to the Supreme Tribunal, the highest-level court in the Lithuanian judicial system, the unchanged constitutional framework had lost “the imperative power and, because of this, the legitimacy of the existing law”. Instead, “a new, provisional law of revolutionary, or transformative, imperative precedents and a new provisional order”⁴⁴ had emerged and functioned for some time, the state remained “based solely on fact of its existence”,⁴⁵ which meant that “the old constitutional order – an imperative one, operating positively – was gone”.⁴⁶

The normalisation of the situation was linked with the promised reform of the Constitution, the objectives and content of which were outlined by politicians and described by the official press and the party press of the Lithuanian Nationalist Union. Having alleged that the existing Constitution consolidated the complete authority of the Seimas and, as a result of this, the absolute power and unlimited freedoms of the leadership of political parties (which, purportedly, proved to be unsuitable for the life of Lithuania⁴⁷), this reform was aimed at strengthening the authority of the President.

In the course of preparing the reform, there were also numerous difficulties while looking into ways of amending the Constitution, since it had provided for the procedure of its review only through the Seimas; however, not only the fact that the Seimas did not exist any longer, but also the former balance of the political forces in the dissolved Seimas, as well as the fact that the Lithuanian Nationalist Union – the initiator and supporter of the reform – was unpopular in society and faced considerable opposition, gave no hope for the success

⁴³ [Romeris], footnote 12, p. 239.

⁴⁴ *Vyriausiojo Tribunolo 1924–1933 metų visuotinių susirinkimų nutarimų rinkinys su Teisingumo ministerijos aplinkraščiais ir dalykine rodykle* [The Collection of the Rulings Passed at the Plenary Sessions of the Supreme Tribunal in 1924–1933 with Circulars and Indexes of Information Prepared by the Ministry of Justice] (prepared for printing by Byla, J.), Kaunas, 1933, p. 119.

⁴⁵ Masiulis, B., “Atstatytosios Lietuvos valstybės teisė” [“The Law of the Restored State of Lithuania”] in *Lietuva: Lietuvių enciklopedija* [Lithuania. A Lithuanian Encyclopaedia], Vol. XV, 2nd edition, Vilnius: The Editorial Office of Lithuania for Publishing Encyclopaedias, 1991, p. 80.

⁴⁶ Romeris, M., *Lietuvos valstybės konstitucijos reforma* [The Reform of the Constitution of the State of Lithuania], Kaunas, 1928, p. 7.

⁴⁷ *Kur išganymas? Kodėl ir kaip turi būti taisoma Lietuvos Konstitucija?* [Where is the Solution? Why and How Must the Constitution of the State of Lithuania Be Amended?], Part 1, *Prie ko privedė kraštą senoji Konstitucija?* [What Did the Old Constitution Lead the Country To?], Kaunas: State Printing House, 1927.

of the reform. For some time, there existed the idea of calling a referendum in accordance with absurd rules, for example, by compulsory voting of only those wishing to express their opposition to amending the Constitution,⁴⁸ but, in the long run, it was rejected.

Possibly, the ruling elite could be prompted to adopt the Constitution itself, without hiding behind democratic illusions, by the argument in the ruling passed by the Supreme Tribunal on 11 May 1928 whereby, after a revolution or a coup, if a formed provisional government establishes a provisional constitution or makes provisional amendments to the existing Constitution by means of certain acts (decrees) issued by it, there should be no doubts on the valid constitutional law.⁴⁹ It was a kind of recommendation, drawn up and formally approved by an authoritative judicial institution, on the future constitutional development of Lithuania, offering the Government that operated after the coup the easiest and most reliable way to resolve the protracted deadlock in rule without a constitution by means of issuing a new constitution by decree.

The new Constitution of the State of Lithuania (hereinafter referred to as the Constitution of 1928) was proclaimed simply by the will and on behalf of the President on 25 May 1928,⁵⁰ without even attempting to hide behind democratic procedures – this was done in a manner that was unconstitutional, had nothing to do with democracy, and, in general, was rare in history.

By the way, the ruling elite even took into consideration the words of the argument of the Supreme Tribunal that, in this case, the Constitution must have been provisional: officially, the proclaimed document was considered to be just a “proposal” to the nation: the ruling elite committed itself to “checking” this “proposal” within ten years by “asking the nation”. This provision permitted Mykolas Romeris to state that the Constitution of 1928 was not a fully fledged constitutional act and that it was only a temporary document or “a provisional constitutional act”,⁵¹ which would have been in effect only until it was checked.

The text of the Constitution of 1928 seemed not to be very different from the previous one – the same fifteen chapters with almost the same length. The length of the entire document was also very similar. The core of the changes was the new provision on the non-application of a concrete term for the first election of the Seimas. In practice, this meant the complete and indefinite rejection of the Seimas – one of the most important state institutions – with all the ensuing consequences.

As regards the other novelties, mention should be made of the fulfilled promise to considerably strengthen the powers of the executive, first of all, of the President, which was a characteristic feature of the Constitution of 1928, while leaving in the text the semblance of the most important democratic institutions, namely, that of parliamentarism, and even

⁴⁸ The 24 November 1927 letter of the Lithuanian Nationalist Union to the Prime Minister, *LCVA*, collection of records 923, folder 1, file 587, sheet 15.

⁴⁹ Römeris, footnote 46, p. 120.

⁵⁰ The Constitution of the State of Lithuania, Official Gazette *Vyriausybės Žinios*, 1928, No 275-1778.

⁵¹ [Romeris], footnote 12, pp. 365–366.

demonstrating increased attention of the ruling elite to institutes of direct democracy. The Constitution still tended to consider Lithuania a democratic country, in which “power belongs to the Nation.” According to Mykolas Romeris, the drafters of the Constitution were still not too far away from formal democracy, they confined themselves only to inserting in the act “authoritarian institutions of a certain character”,⁵² which, among others, manifested themselves by prolonging the mandate of the President of the Republic, making him independent from the Seimas, and subordinating the Cabinet of Ministers to him. In particular, authoritarianism was noticeable in relations between the President and the Seimas: the latter was deprived of the right to elect the President; in the absence of the Seimas or in the period between its sessions, the President enjoyed the main rights of the Seimas, first of all, the right to pass laws himself where such laws had the same legal force as laws adopted by the Seimas, as well as to approve the state budget and its execution, ratify international treaties, and initiate criminal prosecutions against the members of the Government for treason or disciplinary crimes. It was very important that, after the Constitution had sanctioned the opportunity to indefinitely delay convening the first Seimas, the rights of the actually non-existent Seimas, especially in the areas of legislative and budgetary power, became concentrated in the hands of the President. In addition, the President was granted the right to dismiss the Cabinet of Ministers without countersigning. Thus, the President became the central constitutional institution. The letter of democracy was also clearly challenged by some other constitutional provisions of this act: the establishment of the manner of presidential elections by means of an ordinary law, the absence of the countersignature requirement when the President dismissed the Prime Minister, and the requirement that the Cabinet of Ministers had to resign only when at least the 3/5 majority of members of the Seimas expressed no confidence in it (the latter requirement was regarded as “a provision that was, perhaps, not fully democratic”⁵³).

Certain features of the Constitution of 1928 – the emphasis on the power of one person and the restriction on political pluralism, especially the delay in convening the parliament – gave grounds to deem it authoritarian. In Europe, this constitutional act was among the first that moved from democracy to authoritarianism.⁵⁴

LITHUANIA'S CONSTITUTION OF 1938

The Authoritarian Ideas and the State System

At the time when the Constitution of 1928 was adopted, the vision held by its authors concerning the constitutional framework of power was only at the beginning of its development, which was affected by the emerging political tendencies and processes that

⁵² [Romeris], footnote 12, p. 362.

⁵³ Šidlauskas, K., “Lietuvos prezidentų konstitucinės galios” [“The Constitutional Powers of Lithuania's Presidents”], *Aidai [Echoes]*, 1956, No 4, pp. 150–151.

⁵⁴ [Romeris], footnote 12, p. 261.

took place in Europe. The state began the enforcement of discipline and organisational awareness in society – to spread the idea of unity on national grounds. Moving away from a liberal approach to the state and society, an active role of the state was emphasised and it was demanded that all nation and each of its members be included into an idealistic life of the state. Individual freedom as the highest value was denied, while the duty of a separate individual to participate regularly in the creative activities of society was emphasised.⁵⁵

The attempts to change the direction of the development of the state, which had followed a liberal path in the first decade of its independence, were marked by the statements in the nationalist union press that the state should not perform “the role of a night watchman”, as it should take more active action, whereas the implementation of state ideals was not just a matter of the state apparatus or organisations – it had to cover all nation, as well as every resident of the state, since every individual was under the obligation to contribute to the creative work of society.⁵⁶ The representatives of liberalism considered freedom of an individual to be the purpose of the functioning of public power and the basis of public welfare, while those holding the new approach claimed that the state was an instrument for taming wicked human instincts. The democratic slogan “the state for citizens” was replaced by the slogan “citizens for the state”, which meant that the interests of an individual must be subordinated to the state. Denying individual freedom as the highest value, the obligation of a separate individual to assist in the creative activities of society was stressed.⁵⁷ Public solidarity on national basis and an aspiration for national unity were based on the ideas that the state could no longer define the limits of opportunities for the nation: instead, the state had to mobilise the efforts of all its members in order to achieve this objective.⁵⁸

The implementation of these ideas required increasing the scope of such activity; thus, it became more and more difficult to carry it out – it was decided to involve the state in this work. The main provisions, principles, and directions of the launched reorganisation of the public political system were set out in the speech of Antanas Smetona, the President of the Republic and the main ideologist of the Lithuanian Nationalist Union, made at its congress on 15 December 1933.⁵⁹ According to him, the only option of overcoming the harmful effects of liberalism was not the improvement of the latter, but achieving the unity of the nation led by one leader where this was done in conjunction with the mobilisation of society to serve its own economic and cultural interests. Instead of political parties engaged

⁵⁵ Tamošaitis, I., “Asmuo ir bendruomenė” [“An Individual and the Community”], *Vairas [The Helm]*, 1937, No 5, p. 12.

⁵⁶ Daumantas, A., “Valstybė ir propaganda” [“The State and Propaganda”], *Vairas [The Helm]*, 1934, No 3, p. 328.

⁵⁷ Tamošaitis, footnote 55.

⁵⁸ “Tautos valia ir parlamentarizmas” [“The Will of the Nation and Parliamentarism”], *Mūsų tautos kelias [The Path of Our Nation]*, 1930, No 15.

⁵⁹ “Tautos vado Antano Smetonos kalba, š. m. gruodžio mėn. 15 d. pasakyta visuotiniame Lietuvos Tautininkų Sąjungos suvažiavime” [“The Speech Delivered by the Leader of the Nation Antanas Smetona at the General Congress of the Lithuanian Nationalist Union on 15 December”], *Lietuvos Aidas [The Echo of Lithuania]*, 1933, No 285.

in demagoguery, he proposed creating a network of public organisations striving for realistic goals and establishing the sole leadership in the country from the top to the bottom, as well as urged the public to obey government orders. The “direction of divisive activities of political parties” in the state and social life was seen as a negative factor, which was to be replaced by “a national direction” that would unite and mobilise society: it was stated that the will of the nation could not be the will of a majority or a minority, but, rather, it was the will of the whole nation as an entity; thus, the nation was regarded not as a physically focused force, but as a spiritual phenomenon, which could not be divided into a “majority” and a “minority”.⁶⁰ Liberalism was accused of destroying the sense of solidarity among members of society and inciting the fight between the most important economic factors – entrepreneurs and workers.⁶¹

The Government's ambition to legally consolidate the newly implemented ideas was marked by the fact that, from the beginning of the fourth decade of the 20th century, in the course of updating legislation, certain levers were introduced, which made it possible to exert substantial influence on the political and economic life, as well as on the constitutional rights of citizens. The most important laws for the implementation of the new policy of the Government were passed not by the representatives of the nation, not by the Seimas, which was then non-existent, but by the President while exercising the right conferred on him by the Constitution of 1928. The nine years of the political practice and experience of government in the absence of parliament contributed to the formation of the authoritarian presidential government system.

It was decided to accordingly adapt the state apparatus for tackling the raised tasks.

To create a maximally effective, comprehensive and centralised state governance mechanism, the role and independence of representative institutions (the Seimas, municipalities) were totally de-emphasised, since the latter purportedly exalted the crowd, which did not have any signs of autocriticism and was characterised by low ethics and poor wisdom, and by reliance on mood, low instincts, and passions.⁶² Much hope rested on the “class collaboration” system: the need was emphasised for reconciling a worker with the state, its economy, and society, as well as for making him not a “product” of the market, but a fully fledged individual and a fellow worker in the field of economy.⁶³

In order to discipline the social forces of the country, to bring them together at organisational level, and “to make them part of the body as a whole on the basis of professional

⁶⁰ “Visumos valia” [“The Will of the Whole”], *Lietuvos Aidas* [The Echo of Lithuania], 1934, No 12.

⁶¹ Juodeika, V., “Tauta ir ūkis” [“The Nation and Economy”], *Jaunoji karta* [The Younger Generation], 1934, No 17, p. 276.

⁶² “Nuo minios prie asmenybių” [“From the Crowd to Personalities”], *Lietuvos Aidas* [The Echo of Lithuania], 1929, No 236.

⁶³ Juodeika, V., “Naujos socialinio gyvenimo gairės” [“The New Guidelines of Social Life”], *Vairas* [The Helm], 1933, No 11, p. 302.

and estate decision”,⁶⁴ the Government began to form the corporate system consisting of the Chamber of Labour, the Chamber of Commerce, Industry, and Crafts, as well as the Chamber of Agriculture, intended to create the conditions for members of the nation to work for the general welfare of the nation and to jointly satisfy their needs. Expressing concern for public solidarity, emphasis was put on enacting social legislation: the Law on Sickness Funds (1928), the Law on Hiring Industry Workers (1933), the Law on Accident Insurance (1936), etc. were passed.

The increased state interference in economic and social areas also affected other spheres of public life, including the rights of citizens. In this respect, the Press Law of 1935⁶⁵ can be regarded as a typical law, since, in the said law, the traditional press censorship mechanism, because of its purely defensive nature, was considered an inadequate form for pursuing the state policy of the press.⁶⁶ The new approach of the Government to public and societal tasks was expressed by the provision of this law that state institutions had the right not only to establish what is forbidden to publish, but also to obligate the editors and publishers of printed works to print in a mandatory manner certain material or to shed light in more detail on a number of state or social phenomena, i.e. this legalised the state efforts to involve the press, including the opposition press, in “creative activities”⁶⁷ and also to promote government actions, even those that could go against the established existing trends.

The state made efforts to subordinate to its will the organisational activities of citizens. Attempts were made to instil a need to unite into the nation divided on a political basis. In the absence of parliamentary elections, political parties lost the opportunities to pursue power by legal means. Later, at the beginning of 1936, on the basis of the new Law on Societies,⁶⁸ all political parties, with the exception of the Lithuanian Nationalist Union, were suspended at all, by telling the public that the fragmentation destructive to the nation had been liquidated.⁶⁹

National unity was understood as united work led and coordinated by one will, done by people from all professions and cultivated for public welfare, whereas the path to national unity was seen as the one going through the so-called organised nation, i.e. by involving each of its members into a such state-recognised network of organisations that would enable these members to find “the full satisfaction of all their needs” and feel

⁶⁴ Tomkus, J., “Korporatyvizmo gadynės angoje” [“The Beginning of the Epoch of Corporatism”], *Vairas [The Helm]*, 1940, No 2, p. 114.

⁶⁵ Spaudos įstatymas [The Law on the Press], Official Gazette *Vyriausybės Žinios*, 1935, No 510-3538.

⁶⁶ Daumantas, A., “Laikraštis, viešoji nuomonė, valstybė” [“Newspapers, Public Opinion, the State”], *Vairas [The Helm]*, 1934, No 1, p. 64.

⁶⁷ Gražiškis, P., “Vieninga tauta – vieninga spauda” [“The United Nation – the United Press”], 1926–1936 *gruodžio 17-osios dešimtmetis [1926–1936: The First Decade of the 17th December]*, Kaunas, 1936, p. 59.

⁶⁸ Draugijų įstatymas [The Law on Associations], Official Gazette *Vyriausybės Žinios*, 1936, No 522-3626.

⁶⁹ “Partijos uždarytos; Tautos vienybės keliais” [“Political Parties Dissolved; Following the Path of National Unity”], *Lietuvos Aidas [The Echo of Lithuania]*, 1936, No 61.

“the importance of common national affairs”.⁷⁰ It was expected that, with the help of “the organised nation”, it was possible to “nudge” the social activities of citizens in the direction that was useful to the state.

In the third decade of the 20th century, the Government implemented certain restructuring measures (additional measures were also under active ideological and political preparation), which essentially affected the area regulated by constitutional law and soon made the Constitution of 1928 hopelessly outdated. The ideas on the emerging new reform of the Constitution were also generated by the desire of the ruling elite to combine it with the inexorably approaching commitment, fixed in the Constitution, to carry out its “checking”, as those in power had real fear that, if carried out separately, the “checking” could provoke the possible destabilisation of the political situation or lead to widespread discontent among the public.

Already in the autumn of 1936, the State Council formed a commission, led by its Chairman Stasys Šilingas, for the purpose of drafting a new constitution. Working very hard, this commission completed its task by July 1937.⁷¹ Once in the office of the Cabinet of Ministers, the draft was thoroughly and carefully considered in accordance with the three readings procedure, traditional in parliamentary institutions, and returned it to the commission to be further improved. On 27 January 1938, the draft reached the Seimas, formed in 1936 after a long break, which was commissioned by the Constitution of 1928 to initiate and adopt possible amendments thereto.

It was decided to make use of the opportunity, rejected a little more than eight years earlier, to reform the Constitution at the Seimas: following the elimination of the organised opposition from the election, there were substantial changes in the political atmosphere at the parliament: the former very mixed institution with different parties was turned into a one-party Seimas, which was clearly favourable to the ruling elite,⁷² whereas the parliamentary opportunity of members of the Seimas to influence the content of adopted legislation was restricted by the new procedural rules.⁷³

The Content of Lithuania's Constitution

If compared to the previous Constitutions of Lithuania, the Constitution of Lithuania that was adopted in 1938 (hereinafter referred to as the Constitution)⁷⁴ was based on a new philosophy. It not only refrained from repeating the liberal principles found in

⁷⁰ Lecture material for the district chairmen of the Lithuanian Nationalist Union to be used when commemorating the 17th December, LCVA, collection of records 554, folder 2, file 70, sheets 85–86.

⁷¹ *The Shorthand Records of the Seimas*, The second extraordinary session, sitting 66/6 (31 January 1938), p. 9.

⁷² “LTS gen. Sekretoriaus pranešimas metiniame Sąjungos atstovų suvažiavime” [“The Report of the Secretary General of the Lithuanian Nationalist Union at the Annual Congress of the Representatives of the Union”], *Vairas [The Helm]*, 1937, No 2, p. 207.

⁷³ The Statute of the Seimas, Official Gazette *Vyriausybės Žinios*, 1936, No 550-3828.

⁷⁴ The Constitution of Lithuania, Official Gazette *Vyriausybės Žinios*, 1938, No 608-4271.

the Constitution of 1922, especially where they were related to the conception and role of the state, the matter of authority, and the place of an individual and society in the state, but also took a completely different direction – it exalted and emphasised the role of the state, which was considered to be the most perfect expression of freedom of the nation, where this role was linked to the historical past of Lithuania and was believed to have given positive impetus to the whole process of restoring and strengthening Lithuania's independence.

This Constitution, with a preamble and 156 articles, was the longest one of all Constitutions of Lithuania valid until then. In terms of content, it was a new constitutional act, without continuing even in words the democratic constitutional traditions started by the Constituent Assembly (Seimas). In this Constitution, the authoritarian tendencies, which only started to become apparent in 1928, developed into the cult of the leader as the opposite of a democratic system: it was no longer held that power derived from a mandate from the masses, or from the bottom up, but, rather, that it derived from the top down, or from a single source; it was the will of the leader but not the majority of votes that played the decisive role.⁷⁵

The Constitution also exalted and emphasised the role of the state, considered to be the most perfect expression of freedom of the nation. It intended to ensure the dominance of the state in all spheres of public life, as well as in relations with citizens, rejecting the liberal provision that the purpose of the state was to serve an individual. In the provisions of the Constitution, it is easy to see the manifestations of state domination: the Constitution declared that the state was the foundation of a citizen himself, that he had the right to enjoy freedom, while always mindful of his duties to the state, the most important of which was to be a loyal citizen. Among the most important objectives of this Constitution was the desire to strengthen state authority by providing it with “solid foundations, entrusting one person – the President – with the execution of the supreme authority, and by obliging citizens to be loyal to this country and to help it”.⁷⁶

Having set forth the above-mentioned general requirements, the Constitution listed the following rights and freedoms of citizens: freedom of conscience, the inviolability of the person of an individual, the inviolability of home, the confidentiality of correspondence, freedom of movement, the right to petition. Separate mention should be made of “freedom of public activity”, which had capacious content. In the Constitution, this freedom included freedom of the press, as well as freedoms of assembly and associations, which the state undertook to safeguard in order that “a direction harmful for the state” would be prevented. The traditional constitutional obligation of the state to protect the right of ownership was replaced with the provision that an owner had to combine the use of his property “with state affairs”.

⁷⁵ Alantas, V., *Vadovybės principas valstybės gyvenime [The Principle of Leadership in the Life of the State]*, Kaunas, 1937, p. 7.

⁷⁶ Račkauskas, footnote 35, p. 98.

The Constitution legally entrenched the principle of the leader for the purpose of strengthening state power. It completed the formulation of the concept of authoritarian state power, which had been espoused by Antanas Smetona on various occasions.⁷⁷ The entire framework of the constitutional regime was based on the principle of authoritarianism, namely the President,⁷⁸ and the Constitution was characterised by “strengthening the power of the President until it reached decisive importance”.⁷⁹

Formally preserving the institution of a democratic nature – the parliament, the Constitution in fact did not give it a prominent role, nor did it grant the Seimas the status of the independent and sole legislator. Under the Constitution, the President, when passing laws, “did not act on the authorisation of the Seimas”, nor was he considered to be a provisional deputy of the Seimas, but he acted independently “under the powers conferred on him by the Constitution; therefore, laws issued by the President were in all respects of the same level as those passed by the Seimas”.⁸⁰ In addition, the Constitution entrusted the Seimas only with considering and adopting draft laws, which became laws only after they had been approved and promulgated by the President.

The Constitution gave the state additional power – the President: “The President of the Republic is at the forefront of the State. He directs the State.” The separation of power, characteristic of liberal constitutions, was abandoned and it was declared that state power exercised by the President of the Republic, the Seimas, the Government, and the Judiciary, formed “a single whole and was indivisible”, these “different functions were coordinated by the role of the uniting will of the President”, since “if there is a united nation, then state power must also be united”.⁸¹

The Constitution used the peculiar classification of matters falling within the competence of the President, and the phrases “leading the state” and “actions taken within the presidential power” had different meanings. From the context of the Constitution, it is clear that “leading the state” embodied key presidential acts, which affected the foundations of the state and were carried out exclusively by the President. Under the Constitution, it was allowed to transfer the right of “leading the state” into the hands of someone else only if the office of the President fell vacant (upon the death or resignation of the President), whereas “actions taken within the presidential power” included his routine work (the Prime

⁷⁷ *Tautinės minties keliu [On the Path of National Thought]*, Chicago, 1979, pp. 143–144.

⁷⁸ Dirmeikis, B. T., “Seimas 1938 m. Konstitucijoje” [“The Seimas in the Constitution of 1938”], *Vairas [The Helm]*, 1939, No 19, p. 339.

⁷⁹ Gražiškis, P., “Tautinė linkmė naujos Konstitucijos projekte” [“The National Direction in the New Draft Constitution”], *Lietuvos Aidas [The Echo of Lithuania]*, 1938, No 26.

⁸⁰ “Naujoji Lietuvos Konstitucija” [“The New Constitution of Lithuania”], *Savivaldybė [Municipality]*, 1938, No 2, p. 35.

⁸¹ “Naujoji Lietuvos Konstitucija pilniau ir tobuliau aprėpia visas valstybinio gyvenimo sritis” [“The New Constitution of Lithuania Covers More Completely and More Perfectly All Spheres of State Life”], LCVA, collection of records 377, folder 10, file 142, sheet 38.

Minister, substituting the President when the latter was abroad or fell ill, was temporarily entrusted with carrying out the said actions).

In the Constitution, the duration of the mandate of the President remained unchanged – seven years with the unlimited right to re-election. The Constitution stipulated that the President was not liable for carrying out actions by exercising the presidential power and could not be called to account for other activities while he was leading the state. The Constitution did not provide for the possibilities of forcing the President to resign or removing him from office early.

The system of the supreme state institutions, as established in the Constitution, was often described as a triangle with the President at the top angle and the Government and the Parliament at the lower angles. The latter two were regarded as parity institutions, operating on the basis of mutual trust and cooperation. In cases of a lack of such trust and cooperation, the President had to decide whether to dismiss the Prime Minister and the entire Council of Ministers or to dissolve the Seimas.⁸²

The Constitution conferred broad and various powers on the President himself in the area of legislation and the enforcement of laws. In the opinion of Mykolas Romeris, already in the Constitution of 1928 there was a clear tendency to replace democracy with “presidentocracy”, whereas this was fully implemented in the new Constitution.⁸³ The new act was directly related with the former Constitution only by the fact that, in the course of adopting the new Constitution, the procedure established in the former one for its amending was formally used.

According to Antanas Smetona, the Constitution did not completely “match the well-established theories of democracy”, but, in his opinion, its spirit remained very democratic, because it “equally treated the people, as well as their property, both spiritual and material”.⁸⁴

The last constitutional act of the independent State of Lithuania in the first half of the 20th century – Lithuania’s Constitution of 1938 – was destined to perform a very painful role in Lithuania after the Soviet aggressors had begun to destroy the independent State of Lithuania by means of laws issued in June and July of 1940, simultaneously covering up the preparations for Lithuania’s incorporation into the Soviet Union. They did so on the basis of precisely those provisions of the Constitution that concentrated maximum political power in the hands of the President, including the right to dissolve the Seimas, to dismiss the Council of Ministers and form a new one at his sole discretion, and even to pass laws himself. All this was very well suited for this purpose – the aggressors simply had to make sure that the powers of the President provided for in the Constitution were formally transferred to a puppet of Soviets. Such a puppet was found in the person of Justas Paleckis,

⁸² See footnote 71, p. 14.

⁸³ [Romeris], footnote 12, pp. 261–262.

⁸⁴ *The Shorthand Records of the Seimas*, the third extraordinary session, sitting 87/9 (13 May 1938), p. 154.

a former left-wing journalist, who got a chance to crack a cynical joke in public: “The people took the same stick, but turned it around”.⁸⁵

After carrying out the task assigned to it, the Constitution was no longer necessary. It was replaced by an act named the *Constitution of the Lithuanian SSR*, adopted on 25 August 1940, by arranging a staged vote at the so-called “People’s Seimas”, which was formally the legislative body of Lithuania.⁸⁶ A typical Soviet “constitution”, prepared on the basis of the Constitution of the Soviet Union of 1936 and tentatively approved by the Political Bureau of the Central Committee of the All-Union Communist Party (Bolsheviks) in Moscow on 22 August,⁸⁷ this act had no connection with the experience and tradition of the Lithuanian constitutional regulation, as it made no mention of the sovereign State of Lithuania, but, rather, of a political unit incorporated into the Soviet empire.

* * *

The evolution of the modern interwar constitutions of Lithuania did not consistently follow the path of progress: the constitutional development objectives outlined by the Act of 16 February were achieved following the adoption of the Constitution of 1922, whereas the subsequent constitutional acts began to move away from the provision that the State of Lithuania must be founded on democratic principles, despite the fact that it was one of the most important requirements laid down in the Act of 16 February. Namely to move away from it, but not to abandon or deny it. Even the latest constitutions preserved such democratic values as the requirement for fairness in the activities of state institutions, the independence of the judiciary, ownership rights, the cultural autonomy of national minorities, etc. According to Mykolas Romeris, Antanas Smetona gave the state the “authoritarian” and “totalitarian” forms, but this did not prevent it from having a humanistic face.

The drafters and issuers of all constitutions of the interwar Lithuania were guided by noble objectives – to ensure Lithuania’s statehood and create such a constitution that would best suit the realities of life in Lithuania. There is no reason to suspect them of doing this for selfish purposes. These Constitutions reflected the sincere desire and effort of their drafters and issuers to do good for their own land, state, and Lithuania in accordance with their beliefs and attitudes.

⁸⁵ *Lietuvos liaudies seimas [The People’s Seimas of Lithuania]* (shorthand records and other material), Vilnius: Mintis, 1985, p. 40.

⁸⁶ *Ibid.*, pp. 184–197.

⁸⁷ Lebedeva, N., “VKP(b) CK politbiuras ir 1939–1941 m. prijungtų prie SSRS teritorijų sovietizavimas” [“The Political Bureau of the Central Committee of the All-Union Communist Party (Bolsheviks) and the Sovietisation of the Territories Annexed to the USSR in 1939–1941”], *Genocidas ir rezistencija [Genocide and Resistance]*, 2000, No 1(7), p. 95.

Советское правительство считает абсолютно необходимым и неотложным:

1. Чтобы немедленно был арестован и предан суд министр внутренних дел Литвы и директор государственной безопасности Литвы, а также все члены правительства, которые ответственны за действия против советского гарнизона в Литве.

2. Чтобы немедленно было сформировано в Литве такое правительство, которое было бы способно и готово обеспечить честное проведение в жизнь советско-литовского Договора о взаимопомощи и решительное обуздание врагов Договора.

3. Чтобы немедленно был обеспечен свободный пропуск на территорию Литвы советских воинских частей для размещения их в важнейших центрах Литвы в количестве, достаточном для того, чтобы обеспечить возможность осуществления советско-литовского Договора о взаимопомощи и предотвратить провокационные действия, направленные против советского гарнизона в Литве.

Советское правительство ожидает ответа литовского правительства до 10 часов утра 15-го июня. Непоступление ответа литовского правительства к этому сроку будет рассматриваться как отказ от выполнения указанных выше требований Советского Союза.

Fragments of the 14 June 1940 ultimatum from the Soviet Union to the Lithuanian Government

The original document is held by the Lithuanian Central State Archive, collection of records 383, folder 7, file 2259, sheets 41–44.

The 14 June 1940 ultimatum from the Soviet Union to the Lithuanian Government

[...]

The Government of the Soviet Union considers it essentially necessary and urgent:

- (1) that Minister of the Interior Skučas and Director of State Security Department Povilaitis be put on trial as directly responsible for the acts of provocation against Soviet garrisons in Lithuania;*
- (2) that a government capable of and ready for ensuring the conscientious execution of the Soviet–Lithuanian Treaty of Mutual Assistance, and resolved to suppress the enemies of this treaty, be formed immediately in Lithuania;*
- (3) that free passage into Lithuanian territory be guaranteed immediately for Soviet army units that will be situated in the most important centres of Lithuania in sufficiently large numbers to ensure the fulfilment of the Soviet–Lithuanian Treaty of Mutual Assistance and to prevent the acts of provocation directed against the Soviet garrisons in Lithuania.*

[...]

The government of the Soviet Union expects a response from the government of Lithuania by 10 a.m. on June 15. Non-receipt of a response by that time will be taken to be a refusal to comply with the above-made demands of the Soviet Union.

[...]

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Lietuvos Laisvės Kovos Sąjūdžio Tarybos

D e k l a r a c i j a

Lietuvos Laisvės Kovos Sąjūdžio Taryba, atstovaudama visas Lietuvos teritorijoje esančias vieningos vadovybės vadovaujamas karines visuomenines grupuotes, būtent:

- a/ Pietų Lietuvos Sritį, savo sudėtyje turinčią Dainavos ir Tauro apygardas,
- b/ Rytų Lietuvos Sritį, savo sudėtyje turinčią Algimanto, Didžioios Kovos, Vyčio ir Vytauto apygardas,
- c/ Vakarų Lietuvos Sritį, savo sudėtyje turinčią Kęstučio, Priskelimo ir Žemaičių apygardas,

tai yra, reikšdama lietuvių tautos valią, pakartodama Vyriausiojo Lietuvos Atstatymo Komiteto 1946.VI.10. Deklaracijoje, BDPS 1947.V.28. nutarimuose ir BDPS Deklaracijoje Nr.2 paskelbtus pagrindinius principus bei juos papildydama nutarimais, priimtais 1949.II.10. BDPS Prezidiumo ir BDPS Karo Tarybos jungtiniame posėdyje, s k e l b i a :

1. LLKS Taryba, remdamasi BDPS Prezidiumo ir BDPS Karo Tarybos jungtinio posėdžio 1949.II.10. nutarimais, okupacijos metu yra aukščiausias tautos politinis organas, vadovaujantis politinei ir karinei tautos išlaisvinimo kovai.

2. LLKS Tarybos ir jos Prezidiumo būstinė yra Lietuvoje.

3. Valstybinė Lietuvos santvarka - demokratinė respublika.

4. Suvereninė Lietuvos valdžia priklauso tautai.

5. Lietuvos valdžiai vykdomas per laisvais, demokratiniiais, visuotiniiais, lygiais, slaptais rinkimais išrinktą Seimą ir sudarytą Vyriausybę.

6. Nuo okupacijos pabaigos ligi susirenkant demokratiniam Lietuvos Seimui, įstatymų leidžiamąją galią turi Laikinoji Tautos Taryba.

7. Laikinąją Tautos Tarybą sudaro: visų vieningoje vadovybėje Lietuvoje ir užsienyje kovojančių sričių, apygardų, rinktinių, aukštųjų mokyklų, kultūrinių, religinių organizacijų bei sąjūdžių ir tautoje atramą turinčių politinių partijų atstovai, prisilaikant proporcingo atstovavimo principo.

8. Atstovaujama nepriklausomybę, ligi susirenkant Seimui, Lietuvos Respublikos Prezidento pareigas eina LLKS Tarybos Prezidiumo Pirmininkas.

9. Laikinoji Lietuvos Vyriausybė sudaroma LLKS Tarybos Prezidiumo Pirmininko pavedimu. Vyriausybė atsakinga prieš laikinąją Tautos Tarybą.

10. Lietuvių veiklai užsienyje ir Lietuvos atstatymo darbui koordinuoti LLKS Tarybos Prezidiumas turi LLKS Užsienio Delegatūrą, kuri, bendradarbiaudama su Vakarų valstybėse akredituotais Lietuvos atstovais, sudarinėja komisijas bei delegacijas ginti ir atstovauti Lietuvos reikalus suvienytų tautų organizacijose, įvairiose konferencijose ir kitose tarptautinėse institucijose.

11. LLKS Užsienio Delegatūros nariai iš savo tarpo išsirenka LLKS Užsienio Delegatūros Pirmininką, kuris skaitomas LLKS Tarybos Prezidiumo Pirmininku pavaduotoju.

12. LLKS Užsienio Delegatūros nariai laikomi lygiateisiais LLKS Tarybos nariais.

13. Šiai Deklaracijai vykdyti nuostatus leidžia LLKS Taryba.

14. Lietuvos valstybės atstatymas, ligi Seimo bus priimta ir

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paskelbta žmogaus laisvės ir demokratijos siekimus atitinkanti valstybės konstitucija, vykdomas pagal šioje Deklaracijoje paskelbtus nuostatus ir 1922 m. Lietuvos Konstitucijos dvasią.

15. Atstatytoji Lietuvos valstybė garantuoja lygias teises visiems Lietuvos piliečiams, neprasikaltusiems lietuvių tautos interesams.

16. Komunistų partija, kaip diktatūrinė ir iš esmės priešinga pagrindiniams lietuvių tautos siekimui ir kertiniams Konstitucijos nuostatai- Lietuvos nepriklausomumui, - nelaikoma teisine partija.

17. Amenys, bolševikinės arba vokiškosios okupacijos metu išdavę Tėvyną bendradarbiavimu su priešu, savo veiksmais ar įtaka pakenkę tautos išsilaivavimo kovai, susitępę išdavystėmis ar krauju, yra atsakingi prieš Lietuvos Tėsimą.

18. Konstatuojama teigiama religijos įtaka ugdančios tautos moralę ir palaikančios jos atsparumą sunkiausių laisvės kovų laikotarpiui.

19. Socialinė globa nėra vien atskirų piliečių ar organizacijų reikalas, bet vienas pirmųjų valstybės uždavinių. Ypatingą globą valstybė teikia išsilaivavimo kovose nukentėjusiems asmenims ir jų šeimoms.

20. Socialinių problemų racionalus išsprendimas ir krašto ūkinis atstatymas yra susijęs su žemės ūkiu, miestu ir pramonės reforma, kuri vykdoma pačioje nepriklausomo gyvenimo pradžioje.

21. LLKS Taryba, glaudžioje vienybėje su kovojančia tauta, kviečia visus geros valios lietuvius, gyvenančius tėvynėje ir už jos ribų, pamiršti įsitikinimus, skirtumus ir įsijungti į aktyvų tautos išsilaivavimo darbą.

22. LLKS Taryba, prisidėdama prie kitų tautų pastangų sukurti pasaulyje teisingumą ir laisvę pagrįstą pastovią taiką, beširėmiančią pilnutiniu įgyvendinimu tikrosios demokratijos principų, išplaukiančių iš krikščioniškosios moralės supratimo ir paskelbtų Atlanto Chartoje, Keturiose laisvėse, 12-je Prezidento Trumano Punktų, Žmogaus Teisių Deklaracijoje ir kitose teisingumo ir laisvės deklaracijose, prašo visą demokratinį pasaulį pagalbos savo tikslams įgyvendinti.

Okupuotoji Lietuva
1949.II.16.

Vytautas

LLKS Tarybos Prezidiumo Pirmininkas

J. Jankauskas

LLKS Tarybos
nariai:

J. Jankauskas

Uspala
J. Jankauskas
Ladgaila

The Declaration of the Council of the Lithuanian Freedom Fight Movement
of 16 February 1949

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collection of records K-1, folder 58, file 33960/3, Vol. 10, sheet 227 v.

AGGRESSION BY THE SOVIET UNION AND THE OCCUPATION OF LITHUANIA IN 1940–1990. RESISTANCE TO THE SOVIET OCCUPATION: THE 16 FEBRUARY 1949 DECLARATION OF THE COUNCIL OF THE LITHUANIAN FREEDOM FIGHT MOVEMENT

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Prof. Dr. Vytautas Sinkevičius**

Prof. Dr. Dainius Žalimas***

One can note that there is a sufficient uniformity of views and state practice on the assessment of the Molotov–Ribbentrop Pact, the illegality of the 1940 annexation and the legal continuity of the Baltic States.¹ However, recalling these issues helps to understand the development of constitutionalism in Lithuania, i.e. why the Soviet constitutions and legal legacy are not considered to be a part of the constitutional traditions of Lithuania and why the continuity of the Republic of Lithuania has been the legal ground to restore its independence in 1990. One more reason to recall the legal assessment of the Soviet occupation of Lithuania are the attempts to deny the Soviet crimes, in particular from the side of the Russian Federation, which claims to continue the international legal personality of the USSR. One of the most striking examples is that, disregarding the provisions of the 1991 Treaty with Lithuania on

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¹ e.g. a comprehensive bibliography consisting of more than 100 positions on matters related to Baltic statehood is provided by D. A. Loeber in: Loeber, D. A., “Legal Consequences of the Molotov-Ribbentrop Pact for the Baltic States: On the Obligation ‘to Overcome the Problems Inherited from the Past’” in *Baltic Yearbook of International Law*, 2001, Vol. 1, pp. 153–166. In addition, see the relevant articles of L. Mälksoo, R. Satkauskas, I. Ziemele, and D. Žalimas in Vol. 1 and 3 (2001, 2003) of *Baltic Yearbook of International Law* and, e.g. the following publications: Kherad, R., “La Réconnaissance Internationale des Etats Baltes” in Sprudz, A. (ed.), *The Baltic Path to Independence*, New York: William S. Hein & Co., 1994, pp. 293–322; Yakemtchouk, R., “Les republics baltes en droit international: Echec d’une annexation operee en violation du droit des gens”, in Sprudz, A. (ed.), *The Baltic Path to Independence*, New York: William S. Hein & Co., 1994, pp. 261–291; Ziemele, I., *State Continuity and Nationality: the Baltic States and Russia*, Leiden: Martinus Nijhoff Publishers, 2005, pp. 21–43; Mälksoo, L., *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR*, Leiden: Martinus Nijhoff Publishers, 2003, pp. 45–77; Žalimas, D., *Lietuvos Respublikos nepriklausomybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės* [The International Legal Grounds and Consequences of the Restoration of the Independence of the Republic of Lithuania on 11 March 1990], Vilnius: Demokratinės politikos institutas, 2005, pp. 257–261.

the Fundamentals of Interstate Relations,² since approximately 2000 Russia has taken a line on justification of the 1940 Soviet seizure of the Baltic States.³

Before assessing the 1940 Soviet acts taken with respect to Lithuania in the light of international law, it is reasonable to recall the broader international context of that time: the 1939 secret agreements of the Molotov–Ribbentrop Pact between the German Reich and the USSR, which was the starting point of a number of forceful acts committed by those two states against others. It was namely the Molotov–Ribbentrop Pact of 23 August 1939 which opened the way for Nazi Germany to launch aggression against Poland, soon followed by the Soviet Union and the division of Poland by these two states; it then also gave a free hand to the Soviet Union to start war against Finland, to commit aggression against Estonia, Latvia, and Lithuania, and to seize a part of Romania. Therefore, this article begins with the international legal evaluation of the Molotov–Ribbentrop Pact, in order to demonstrate whether the Soviet acts of 1940 could have any legal grounds arising out of the pact. Though, certainly, the conclusion of the pact and the subsequent Soviet actions against Lithuania can be seen as separate historical events that can be assessed separately,⁴ i.e. the legal qualification of the events of 1940 would nevertheless be the same, with or without taking into account the legal assessment of the Molotov–Ribbentrop Pact.

² In the preamble of this Treaty, Russia expressed its conviction that the USSR had to remove the consequences of the 1940 annexation of Lithuania. However, most importantly, by virtue of Article 1 of the Treaty, Russia recognised the Republic of Lithuania as a fully fledged subject of international law and a sovereign State *under its State status defined in the fundamental acts of 11 March 1990*. This means that Russia has recognised all the principles declared by those acts and the 11 March 1990 Act on the Restoration of Independence of the Republic of Lithuania, including the fact of the 1940 aggression against Lithuania, the illegality of the subsequent occupation and annexation of Lithuania, and the legal continuity and identity of the Republic of Lithuania inherent in the acts of 11 March 1990; i.e., in general, Russia has accepted the concept of the State of Lithuania which was founded in 1918 and liberated itself on 11 March 1990 from Soviet occupation which began in 1940. See the 29 July 1991 Treaty on the Fundamentals of Interstate Relations between the Republic of Lithuania and the Russian Soviet Federal Socialist Republic, *Lietuvos aidas*, 30 July 1991. English translation of the text of the Treaty has been published in: *Lithuanian Foreign Policy Review*, 1998, No 1.

³ The most characteristic here is the 9 June 2000 Statement No 342 of the Ministry of Foreign Affairs of the Russian Federation concerning the beginning to consider by the Seimas of the Republic of Lithuania the draft Law on Compensation of the Damage Resulting from the Soviet Occupation, in which material claims to Russia are raised (see the full English text in: Žalimas, D., “Commentary to the Law of the Republic of Lithuania on Compensation of Damage Resulting from the Occupation of the USSR” in *Baltic Yearbook of International Law*, 2003, Vol. 3, pp. 120–121 (footnote 56)). *Inter alia*, this Statement declared that “the USSR troops were introduced (into Lithuania) in 1940 with the consent of the highest leadership of that State, which had been received in the framework of international law of that time. During the Soviet period, there (in Lithuania) the power functions had been exercised by national authorities. The 3 August 1940 Resolution of the Supreme Soviet of the USSR on Lithuania’s admission to the Soviet Union was preceded by the corresponding appeals of the highest representative organs of the Baltic States’ and concluded that ‘it is wrong to qualify Lithuania’s entry into the USSR as the result of unilateral actions of the latter. Statements about Lithuania’s ‘occupation’ and ‘annexation’ by the Soviet Union, as well as related claims of any nature ignore political, historical and juridical realities and, consequently, are groundless”.

⁴ Šepetys, N., *Molotovo–Ribbentropo paktas ir Lietuva [The Molotov–Ribbentrop Pact and Lithuania]*, Vilnius: Aidai, 2006, pp. 75–76.

PRELUDE TO THE AGGRESSION: THE MOLOTOV–RIBBENTROP PACT

Before the outbreak of the Second World War, Lithuania's international situation began to deteriorate. This change came about as a result of the secret protocols of the Molotov–Ribbentrop Pact: it is well known that on August 23 and September 28 of 1939 the German Reich and the USSR signed two secret protocols on the division of the spheres of interests in Europe, including the fate of Lithuania (those two protocols together with the third, dated 10 January 1941,⁵ are usually referred to as the Molotov–Ribbentrop Pact⁶). As the true content of political agreements can be seen from mutual relations and intentions of the parties to those agreements,⁷ one can state that without any doubt the true intentions of the parties to the Molotov–Ribbentrop Pact were aggressive.⁸ According to these protocols, the Soviet Union and Germany granted each other the right to occupy these countries, change their political regime, and interfere in their internal affairs. Initially, Lithuania was apportioned to the German sphere of influence. But, upon the subsequent German–Soviet secret arrangement of 28 September 1939, Germany transferred Lithuania's territory from the envisioned German sphere to the Soviet sphere of influence: in the second secret protocol of 28 September 1939, “the special measures” to be taken by the Soviet government to protect its interests on Lithuania's territory were already foreseen. Those special measures in practice brought about the occupation and annexation of Lithuania in 1940.⁹

From the standpoint of international law, the secret protocols of the Molotov–Ribbentrop Pact have to be regarded as null and void, i.e. invalid from the very moment of their signing (*ex tunc*).¹⁰ They were declared null and void by both signatories in 1989.¹¹ In particular, the Soviet Union declared that by the 24 December 1989 Resolution

⁵ According to this protocol, in exchange for monetary compensation from the Soviet Union the German Reich waived its claim to a part of Lithuania's territory that had been assigned to Germany pursuant to the second secret protocol of 28 September 1939, as this part of Lithuania's territory from 15 June 1940 had already been seized by the Soviets.

⁶ English translation of the texts of all three protocols of the Molotov–Ribbentrop Pact can be found, e.g. in: *Eesti Teaduste Akadeemia Toimetised*, 1990, No 39(2), pp. 208–233.

⁷ Лукашук, И. И., *Международное право: общая часть*, Москва: БЕК, 1996, pp. 32–33.

⁸ Hannikainen, L., “The Molotov–Ribbentrop Pact and Imperative Norms of International Law” in: *Eesti Teaduste Akadeemia Toimetised*, 1990, No 39(2), p. 136.

⁹ This is also one of the conclusions reached in 1989 by the Commission of the Supreme Council of the Lithuanian SSR for the Examination of the German–Soviet Agreements of 1939 and their Consequences. See the 21 August 1989 Conclusions of the Commission in: *Tiesa*, 22 August 1989.

¹⁰ Lindpere, H., “Evaluation of the Soviet–German Pacts of August 23 and September 28, 1939, from the Standpoint of International Law” in: *Eesti Teaduste Akadeemia Toimetised*, 1990, No 39(2), p. 106.

¹¹ D. A. Loeber referred to the 1 September 1989 special Declaration on this issue made by the Government of the Federal Republic of Germany on the occasion of the 50th anniversary of the outbreak of World War II. See Loeber, D. A., “Consequences of the Molotov–Ribbentrop Pact for Lithuania of Today: International Law Aspects” in: *Lithuanian Foreign Policy Review*, 1999, No 4, p. 104; Loeber, D. A., “Legal Consequences of the Molotov–Ribbentrop Pact for the Baltic States: On the Obligation ‘to Overcome the Problems Inherited from the Past’” in: *Baltic Yearbook of International Law*, 2001, Vol. 1, p. 131.

of the Congress of People's Deputies of the USSR on the Political and Juridical Appraisal of the Soviet–German Non-Aggression Treaty of 1939.¹² In that Resolution the Congress of People's Deputies of the USSR, then being the supreme authority of the Soviet Union, also stated that “territorial divisions into Soviet and German “spheres of influence” [...] from the standpoint of international law were in conflict with the sovereignty and independence of several third countries” (here the Congress was referring to Latvia, Lithuania, Estonia, Poland, and Finland). Moreover, it was acknowledged that, although the secret protocols of the Molotov–Ribbentrop Pact had not formed a new basis for relationships of the USSR with those third countries, they were used “for ultimatums and pressure by force on (those) other States in breach of legal obligations assumed (by the USSR) towards those States” (the Congress also specifically noted that the relationships of the USSR with Latvia, Lithuania, and Estonia had been based on the 1920 peace treaties and the 1926–1933 non-aggression treaties).

Here one can mention the most important bilateral treaties between the Republic of Lithuania and the USSR, according to which the latter undertook the obligations to respect the independence and sovereignty, not to resort to aggression against and not to interfere into the internal affairs of the Republic of Lithuania. The first and the most important was the 12 July 1920 Peace Treaty between Lithuania and the then Soviet Russia:¹³ under Article 1 of this Treaty, Russia without reservations recognised “the self-reliance and independence of the State of Lithuania with all the legal consequences arising thereof” and with good will forever renounced “all the sovereign rights that Russia had ever had over the Lithuanian people and territory” (the validity of all provisions of the 1920 Peace Treaty was confirmed by Article 1 of the 1926 Non-Aggression Pact between the Republic of Lithuania and the USSR¹⁴); according to Article 5 of the Treaty, Russia had to safeguard and to take part in guaranteeing the neutrality of Lithuania. The second important bilateral treaty was the above-mentioned 28 September 1926 Non-Aggression Pact between the Republic of Lithuania and the USSR: under Article 2 of this Pact, both parties undertook the obligation “to respect in all circumstances the sovereignty, territorial integrity and inviolability of each other”; Article 3 of the Pact obliged both parties to abstain from any act of aggression; Article 5 established the dispute settlement procedure, according to which all the disputes between the parties had to be resolved by conciliation commissions, if a compromise settlement could not be found by diplomatic means. The third important bilateral treaty was the 5 July 1933 Convention for the Definition of Aggression between Lithuania and the

¹² English translation of the text of this Resolution see in: *Eesti Teaduste Akadeemia Toimetised*, 1990, No 39(2), pp. 198–199.

¹³ *Lietuvos okupacija ir aneksija 1939–1940: dokumentų rinkinys [The Occupation and Annexation of Lithuania in 1939–1940]* (collection of documents), Vilnius: Mintis, 1993, pp. 27–40.

¹⁴ *Ibid.*, pp. 41–44.

USSR:¹⁵ Article 3 of this Convention provided that aggression could not be justified by political, military, economic or any other consideration. The last relevant bilateral treaty was the 10 October 1939 Treaty on Transfer of Vilnius and Vilnius Region to the Republic of Lithuania and Mutual Assistance between Lithuania and the Soviet Union:¹⁶ under Article 6 of this Treaty, the parties undertook not to create any unions and not to take part in any coalitions directed against one of them; Article 7 of the Treaty established the obligation of the parties not to violate the sovereign rights of each other and “more especially, their political structure, social and economic organisation, military instruments, or the principle of non-interference in domestic affairs in general”. All of these provisions of the mentioned bilateral treaties were violated by the Soviet Union when it concluded and implemented the Molotov–Ribbentrop Pact.¹⁷

Several legal grounds for nullity of the secret protocols of the Molotov–Ribbentrop Pact might be mentioned. First of all, their conclusion and realisation contravened the main principles of international law that were already in force in 1939,¹⁸ such as, first and foremost, the prohibition of aggression (this principle followed from Article 1 of the Briand–Kellogg Pact¹⁹ which had already become a part of customary international law²⁰) and the respect for the sovereignty of other states (the obligation to respect and preserve against external aggression the territorial integrity and political independence of states was stipulated in Article 10 of the Covenant of the League of Nations²¹). According to the well-known Stimson Doctrine that emerged in international law in 1932, it is a duty of all states not to recognise any situation, treaty, or agreement which may be brought about by means contrary to the Covenant of the League of Nations or the Briand–Kellogg Pact.²² Secondly, from the standpoint of modern international law the secret protocols of the

¹⁵ Convention between Lithuania and the Union of Soviet Socialist Republics for the Definition of Aggression. See League of Nations, *Treaty Series*, Vol. 148, p. 79 (No 3405): <<http://www.worldlii.org/int/other/treaties/LNTSer/1934/95.html>>.

¹⁶ *Lietuvos okupacija ir aneksija 1939–1940 [The Occupation and Annexation of Lithuania in 1939–1940]*, footnote 13, pp. 95–98.

¹⁷ Paragraph 3 of the 21 August 1989 Conclusions of the Commission of the Supreme Council of the Lithuanian SSR for the Examination of the German–Soviet Agreements of 1939 and their Consequences, footnote 9.

¹⁸ *Ibid.*, paragraph 1.

¹⁹ That is the unofficial name of the 27 August 1928 General Treaty for Renunciation of War as an Instrument of National Policy. See League of Nations, *Treaty Series*, Vol. 94, p. 57 (No 2137): <<http://treaties.un.org/doc/Publication/UNTS/LON/Volume%2094/v94.pdf>>. Under Article 1 of this Treaty, the High Contracting Parties condemned recourse to war for the solution of international controversies, and renounced it as an instrument of national policy. One can see also the violation of Article 2 of the Treaty, in particular in the course of the implementation of the Molotov–Ribbentrop Pact, which provided for the obligation to settle all the disputes only by peaceful means.

²⁰ Wallace, C. D., “Kellogg–Briand Pact” in: *Encyclopaedia of Public International Law*, 1982, Vol. 3, p. 238.

²¹ The 28 April 1919 Covenant of the League of Nations. See the UNHCR webpage: <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3dd8b9854.pdf>>.

²² See Hough III, W. J. H. “The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory” in: *New York Law School Journal of International and Comparative Law*, 1985, Vol. 6, No 2, pp. 327–329.

THE SOVIET AGGRESSION

Facts. As regards the 1940 events in the Baltic States, the European Court of Human Rights also perceives the Soviet *armed invasion* into these countries and their subsequent forceful incorporation into the Soviet Union as a well-established fact. For instance, in the above-mentioned case of *Ždanoka v Latvia*,²⁹ the Court stated that in June 1940 “the Soviet army *invaded* the Baltic States, the legitimate governments were removed, new (“people’s”) governments were formed under the direction of the Communist Party of the Soviet Union and ‘the ensuing annexation of Latvia by the Soviet Union was orchestrated and conducted under the authority of the Communist Party of the Soviet Union’”. Again, similarly in the above-mentioned case of *Kuolelis, Bartoševičius and Burokevičius v Lithuania*,³⁰ the Court stated that “following an ultimatum to allow an unlimited number of Soviet troops to be stationed in the Baltic countries, on 15 June 1940 the Soviet Army invaded Lithuania. The Government of Lithuania was removed from office, and a new government was formed under the direction of the Communist Party of the Soviet Union, the USSR’s only party”; the Court went on to note that “on 3 August 1940 the Soviet Union completed the annexation of Lithuania by adopting an act incorporating the country into the USSR, with Lithuania being called the ‘Soviet Socialist Republic of Lithuania’” (hereinafter – the Lithuanian SSR); the Court also acknowledged that the government of the Lithuanian SSR was appointed and controlled by the Communist Party of Lithuania, a regional branch of the Communist Party of the Soviet Union.

The Soviet Union began preparing for the occupation of Estonia, Latvia, and Lithuania in spring 1940. Seeking a pretext to invade Lithuania, the Soviet Union charged the Lithuanian authorities in 1940 with abducting missing Soviet soldiers, although there were no grounds to justify these charges. On late Saturday 14 June 1940, the Soviet Union issued an ultimatum to Lithuania. The ultimatum accused Lithuania of hostility towards the Soviet Union, demanded the arrest of the Minister of the Interior and the Director of the State Security Department, and made it obligatory to form a new government and allow free entry into Lithuania for an unspecified number of Red Army troops.³¹ The last two demands were the most important, as they actually put pressure on Lithuania to agree to the Soviet occupation of the country, as the Soviet Union had expressly sought to control the territory of Lithuania by means of deployment of armed forces and substitution of the Lithuanian government. Here it is also worth recalling that the element of effective control and authority is decisive for military occupation: the International Court of Justice stated

²⁹ See footnote 27.

³⁰ See footnote 28.

³¹ *Lietuvos okupacija ir aneksija 1939–1940: dokumentų rinkinys* [*The Occupation and Annexation of Lithuania in 1939–1940*], footnote 13, pp. 262–264.

on several occasions³² that, “under customary international law, as reflected in Article 42 of the Hague Regulations of 1907,³³ territory is considered to be occupied when it is actually placed under the authority of a hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised”.

On handing the ultimatum, it was added that, no matter whether Lithuania accepted or rejected it, the Soviet Army – 10 to 15 divisions – would enter Lithuania anyway. The ultimatum demanded a reply from the Lithuanian Government within an extremely short time – 12 hours, i.e. within one night, by Sunday morning.

The Soviet Union developed plans for invasion and launched military operations in June 1940. On 3 June, all military units that were to attack the Baltic States were assigned to the direct command of the USSR People’s Commissar for Defence. By June 7, all of them were mobilised at the borders with Lithuania, Latvia, and Estonia. On 8 and 11 June, military deliberations took place, at which General Dmitry Pavlov set out the plan of invasion: to swiftly defeat the Lithuanian troops, to prevent their retreat to East Prussia, and to capture the country within three to four days. The 11th Soviet Army was to besiege the Lithuanian forces, ultimately crushing them in the main battle on the outskirts of Kaunas, and to seize the bridges and ferries over the Nemunas and Neris rivers. As many as 935 paratroopers were to occupy a Lithuanian military camp in Gaižiūnai, while another 475 were to be deployed for taking the airport in Kaunas. While crossing the border, the troops were instructed to “operate quietly and use bayonets”; in the event of small-scale confrontation, “to shoot on the spot” and, if met with stronger resistance, “to refrain from attack, bypass and block instead”. Subsequently, the trapped forces were to be liquidated by artillery and air strikes.³⁴ The Soviet war planes were to destroy “the enemy’s air force based at the airport in Šiauliai”.³⁵ For the assault on Lithuania, the Soviets allocated 221 000 Red Army troops, 2 946 artillery guns and mortars, 1 564 tanks, 245 armoured vehicles, 11 860 trucks, and 1 140 airplanes.³⁶ In this way, the Soviet forces far outnumbered the Lithuanian Army, comprising 26 000 troops at the time.

³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, ICJ, Advisory Opinion, paragraph. 78, *I.C.J. Reports 2004*, p. 136: <<http://www.icj-cij.org/docket/files/131/1671.pdf>>; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, 19 December 2005, ICJ, Judgment, Merits, paragraphs. 172–173, *I.C.J. Reports 2005*, p. 168: <<http://www.icj-cij.org/docket/files/116/10455.pdf>>.

³³ See the text of Article 42 of the 1907 Regulations Respecting the Laws and Customs of War on Land (Annex to the IV Hague Convention Respecting the Laws and Customs of War on Land) in the website of the International Committee of the Red Cross: <<http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=4D47F92DF3966A7EC12563CD002D6788&action=openDocument>>.

³⁴ Jakubčionis, A., “Lietuvos okupavimas ir aneksavimas” [“The Occupation and Annexation of Lithuania”] in *Okupacija ir aneksija. Pirmoji sovietinė okupacija (1940–1941) [Occupation and Annexation. The First Soviet Occupation (1940–1941)]*, Vilnius: Margi raštai, 2006, p. 15.

³⁵ Мельтюхов, М. И., *Упущенный шанс Сталина*, Москва: Вече, 2002, с. 161–162.

³⁶ *Ibid.*, p. 163.

The military and logistics preparation for a large scale invasion of Lithuania, hostilities on and occupation of Lithuanian territory was completed on 13 June; and the movement of the Soviet troops in and within the Lithuanian territory was typical of military occupation.³⁷ This can be confirmed by a number of the Soviet combat orders and other military documents of 7–15 June 1940: instructions and reports on the preparation of military hospitals, the evacuation of eventual prisoners of war and the preparation of special camps for them, combat preparation and equipment of military units, schemes of movement and stationing of troops, as well as occupation of key points, including the temporary capital Kaunas, Vilnius and other cities, main roads, bridges and airports³⁸.

The date for launching the attack on the country was set for 15 June at 9 a.m. However, military aggression against Lithuania had started even earlier. On 13 June, seven paratroopers were parachuted to the vicinity of Gaižiūnai; they were tasked with making preparations for accommodating larger forces.³⁹ A propaganda campaign was carried out among the soldiers of the Red Army to advocate the idea that any war fought by the Soviet Union was “a fair liberation war”.⁴⁰ At night on 15 June, the Soviets embarked on provocations: made raids on the border and murdered a Lithuanian border guard, Aleksandras Barauskas;⁴¹ some 50 soldiers of the Red Army stormed into the Lithuanian territory near Eišiškės and stationed there.⁴² Had the Lithuanian border police tried to force them out, opening fire would have been inevitable. This would have given grounds for accusing Lithuania of an attack, thus justifying the invasion by the Soviet Union. Analogous provocations had been undertaken by Germany before its attack on Poland and used by the Soviet Union to produce a rationale for its invasion into Finland.

³⁷ Лебедева, Н. С., “Вводная статья” in: *СССР и Литва в годы Второй мировой войны: сборник документов*, Vilnius: LII leidykla, 2006, Vol. 1, pp. 51–52; Katuoka, S., Žilinskas, J., “Lietuva ir tarptautinė teisė: 1940–1991 m. SSRS okupacijos neigimo teisiniame diskurse nepagrįstumas [Lithuania and International Law: Ill-Soundness of Denial of the 1940–1991 USSR Occupation in the Legal Discourse]” in: *Regnum est. 1990 m. Kovo 11-osios Nepriklausomybės Aktui – 20: Liber Amicorum Vytautui Landsbergiui [Regnum est. 20 Years for the 11 March 1990 Act of Independence. Liber Amicorum Vytautas Landsbergis]*, Vilnius, Mykolas Romeris universiteto Leidybos centras, 2010, pp. 277–278.

³⁸ See the corresponding documents in: *СССР и Литва в годы Второй мировой войны: сборник документов*, Vilnius: LII leidykla, 2006, Vol. 1, pp. 566–571, 578–579, 586–589, 600–601, 605–609.

³⁹ Мельтюхов, М. И., *Упущенный шанс Сталина*, footnote 35, p.162.

⁴⁰ Ibid., p.168.

⁴¹ On 29 April 2010, the Seimas of the Republic of Lithuania adopted the Resolution on the 70th Anniversary of the Murder of the Border Police Officer A. Barauskas and the Beginning of the Aggression of the Soviet Union against the Republic of Lithuania (Official Gazette *Valstybės žinios*, 2010, No 52-2551). In the Resolution, the Seimas stated that in the early morning of 15 June 1940, prior to the expiration of the term of the Soviet ultimatum, a squad of the Soviet armed forces invaded the territory of the Republic of Lithuania, attacked the Lithuanian Ūta border police station and savagely murdered the unarmed chief guard Aleksandras Barauskas. The Seimas emphasised further that “in such a manner the USSR started the aggression against the Republic of Lithuania seeking to intimidate anyone who would dare to resist. The armed attack against the Ūta border station and the murder of its chief guard Aleksandras Barauskas is one of the facts that deny the Soviet fabrications that the armed force has not been used against Lithuania and that Lithuania itself has admitted the USSR armed forces”.

⁴² *Lietuvos okupacija ir aneksija 1939–1940 [The Occupation and Annexation of Lithuania in 1939–1940]*, footnote 13, pp. 267–268.

The Lithuanian government accepted the ultimatum by a majority of votes after an all-night debate. Such a decision was reached because of several reasons. Within few hours, it was impossible to mount an effective defence of the country; until September 1939, Lithuania and the Soviet Union had no common border; therefore, the Lithuanian military had never made any defence plans, since drafting them was not pertinent upon signing the Mutual Assistance Treaty; an armed resistance would have led to fatal casualties among inhabitants and would have hit national economy severely. After being notified that the Lithuanian Government had agreed to accept the ultimatum, the Soviet Union replied that its armed forces would cross the Lithuanian border on 15 June at 3 p.m. The Soviets demanded that the Lithuanian army be ordered to allow the Soviet troops to freely march into the territory of Lithuania. The military preparedness for an attack was cancelled by a telegram on account of “Lithuania’s capitulation”.⁴³

The occupation of Lithuania was dovetailed with the German attack on the west. On 15 June, as the Wehrmacht occupied Paris, the whole world’s attention was focused on the tragedy of France, not on the assault on Lithuania. The President of Lithuania, Antanas Smetona, after appointing Prime Minister Antanas Merkys as Acting President, left the country, moving to Germany and, later, to the United States. In a few days, the Red Army occupied Lithuania, i.e. took control of the whole country – all cities and smaller towns; the troops of the Red Army were posted to patrol state institutions, stations, bridges, post offices, and telegraph stations in the then provisional capital Kaunas.

On 15 June 1940, the Soviet government special emissary to Lithuania, Vladimir Dekanozov, flew to Kaunas. He was commissioned with forming a puppet Lithuanian government, imitating that all rearrangements took place in accordance with Lithuanian laws, and preparing the country for annexation. A special group was set up from the members of the USSR envoy’s staff, officials of the USSR People’s Commissariat for Internal Affairs (NKVD), officers of the Red Army garrisons, and local communists for dealing with issues related to the formation of a new government and the organisation of its activity. This group had the powers to give orders on any matters of Lithuania’s internal life. A pro-Soviet journalist, Justas Paleckis, was chosen as Prime Minister. No single communist was appointed as a member of the newly formed government, which demagogically came to be called “the people’s government”. This government took an oath to the constitution, promised to defend the state, and even laid a wreath at the Tomb of the Unknown Soldier, who lost his life fighting for independence. Describing the then Lithuania, Professor of Law Mykolas Romeris wrote the following: “the state had come under alien military and political disposition; it had been neither independent nor sovereign any more”.⁴⁴ In view of the internal situation, Professor Romeris would define “the people’s government” as

⁴³ Еременко, А. И., “Год 1940-й. Каунас встретил цветами”, *Военно-исторический журнал*, 1994, No. 3, c. 38.

⁴⁴ Romeris, M., *Lietuvos Konstitucijos teisės paskaitos [Lectures on Lithuanian Constitutional Law]*, Vilnius: Mintis, 1990, p. 452.

“Soviet exposure”, and would refer to ministers as “puppets in the hands of the Soviets”.⁴⁵ The subsequent developments would only prove this testimony. Acting President Antanas Merkys resigned after having appointed Justas Paleckis as Acting President. Paleckis, after taking on this office, could not appoint any other person as Acting President, since this was not provided for by the Lithuanian Constitution, which had already been violated. Shortly afterwards, communists would be appointed as members of the government and, consequently, would come to dominate. On June 19, political parties were suppressed except for the Communist Party and, on 1 July, all non-communist public, cultural, religious, and even student organisations were prohibited. The Seimas was dissolved. The publication of newspapers was stopped. The formation of militia forces began. By the middle of July, nearly 350 public officials were dismissed.⁴⁶ These developments finalised the first stage of the destruction of the Lithuanian state.

The next ruinous stage began after a new law on elections to the Seimas was published on 5 July 1940 and an election was called for 14 July. The election was conducted hastily, without even compiling any lists of eligible voters; only registered, i.e. communist, organisations were allowed to put up their candidates. Only one candidate could be nominated per seat. A member of the Central Committee of the Lithuanian Communist Party, Vladas Niunka, was appointed as Chairman of the Electoral Commission, and this meant that the election would be completely controlled by communists.

A vigorous electoral campaign was mounted, and spurious promises were made. In principle, all segments of the population were promised everything and all at once. No one was speaking about changing the order of the Lithuanian state and proclaiming it socialist, or about the incorporation of the Lithuanian state into the Soviet Union. Insistent calls were made that everyone should vote. Anyone not turning out to cast a ballot on the election day was to be labelled as “an enemy of the people”. To “encourage” voters, first arrests were carried out on 11–12 July; the arrestees were declared to have been “enemies of the people”. During the election, the passports of voters were stamped, so that those who had not voted could be identified and arrested. Votes were cast for each candidate individually; however, no effort was made to count the votes. After the rigged election results had been announced, the turnout was claimed to be 95.51 per cent of eligible voters with 99.18 per cent of them having voted for the official candidates – all of whom were declared to have been elected.⁴⁷ Local records testified to even more serious infringements. For instance, the turnout in the Pasvalys rural district was reported to have reached 106 per cent of voters.⁴⁸

⁴⁵ Ibid., p. 454.

⁴⁶ Maslauskienė, N., “Valdininkijos šalinimas iš okupuotos Lietuvos administracijos ir jos keitimas okupantų talkininkais 1940 m. birželio–gruodžio mėn.” [“The Purge of Civil Servants in Soviet Occupied Lithuania in June–December 1940”], *Genocidas ir rezistencija* [Genocide and Resistance], 2000, No 2, p. 17.

⁴⁷ *Lietuvos liaudies seimas* [The Lithuanian People’s Seimas], Vilnius: Mintis, 1985, p. 11.

⁴⁸ *Lietuvos okupacija ir aneksija 1939–1940* [The Occupation and Annexation of Lithuania in 1939–1940], footnote 13, p. 376.

A first session of the elected “People’s Seimas” was convened on 21 July and took place in breach of the governing rules. In the hall of the National Theatre, there were 78 elected members of the Seimas, sitting together with approximately 500 “guests”. The voting procedure was likewise violated. One of the then communists later wrote in his memoirs: “Only members of the Seimas had the right to vote; however [...] the guests did not abstain either – all raised their hands.”⁴⁹ Draft laws were not considered in commissions but were put to the vote immediately after their submission. Consequently, proclaiming Lithuania a Soviet republic took no more than one hour and five minutes.⁵⁰ A resolution on joining the Soviet Union was considered within one hour and twenty-four minutes.⁵¹ The ordinary Seimas had no powers to adopt such resolutions; this type of decision would have required the convening of a constituent Seimas (constitutional assembly). In effect, the Seimas finalised the destruction of the state. On 3 August, the Supreme Soviet of the USSR declared that Lithuania was incorporated into the Soviet Union. The annexation process was completed.

Started by the “People’s Government”, the sovietisation of Lithuania’s internal life reached its peak after July. On 3 July, the Lithuanian Army was reorganised into the “People’s Army” and the position of a political leader (supervisory political officer) was introduced into army ranks. The Lithuanian police force was replaced by the Soviet militia. At the end of July, the form of address “comrade” was brought into use instead of “Mister”. On 25 August, the Constitution of the Soviet Lithuania, which was essentially a copy of the Constitution of the Soviet Union, was proclaimed. The Seimas was renamed the Supreme Soviet; the Chairman of the Presidium of the Supreme Soviet was approved to replace the institution of the President. The People’s Government was transformed into the Council of People’s Commissars, vested with supreme executive power. Municipal authorities were dissolved; the establishment of executive committees started. Soviet symbols and holidays were introduced, and even Moscow time was imposed. The Communist Party of Lithuania was merged with the Communist Party of the Soviet Union and had the rights of a territorial party organisation, i.e. it had no autonomy. Masses of Russian-speaking people from the Soviet Union were sent to Lithuania to take up posts in a newly created apparatus of the Soviet, party, and economic administration. Until June 1941, various leading positions were occupied by 1 695 communists sent from the Soviet Union.

The sovietisation of the Lithuanian economy and finances began on 26 July 1940, when the nationalisation of all banks, credit unions, and insurance enterprises was announced. The Bank of Lithuania was transformed into the territorial agency of the State Bank of the USSR. On 25 November, the litas ceased to be the national currency as the Soviet rouble was introduced. All Lithuanian industrial enterprises were nationalised and

⁴⁹ Gedvilas, M., *Lemiamas posūkis [A Decisive Turn]*, Vilnius: Vaga, 1975, p. 58.

⁵⁰ *Lietuvos liaudies seimas [The Lithuanian People’s Seimas]*, footnote 47, pp. 54–62.

⁵¹ *Ibid.*, pp. 62–76.

their control was assigned to a newly established Ministry of Industry. Trade businesses – shops, bookshops, pharmacies, and warehouses – were in a like manner nationalised. Every vehicle became exclusively state owned; by the end of 1940, sea and river vessels, lorries, buses, and even personal cars were transferred to state ownership.

From 31 October 1940, the expropriation began of the houses with a total area of floor space reaching 220 m² in cities and 170 m² in other locations.⁵² On 22 July, the declaration on the nationalisation of land was adopted – all land was appropriated by the state and land farmers became its tenants. Landholdings were restricted to 30 ha. If farmers held more, the land was confiscated. Moreover, sovietisation went hand in hand with repressions. Arrests of “members of anti-government parties” were already envisaged on 7 July 1940. Within one month, the Soviet authorities seized 504 people, of whom 158 were members of the Lithuanian Nationalist Union.⁵³ The numbers of arrested people were subsequently growing; 6 606 people were put in prison by June 1941.⁵⁴ Most of them were deported to the camps of the Soviet Union in Archangelsk, Komi, and Norilsk; others were executed in the early days of the German–Soviet war.

In 1941, the Soviet administration ordered to compile a list of the names of the people who belonged to the organisations that were regarded as unacceptable. After the data was collected, 320 000 names of people were included in the list.⁵⁵ 14 June 1941 witnessed the beginning of the mass deportation of Lithuanian residents to the most remote regions of the Soviet Union with harsh climates. The number of the people sent to Siberia alone reached 18 500 at the least.⁵⁶ The deportees were held in camps and forced to hard labour. Hundreds starved to death due to food shortages. All arrests and deportations of Lithuanian residents were carried out under the Criminal Code of Soviet Russia by extrajudicial bodies of the USSR upon special counsel, or upon the decisions of the Military Collegium of the Supreme Court or military district tribunals of the USSR.

Within one year, Lithuania was occupied, annexed, and sovietised, while large numbers of its residents were repressed.

Legal Assessment of the 1940 Soviet Acts against Lithuania. Against this background, it is only logical to presume that the 15 June 1940 Soviet armed invasion into Lithuania has to be treated as *an act of aggression* (aggressive war)⁵⁷ that was *ipso facto* a manifestly grave breach of Articles 1 and 2 of the Briand–Kellogg Pact, i.e. of

⁵² *Lietuva 1940–1990: okupuotos Lietuvos istorija [Lithuania 1940–1990: the History of Occupied Lithuania]*, Vilnius: The Genocide and Resistance Research Centre of Lithuania, 2007, p. 121.

⁵³ *Ibid.*, p. 134.

⁵⁴ *Ibid.*, p. 139.

⁵⁵ Anušauskas, A., *Lietuvių tautos sovietinis naikinimas 1940–1958 [The Soviet Annihilation of the Lithuanian Nation in 1940–1958]*, Vilnius: The Genocide and Resistance Research Centre of Lithuania, 1996, p. 45.

⁵⁶ *Ibid.*, p. 108.

⁵⁷ As Lauri Hannikainen pointed out, “the Soviet Union’s occupations and annexation of the Baltic States after a successful threat of an armed attack was equivalent to a war of aggression”. See Hannikainen, L., “The Molotov–Ribbentrop Pact and Imperative Norms of International Law”, footnote 8, p. 136.

the international legal obligations not to resort to war and to settle all disputes solely by peaceful means. Indeed, the Soviet armed invasion fully met the definition of the term “act of aggression” as defined in paragraph 2 of Article 2 of the Convention for the Definition of Aggression between Lithuania and the USSR,⁵⁸ which was signed on 5 July 1933 in London:⁵⁹ namely, it was an “invasion by armed forces, with or without a declaration of war, of the territory of another State”.

It should be emphasised that, according to its content, this bilateral Convention was identical to two multilateral conventions for the definition of aggression, which were also signed in London shortly before: the first, most often referred to as the London Convention for the Definition of Aggression, was signed on 3 July 1933 by the USSR and its seven neighbouring States,⁶⁰ including Estonia, Latvia, and Poland (Finland acceded to this Convention later in 1934); the second one was signed on 4 July 1933 between the USSR and its four neighbouring states⁶¹ (apart from the Soviet Union, both conventions were signed also by Romania and Turkey). Thus, all three London conventions bound the USSR and 11 of its neighbours in different combinations, including Lithuania. The most important is that all three conventions shared the same purpose – to clarify the meaning of aggression as already prohibited by the Briand–Kellogg Pact and in such a way to specify more precisely the obligations arising from that Pact.⁶² This was clear from the preambles of the conventions, whereby Briand–Kellogg was referred to as the basis that “prohibits all aggression” and it was declared necessary, “in the interests of the general security, to define aggression as specifically as possible”.

It is also important that in all three conventions an invasion by armed forces of the territory of another state and an attack by armed forces on the territory of another state (as well, “with or without a declaration of war”) were named as different acts of aggression (they were stipulated in different paragraphs of the same Article 2). That leads to the conclusion that an invasion was not necessarily covered by an attack, but also had to include the so-called “peaceful invasions”, those not meeting any resistance from the invaded country or conducted with the forced consent of the latter. This is exactly the situation of the 15 June 1940 armed Soviet invasion of Lithuania.

⁵⁸ Vadapalas, V., Žalys, V. “Secret Protocols to the Soviet-German Treaties of 1939 and the Problem of Prescription in International Law”, footnote 24, p. 131.

⁵⁹ See footnote 15.

⁶⁰ Convention for the Definition of Aggression. See League of Nations, *Treaty Series*, Vol. 147, p. 67 (No 3391): <<http://www.worldlii.org/int/other/treaties/LNTSer/1934/75.html>>.

⁶¹ Convention for the Definition of Aggression between Romania, the Union of Soviet Socialist Republics, Czechoslovakia, Turkey and Yugoslavia. See League of Nations, *Treaty Series*, Vol. 148, p. 211 (No 3414): <<http://www.worldlii.org/int/other/treaties/LNTSer/1934/102.html>>.

⁶² See Brownlie, I., *International Law and the Use of Force by States*, Oxford: Clarendon Press, 1963, pp. 75–76, 103; Kūris, P., *Atsakomybės tarptautinėje teisėje problemos [Problems of State Responsibility in International Law]*. Vilnius: Vilniaus valstybinis V. Kapsuko universitetas, 1970, p. 43.

How then does one assess the above-mentioned argument regarding the consent of Lithuania as a factor legitimising the Soviet invasion?⁶³ Could this argument disprove the said presumption of aggression? From the very beginning it is apparent that this argument is not original; the same argument was raised to justify aggressive acts of the German Reich against other States (including Austria, Czechoslovakia, Denmark, Belgium, and Luxembourg) before the Nuremberg International Military Tribunal by the accused Nazi leaders. For instance, there is a striking similarity between the Russian argument regarding the consent of Lithuania over its invasion and annexation and the Nazis' argument about the consent or even desire of Austria to unite with the German Reich.⁶⁴ As regards the latter, the Nuremberg Tribunal firmly rejected this kind of argument: the 1938 Anschluss was treated as an act of aggression (aggressive war), since Austria's alleged consent was regarded by the Tribunal as "really immaterial, for the facts plainly prove that the methods employed to achieve the object were those of *an aggressor*. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered".⁶⁵ The rule here is more than clear: the consent of a victim (in particular, when given under coercion) to an act of aggression cannot be considered as legally valid and decisive in assessing legitimacy of that act,⁶⁶ and such a consent has to be regarded as null and void.⁶⁷ There is no legal ground to assess the 1940 Lithuanian case differently from the Austrian Anschluss, as otherwise international law would lose its objective legal character. It should be added here that *the universality of the Nuremberg principles* has been generally recognised. Serving as excellent examples of proof are several cases of the European Court of Human Rights: in its almost

⁶³ See footnote 3.

⁶⁴ Currently Russia uses the same argument attempting to justify the 2014 annexation of a part of the Ukrainian territory – the Crimean peninsula, by claiming that it was a voluntary "reunification" of the Crimea with Russia allegedly based on the right to self-determination, and that Russian armed forces stationed and deployed to the Crimea were allegedly securing this "reunification". See more: Leonaitė, E., Žalimas, D., "The Annexation of Crimea and Attempts to Justify It in the Context of International Law" in: *Lithuanian Annual Strategic Review, 2015-2016*, 2016, Vol. 14, pp. 11-63: <<https://www.degruyter.com/view/j/lasr.2016.14.issue-1/issue-files/lasr.2016.14.issue-1.xml>>; <<https://www.degruyter.com/downloadpdf/j/lasr.2016.14.issue-1/lasr-2016-0001/lasr-2016-0001.xml>>.

⁶⁵ Extract from the 30 September–1 October 1946 Judgement of the International Military Tribunal for the Trial of Major German War Criminals. See the website of the Avalon Project at Yale Law School: <<http://avalon.law.yale.edu/imt/judaus.asp>>; Нюрнбергский процесс над главными немецкими военными преступниками, Москва: Госюриздат, 1961, Vol. 7, p. 336.

⁶⁶ Taking into account the Nuremberg Tribunal's assessment of the Austrian Anschluss, this rule has been confirmed by the International Law Commission in Articles 20 and 26 of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts. See paragraph 4 (footnote 321) of the Commission's commentary to Article 20 of those Draft Articles, *Responsibility of States for Internationally Wrongful Acts: commentaries*, Official Records of the UN General Assembly, Fifty-sixth session, Supplement No 10 (A/56/10), chapter. IV.E.2; Crawford, J., *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*. Cambridge: University Press, 2002, pp. 163–164.

⁶⁷ Indeed, if any legal weight was given to the consent of a victim (in particular, given under coercion), then the prohibition of aggression would have become meaningless, as the (potential) aggressors would always have been given the prospect to easily avoid any responsibility for their actions, in particular in cases when resistance would have been hopeless. Such a prospect would also have been in conflict with the general aim of the Briand–Kellogg Pact to perpetuate peaceful and friendly relations between states (see footnote 20).

identical decisions on admissibility in the cases of *Kolk and Kislyiy v Estonia*⁶⁸ and *Penart v Estonia*,⁶⁹ the Court declared that “responsibility for crimes against humanity cannot be limited only to the nationals of certain countries and solely to acts committed within the specific time frame of the Second World War”, and that the Nuremberg principles and their universal validity were perfectly known to the Soviet Union, which was the founder of the Nuremberg Tribunal and a founding member of the United Nations. Similar reasoning was applied by the Court in the cases of *Kononov v Latvia*⁷⁰ and *Janowiec and Others v Russia*,⁷¹ whereby it relied, *inter alia*, on the Nuremberg principles, thus impliedly rejecting the Russian argument that those principles could not be applied to the acts committed by the Soviet Union and the members of its armed forces. Thus, the Nuremberg rule of invalidity of consent with aggression can and should be applied to the 1940 Soviet invasion of Lithuania and the other two Baltic States.

Moreover, before the invasion into Lithuania, in 1938 the Soviet Union itself in the strongest possible terms condemned that kind of invasion by proclaiming in the League of Nations that neither the direct seizures and annexations of other peoples’ territory, nor “those cases where such annexations are camouflaged by the setting-up of puppet ‘national’ governments, allegedly independent, but in reality serving merely as a screen for, and an agency of, the foreign invader”, could ever be recognised as legal.⁷² One of the best examples of the latter case is precisely the 1940 Soviet invasion, occupation, and annexation of Lithuania.⁷³ It is also worth recalling that, by the 24 December 1989 Resolution of the Congress of People’s Deputies of the USSR on the Political and Juridical Appraisal of the Soviet–German Non-Aggression Treaty of 1939,⁷⁴ the Soviet Union acknowledged breaches of the 1920 Peace Treaty and the 1926 Non-Aggression Pact with Lithuania. Bearing that in mind, one is simply compelled to draw the conclusion that in such a way the USSR itself had recognised the 1940 aggression against Lithuania, because that is the only logical way to explain the acknowledgment of those breaches, i.e. it is obvious that to violate both a peace treaty and a non-aggression pact one must commit an act of aggression. To prove the contrary would be a sophistic exercise.

⁶⁸ The ECtHR, the decision on admissibility of 17 January 2006, *Kolk and Kislyiy v Estonia* (dec.), nos 23052/04 and 24018/04: <[http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-72404%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72404%22]})>.

⁶⁹ The ECtHR, the decision on admissibility of 24 January 2006, *Penart v Estonia* (dec.), no 14685/04: <[http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-72685%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72685%22]})>.

⁷⁰ The ECtHR, the judgment of 17 May 2010, *Kononov v Latvia* [GC], no 36376/04: <[http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-98669%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-98669%22]})>.

⁷¹ The ECtHR, the judgment of 21 October 2013, *Janowiec and Others v Russia* [GC], nos 55508/07 and 29520/09: <[http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-127684%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-127684%22]})>.

⁷² Hough III, W. J. H. “The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory”, footnote 22, p. 390.

⁷³ Regrettably, Russia continues the Soviet practice of the 1940s of establishing the puppet “people’s” governments and the “people’s” pseudo-states in the occupied territories. It is enough to mention the examples of the Donetsk and Lugansk “people’s” republics established in the occupied eastern part of Ukraine.

⁷⁴ See footnote 12.

Thus, to sum up, there is no alternative under international law than to treat the 15 June 1940 Soviet invasion into Lithuania as an act of **aggression** that was followed by other acts continuing the aggression – an illegal occupation and annexation. It is not accidental that Article 3(a) of the 1974 Definition of Aggression by the UN General Assembly Resolution No 3314(XXIX),⁷⁵ in comparison with the 1933 conventions on the definition of aggression,⁷⁶ formally and logically expanded the previous exemplary list of the acts of aggression so as to include not only an invasion or attack by armed forces, but also the possible consequences of such an invasion or attack: military occupation and annexation.

INTERNATIONAL LEGAL STATUS OF LITHUANIA IN 1940–1990

After establishing that in 1940 Lithuania fell victim to Soviet aggression, the next issue is the international legal status of Lithuania from 15 June 1940 (the first day of the Soviet invasion and occupation) to 11 March 1990 (the restoration of the independence of the Republic of Lithuania). The key to the answer lies in the general principle of law *ex injuria non oritur jus*, according to which no legal benefit can be derived from an illegal act, or, to be more concrete for the purposes of the present analysis, an internationally wrongful act cannot be a source of legal rights for the perpetrator of that act.

The first conclusion to be made from the application of the principle *ex injuria non oritur jus* in case of the Soviet aggression against Lithuania is that the USSR did not have any sovereign rights (or a legal title) over Lithuania's territory. Therefore, in accordance with international law, Lithuania has never been a legitimate part of the USSR; from the standpoint of international law, Lithuania could never be treated as a (former) Soviet republic. Consequently, in 1990 Lithuania did not secede from the Soviet Union, it rather restored its injured rights (independence) by liberating itself from the Soviet occupation.⁷⁷ The Soviet Union could not acquire any rights to Lithuania's territory due to a long period (almost five

⁷⁵ *Resolutions Adopted by the General Assembly during its Twenty-ninth Session, 17 September–18 December 1974*, Official Records of the UN General Assembly, Twenty-ninth Session, Supplement No 31 (A/9619) (United Nations, New York, 1975) pp. 142–144: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/3314%28XXIX%29&Lang=E&Area=RESOLUTION>.

⁷⁶ The 1974 Definition of Aggression had been prepared on the basis of the 1933 definition; however, it developed and supplemented the latter with new provisions reflecting the evolution of international law. See Лукашук, И. И., Мэрфи, Д., “Преступления против мира” in: *Нюрнбергский процесс: право против войны и фашизма*, Москва: Институт государства и права РАН, 1996, p. 128.

⁷⁷ See more about the international legal status and the 1990 restoration of the independence of the Republic of Lithuania in: Žalimas, D. “Legal Issues on the Continuity of the Republic of Lithuania” in: *Baltic Yearbook of International Law*, 2001, Vol. 1, pp. 8–21; Žalimas, D. “The Soviet Aggression against Lithuania in January 1991: International Legal Aspects” in: *Baltic Yearbook of International Law*, 2006, Vol. 6, pp. 297–300, 321–327; Žalimas, D. “The International Legal Status of Lithuania and its Resistance to the Soviet Union” in: Korzeniewska, K., Mielczarek, A., Kareniauskaitė, M., Stefanowicz, M. (eds.). *Lithuanians and Poles against Communism after 1956. Parallel Ways to Freedom?*, Vilnius: PI Bernardinai.lt, 2015, pp. 335–373.

decades) of actual possession (effective authority) of that territory:⁷⁸ international law does not recognise any general term of prescription.⁷⁹ Moreover, there cannot be any prescription at all for an aggression that is of the most serious breaches of international law.⁸⁰

Thus, a logical consequence of the application of the principle *ex injuria non oritur jus* is that the Soviet annexation of Lithuania's territory was null and void, therefore it could not alter the legal title to, or the legal status of, that territory. This can also be supported by analogy with the case of the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.⁸¹ Here the International Court of Justice noted that neither the annexation of a part of the occupied Palestinian territory, nor alleged partial autonomy of the occupied territory, nor any other legislative or administrative actions taken by the occupying State (Israel) could change the legal status of that occupied territory. In the case of Lithuania, there is no reason to come to different conclusions: neither the creation of the Lithuanian SSR in the territory of Lithuania, nor the alleged partial national autonomy of that entity, nor any other Soviet administrative measures in Lithuania could ever change the legal status of the territory of the Republic of Lithuania and the Republic of Lithuania itself. Similarly to the case of Palestine, regardless of the Soviet annexation, the Republic of Lithuania and its territory from 1940 to 1990 has to be treated as *an occupied State and territory*. In line with that reasoning, the Parliamentary Assembly of the Council of Europe referred to the Baltic States as “the (formerly) occupied States”.⁸²

Indeed, it is only logical that there is no other alternative under international law but to treat all the period of 1940–1990 in Lithuania's history as that of *the Soviet occupation* (with the exception of the period of the Nazi occupation in 1941–1944). As already proved, on 15 June 1940 the Soviet Union launched a successful armed invasion that, according to international law, was an act of aggression. A logical consequence of that invasion was the full control of the territory of Lithuania by the Soviet armed forces and the introduction of Soviet rule. According to terms of Article 42 of the Hague Regulations of 1907,⁸³ it was a military occupation of the entire territory of Lithuania, even if it was achieved in 1940 without an outbreak of hostilities. Incidentally, even the absence of Lithuania's armed

⁷⁸ Mälksoo, L. *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR*, footnote 1, pp. 164–165.

⁷⁹ Vadapalas, V., Žalys, V. “Secret Protocols to the Soviet–German Treaties of 1939 and the Problem of Prescription in International Law”, footnote 24, p. 132.

⁸⁰ One can recall here that in its judgment the Nuremberg Tribunal characterised an aggression as “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole”. See footnote 66, <<http://avalon.law.yale.edu/imt/judnazi.asp#common>>, p. 327.

⁸¹ See footnote 32, paragraphs. 75–78.

⁸² Council of Europe, Parliamentary Assembly, *On Russia's request for membership of the Council of Europe*, Opinion No 193(1996), 25 January 1996: <<http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA96/Eopi193.htm>>, paragraph 7.xii; Council of Europe, Parliamentary Assembly, *Honouring of obligations and commitments by the Russian Federation*, Resolution No 1455(2005), 22 June 2005: <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta05/ERES1455.htm>>, paragraph 14.iv.

⁸³ “Territory is considered occupied when it is actually placed under the authority of the hostile army”, see footnote 33.

resistance to the Soviet occupation can be questioned: keeping in mind the re-occupation by the Soviet Union of Lithuania's territory in 1944–1945, one can recall the undisputed fact that then the Soviet armed forces met a fierce armed resistance that lasted around 10 years.⁸⁴ However, if to turn back to 15 June 1940, it would be hard to disagree with the position that the Soviet armed forces had not become less hostile to Lithuania merely because the latter had been forced to agree with the invasion.⁸⁵ In addition, the decisive factor for the existence of a military occupation is the military might of the occupying power and its *de facto* rather than *de jure* authority.⁸⁶ It is clear from the circumstances that from 15 June 1940 the Soviet military presence played a decisive role in managing Lithuania's affairs and due to that military presence the Soviet officials had full *de facto* authority in Lithuania, although *de jure* authority until the formal end of the annexation on 3 August 1940 had been in hands of the so-called "people's government" of Lithuania.

Moreover, even if to assume that the Soviet occupation of Lithuania can be qualified as *pacific* rather than belligerent (i.e. accomplished with the consent and without resistance of the occupied state), that would not change the legal regime applicable to that occupation: *pacific* occupation should be treated in the same way as the use of force and the same norms of international law should be applied as in the case of classic military occupation.⁸⁷ Indeed, it can be asserted that, in the context of the Second World War, the rule requiring to apply the 1907 Hague Regulations regime of belligerent occupation to all the forcible *pacific* occupations has already emerged⁸⁸. The legal grounds for that rule was "Marten's clause" inserted into the preamble of the IV Hague Convention of 1907 Respecting the Laws and Customs of War on Land:⁸⁹ according to that clause, "the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from usages established among civilised peoples, from laws of humanity, and the dictates of the public conscience". Therefore, it follows that no grey zone could ever be left for non-classical (*pacific*) occupations, as in that case the inhabitants of the "peacefully" occupied territory would be denied the protection of international law and would be left at the mercy of the occupying power; moreover, if to make the applicability of

⁸⁴ The organised armed resistance against the second Soviet occupation lasted until 1953 when the leader (underground president) of the Resistance Jonas Žemaitis was captured, while the last active Resistance fighter fell in 1965. See more about Lithuania's armed Resistance to the Soviet occupation and its legal status in: Žalimas, D. "Legal Status of Lithuania's Armed Resistance to the Soviet Occupation in the Context of State Continuity", *Baltic Yearbook of International Law*, 2011, Vol. 11, pp. 67–112.

⁸⁵ Katuoka, S., Žilinskas, J., "Lietuva ir tarptautinė teisė: 1940–1991 m. SSRS okupacijos neigimo teisiniam diskurse nepagrįstumas [Lithuania and International Law: Ill-Soundness of Denial of the 1940–1991 USSR Occupation in the Legal Discourse]", footnote 37, p. 278.

⁸⁶ Ibid., p. 281; Bothe, M. "Occupatio Belligerent" in: *Encyclopedia of Public International Law*, 1982, Vol. 4, p. 65.

⁸⁷ Bothe, M. "Occupatio Belligerent", footnote 86, pp. 67–69.

⁸⁸ Mälksoo, L. *Illegal Annexation and State Continuity: the Case of the Incorporation of the Baltic States by the USSR*, footnote 1, pp. 174–177, 189–191; Žilinskas, J. "Status of Members of Anti-Soviet Armed Resistance (Partisans' War) of 1944–1953 in Lithuania under International Law", *Baltic Yearbook of International Law*, 2011, Vol. 11, pp. 41–44.

⁸⁹ See footnote 33.

the legal regime of occupation dependent on the resistance of the occupied state, then that regime would almost always be inapplicable, in particular if the much weaker state, whose resistance would be hopeless, is subjected to the occupation. In other words, the law and administration of justice would be left in the hands of the criminal (aggressor). The same would also happen in cases where the applicability of the law of occupation was dependent solely on the discretion of the occupying power (e.g. the decision to terminate the regime of occupation after the suppression of resistance). That obviously would be inconsistent with the Hague regime.

That development of international law, according to which the same international legal regime has to cover all kinds of foreign occupations, is expressly reflected in the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention),⁹⁰ which includes the rules applicable to occupied territories: Article 2 states that the Convention is applicable, *inter alia*, in cases when a state of war is not recognised by one of the parties, and to all cases of partial or total occupation of the territory, *even if the said occupation meets with no armed resistance*.

Thus, once more it can be confirmed that, once it is established that in 1940 the Soviet Union occupied Lithuania's territory and the subsequent annexation of that territory was null and void, the only possible international legal status of Lithuania's territory in 1940–1990 was that of occupied territory, even if the Soviet Union did not acknowledge that status and did not apply the law of occupation.⁹¹ However, that brings into question the status of the Lithuanian SSR – the entity established by the Soviet Union in the occupied territory of Lithuania. Again it is only logical that, as well as its predecessors also established under the dictate of the Soviet officials – “Lithuanian people's government” and “Lithuanian people's Seimas”, the Lithuanian SSR had been nothing more than *a puppet Soviet entity*,⁹² i.e. it was a mere blind tool of the Soviet Union, which had to disguise the aggression rather than to be an autonomous national authority.⁹³ Therefore, from the standpoint of international law, the Lithuanian SSR was an artificial pseudo-state entity of the Soviet Union rather than any form of the statehood of Lithuania. With respect to the State of Lithuania, the Lithuanian SSR was always a part of the state machinery of the foreign state, which had been established illegally on the territory of the State of Lithuania.

⁹⁰ See the text in the website of the International Committee of the Red Cross: <<http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument>>.

⁹¹ The refusal to apply the international legal rules on occupation led to the commission of numerous international crimes by the Soviet occupation regime, including the following crimes against humanity and war crimes: mass killings and torture of the population and the members of the Resistance, denying the latter category guarantees provided for combatants and prisoners of war by international law, mass deportations of the civilian population, mass arrests, deprivation of liberty and other persecutions on political grounds, forced mobilisation and recruitment to the occupation armed forces. See *Crimes of the Soviet Totalitarian Regime in Lithuania*. Vilnius: Solidarity, 2008.

⁹² Marek, K. *Identity and Continuity of States in Public International Law*. Geneva: Librairie E. Droz, 1954, p. 396.

⁹³ Romeris, M. *Lietuvos sovietizacija, 1940-1941 [The Sovietisation of Lithuania, 1940-1941]*. Vilnius: Lituanus, 1989, p. 38.

Thus, the Lithuanian SSR could never be regarded as a state and a subject of international law; the term “Lithuanian SSR” rather reflected the following means of administration of the occupied territory of the Republic of Lithuania: to administer that territory, the USSR established its subordinate and controlled administration and granted it a “national” name (the “Lithuanian” SSR) to demonstrate the alleged national and representative character of that administration.⁹⁴ Obviously no legal ties could ever exist between the Republic of Lithuania (as a state and a separate subject of international law) and the Lithuanian SSR (as a part of the state machinery of the other state); the latter could not have any legal powers to govern the affairs of the former.

On 7 February 1990, the Resolution on the 1939 German–Soviet Treaties and the Liquidation of their Consequences for Lithuania⁹⁵ was adopted by the last Supreme Council of the Lithuanian SSR shortly before the restoration of the independence of the Republic of Lithuania. After condemning the aggression against Lithuania and its occupation and annexation as international crimes committed by the USSR, the Supreme Council of the Lithuanian SSR made the following decisions: 1) to declare unlawful and invalid the 21 July 1940 Declaration of the puppet “People’s Seimas” of Lithuania regarding Lithuania’s entry into the USSR; 2) to state that the 3 August 1940 Soviet Law on the Admission of Lithuania into the USSR was both unlawful and non-binding upon Lithuania. That Resolution of the Supreme Council of the Lithuanian SSR was unique, as even the Lithuanian SSR itself acknowledged the illegality of its nature and establishment in 1940.

The final outcome of the application of the principle *ex injuria non oritur jus* is **the continuity of the Republic of Lithuania**: the Soviet aggression could not abolish the State of Lithuania as a subject of international law, i.e. the Republic of Lithuania continued to exist as a state and an international legal person, despite the Soviet occupation of the whole of its territory and almost the complete destruction of state institutions (only the Lithuanian diplomatic service abroad had continued its activities representing the last Government of the Republic of Lithuania, dissolved on 15 June 1940). Therefore, during the whole period of 1940–1990, the Republic of Lithuania and the USSR had always been *two different States and subjects of international law*, although the former had been illegally occupied by the latter.

Both pillars of the continuity of the State of Lithuania, the will of the state to exist and international recognition of the continuity,⁹⁶ have been present. As regards the latter pillar, the recognition of the legal continuity of the Republic of Lithuania logically

⁹⁴ Sinkevičius, V. *Lietuvos Respublikos pilietybė 1918–2001 metais [Citizenship of the Republic of Lithuania in 1918–2001]*. Vilnius: TIC, 2002, p. 122.

⁹⁵ Official Gazette *Lietuvos TSR AT ir Vyriausybės žinios*, 1990, No 8-182.

⁹⁶ Those pillars of state continuity are pointed out by Ineta Ziemele. See Ziemele, I. *State Continuity and Nationality: the Baltic States and Russia (Past, Present and Future as Defined by International Law)*, footnote 1, p. 126.

followed the non-recognition of the illegal annexation of the Baltic States.⁹⁷ As regards the former pillar, the continuous resistance to the Soviet occupation with the aim to restore the independence of the country played a key role. That was demonstrated first and foremost by the strong armed resistance to the second Soviet occupation; after its suppression on the first occasion the resistance came from the underground together with the Lithuanian Freedom League and the Sąjūdis in 1987–1988, and that ultimately led to the restoration of the independence of the Republic of Lithuania in 1990.⁹⁸

GERMAN OCCUPATION OF 1941–1945

After the attack by Germany on the Soviet Union on 22 June 1941, German troops invaded the territory of Lithuania. The Soviet occupation was replaced by the Nazi occupation. At that time, the Lithuanian Activist Front made attempts to re-establish the independence of the state. According to a devised plan, an anti-Soviet uprising was to break out immediately following the German attack on the Soviet Union. The declaration of the restoration of independence was envisaged to follow right after that, as well as the announcement about the formation of the Lithuanian government in the hope that Germany would recognise it.

⁹⁷ See for comprehensive review of state practice concerning non-recognition of the annexation of the Baltic States and the continued recognition of their legal existence: Hough III, W. J. H. “The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory”, footnote 22. See also the relevant resolutions of the Parliamentary Assembly of the Council of Europe and the European Parliament: Council of Europe, Parliamentary Assembly, *On the Situation in the Baltic States on the Twentieth Anniversary of Their Forcible Incorporation into the Soviet Union*, Resolution No 189(1960), 29 September 1960: <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta60/ERES189.htm>>; Council of Europe, Parliamentary Assembly, *On the Situation of the Baltic Peoples*, Resolution No 872(1987), 28 January 1987: <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta87/ERES872.htm>>; European Parliament, Resolution, 13 January 1983 in: Hough III, W. J. H. “The Annexation of the Baltic States and Its Effect on the Development of Law Prohibiting Forcible Seizure of Territory”, footnote 22, p. 439. In all these resolutions, it was stated that the Soviet annexation had not gained recognition and, as a corollary, a great majority of the democratic states continued to recognise the independent existence of the Baltic States. The 1975 Helsinki Final Act of the Conference for Security and Cooperation in Europe, which provided for the principle of the inviolability of borders, had not changed the policy of the non-recognition of the annexation of the Baltic States, as pursued by the majority of the then-existing democratic States: there was also the provision of the Helsinki Final Act which obliged states not to recognise any occupation or other territorial acquisition contrary to international law.

⁹⁸ In its 22 February 2013 Ruling (English text available on the official website of the Constitutional Court of the Republic of Lithuania: <<http://www.lrkt.lt/dokumentai/2013/r130222.htm>>), the Constitutional Court of the Republic of Lithuania, *inter alia*, noted that “the restoration of the independence of the State of Lithuania was grounded on the continuity of the State of Lithuania, which means that the aggression that the USSR began against the Republic of Lithuania on 15 June 1940 (*inter alia*, the occupation and annexation of the territory of the Republic of Lithuania) did not abolish the State of Lithuania as a subject of international law and its sovereign powers; due to the occupation of the territory of Lithuania and demolition of its state institutions, the implementation of the sovereign powers of the State of Lithuania, *inter alia* its international rights and obligations, were suspended; the annexation of the territory of the Republic of Lithuania perpetrated by the USSR on 3 August 1940, as a continuation of the aggression, was an act null and void, thus, from the viewpoint of the international law, the territory of the Republic of Lithuania was occupied by another state and it was never a legal part of the USSR”.

On 23 June, the rebels took the radio station in Kaunas and announced the restoration of the state. On the following day, Kaunas was under the control of the rebel units. The uprising spread through the whole country, was joined by 16 000–20 000 people, and cost around 600 lives.⁹⁹

Following the Nazi occupation of the country, the rebel groups were disbanded. On 24 June 1941, the Provisional Lithuanian Government was established. It pursued the aim of restoring the situation that had been in Lithuania before the Soviet occupation. However, as the Nazis introduced the civilian administration of the country and established the Ostland, the Provisional Government was forced to self-disband on 5 August.¹⁰⁰ The activity of the Provisional Government is viewed to have been controversial. The June uprising and the Provisional Government sought to re-establish the independent state of Lithuania, but their goal was not achieved. Meanwhile, the acts of genocide against Jews were started.

Germany set up the General Commissariat of Lithuania, which had all the rights of a civilian government in the country. Industrial establishments were not returned to their owners but were ceded to German enterprises. Taxes on land were so high that it was impossible to pay them at all. In 1942, the forced deportation of manpower to Germany began and, until mid-1944, approximately 60 000 Lithuanian inhabitants were deported.¹⁰¹ Damage was also caused in the sphere of education: the universities in Vilnius and Kaunas were closed in 1943 – in retaliation for failed attempts by the Nazis to form a Lithuanian SS legion.

The most tragic of the atrocities perpetrated at the time of the Nazi occupation was the genocide against Jews. In early 1941, special action groups (*Einsatzgruppen*) were created in Germany for conducting the extermination of Jewry in the captured territories of the Soviet Union. A unit headed by Joachim Hamann was sent to carry out these criminal acts throughout provincial Lithuania, where it operated with the involvement of collaborating Lithuanian volunteers, self-defence battalions, and the special unit in Vilnius. According to the latest data, 195 000 Jews were murdered in Lithuania.¹⁰²

By the end of 1941, the unfulfilled efforts to regain independence, the German racial policy, and economic exploitation provoked Lithuanian opposition to the Nazi occupation. Its participants engaged in various forms of unarmed resistance: sought to preserve national culture and educational establishments; sabotaged the fulfilment of duties imposed by the Nazis; boycotted recruitment to military German formations; were

⁹⁹ Brandišauskas, V., *Siekiai atkurti Lietuvos valstybę (1941.06–1941.09)* [Efforts to Restore the State of Lithuania (06.1941–09.1941)], Vilnius: The State Publishing Centre, 1996, pp. 85–87.

¹⁰⁰ *Lietuvos laikinoji vyriausybė: posėdžių protokolai* [The Provisional Lithuanian Government] (minutes of sittings), Vilnius: The Genocide and Resistance Research Centre of Lithuania, 2001, p. 7.

¹⁰¹ *Lietuva 1940–1990: okupuotos Lietuvos istorija* [Lithuania 1940–1990: the History of Occupied Lithuania], footnote 52, p. 241.

¹⁰² Bubnys, A., *Vokiečių okupuota Lietuva (1941–1944)*, [Lithuania under the German Occupation (1941–1944)], Vilnius: The Genocide and Resistance Research Centre of Lithuania, 1998, p. 206.

hiding to escape deportation for forced labour in Germany; condemned collaborators; and endeavoured to reveal and disclose the aims of the German policy in Lithuania.

On 25 November 1943, the anti-Nazi resistance organisations united and formed the Supreme Committee for the Liberation of Lithuania. On 16 February 1944, the Committee issued the declaration “To the Lithuanian Nation”. It contained an activity programme and provided for the restoration of independent Lithuania, while underlining that Lithuania would be a democratic state. The activity of the Committee was to be regulated by the Provisional Norms of the Constitution of the State, drawn up on the basis of the 1922 Constitution of the State of Lithuania. It was envisaged that a future setup of the state would thereafter be decided by an elected Seimas.¹⁰³ However, the programme came to nothing; soon afterwards most members of this organisation were arrested by the Nazi authorities.

RESISTANCE TO THE SECOND SOVIET OCCUPATION

Facts. In summer 1944, the army of the Soviet Union re-entered Lithuania. The Soviets started re-occupation, which reminded the Lithuanian inhabitants of the repressions carried out in 1940–1941 and instilled fear. Part of the residents, among them professors, teachers, students, gymnasium pupils, writers, even 225 lawyers – around 60 000 people in total, resolved to leave the country.¹⁰⁴ Others flocked to the forests to start fighting with the occupants. The Soviet army did not liberate Lithuania but reoccupied it, since a liberated country and its people are generally left to organise their lives independently. From the first days, the Soviet authorities installed a brutal repressive government. Even the Soviet documents, when recording the behaviour of the Soviet troops, indicated that “the situation was difficult due to abuse, plunderage, rape [...] widespread depredation”.¹⁰⁵ According to the official data, within one year (from 1944 until July 1945) in Vilnius alone, 36 104 soldiers of the Red Army were punished for various crimes, while 22 of them were subject to punishment by the death penalty.¹⁰⁶ A wave of Soviet violence swept over Lithuania; no one could feel safe. People were forced to go into hiding, flee into the forests, and take armed resistance against the punishers.

The same summer, in 1944, the Soviets ordered the forced mobilisation of the Lithuanian residents to the Red Army. Young people tried to avoid mobilisation on a mass scale. By 1 June 1945, the Soviet authorities seized 40 000 people hiding from mobilisation; another 3 819 of the young men who were forcefully captured managed to escape from military units.¹⁰⁷ To reach the aims of mobilisation and force the Lithuanian youth to serve

¹⁰³ “Į lietuvių tautą” [“To the Lithuanian Nation”], *Laisvės kovotojas* [Freedom Fighter], 1944, No 21.

¹⁰⁴ Truska, L., *Lietuva 1938–1953 metais* [Lithuania during 1938–1953], Kaunas: Šviesa, 1995, p. 126.

¹⁰⁵ Tininis, V., *Prievartinė mobilizacija į raudonąją armiją* [Forced Mobilisation into the Red Army], Vilnius: The Genocide and Resistance Research Centre of Lithuania, 2014, p. 28.

¹⁰⁶ Ibid., p. 30.

¹⁰⁷ Ibid., p. 58.

in the Soviet army, the Soviets resorted to acts of terror: 48 homesteads were set on fire in the Merkinė rural district; 22 people were killed in the village of Klepočiai. During 1944–1945, the NKVD executors murdered 12 226 inhabitants, most of whom were hiding from military mobilisation.¹⁰⁸

The Soviet terror in the second half of 1944 spurred the growth of armed anti-Soviet partisan resistance, which lasted until 1953. A no less compelling reason to become a resistance fighter was patriotism. Part of the Lithuanian army officers, frustrated by the non-resistance and submission in 1940, resolved to defend freedom by arms. Motivated by patriotism, senior pupils, followed by others and, in some cases, all their classmates together with the teacher, joined the ranks of freedom fighters. Another reason to be involved in the armed underground resistance against the Soviets was the expectation to receive support from democratic western states in liberating the country, and it was believed that help would come only if they fought themselves. Those joining the partisans were not only aware they would not be able to return to civilian life, but also that there was little hope of surviving. They also relied on the provisions of the Atlantic Charter, stating that the situation that had existed before the war should be restored after its end.

In 1944, atrocities against the Lithuanian population resumed: people were arrested, sent to camps, or deported to Siberia. Those who managed to escape, together with their non-deported family members and close ones, felt the responsibility to take revenge on the wrongdoers and unite with the freedom fighters. Collectivisation turned farmers into landless serfs, which created additional reasons to go into the forests and punish those who had deprived them of property. All this determined that, until 1949, one lost freedom fighter was replaced by another; therefore, the number of partisans did not show a decline.¹⁰⁹ Subsequently, the Lithuanian freedom fight was in part continued as a cold war, keeping alive the hope that the Soviet Union would be destroyed in the third world war and Lithuania would regain its freedom. This belief was reinforced by the Korean War, but it faded soon afterwards.

The Lithuanian freedom fight against the second Soviet occupation can be divided into three periods: summer 1944 to summer 1946; summer 1946 to 1948; and 1949 to 1953.

The first period was characterised by the spontaneous formations of large – one hundred or more strong – partisan units, which did not avoid entering open battles with Soviet troops, e.g. 500 partisans fought in the battle of Birbiliškės in January 1945; they were able to take small towns at times but did sustain large losses in open combats. During this period, the operating units of partisans united into detachments, first of all, forming the Dainava and Tauras Districts.¹¹⁰

¹⁰⁸ *Lietuva 1940–1990: okupuotos Lietuvos istorija [Lithuania 1940–1990: the History of Occupied Lithuania]*, footnote 52, p. 283.

¹⁰⁹ Girnius, K., *Partizanų kovos Lietuvoje [The Fights of Partisans in Lithuania]*, Vilnius: Mokslas, 1990, p. 116.

¹¹⁰ *Lietuva 1940–1990: okupuotos Lietuvos istorija [Lithuania 1940–1990: the History of Occupied Lithuania]*, footnote 52, p. 319.

The formation of partisan districts was finalised during the second period, resulting in nine districts. The tactics were changing towards the more frequent mounting of ambushes and unexpected attacks, as well as interfering with the elections and events organised by the Soviets. Large numbers of bunkers were built in the forests; partisans were increasingly facing greater everyday difficulties, as well as shortages of food and medicines.

The third period of partisan resistance started in 1949. In February 1949, partisan commanders convened for a meeting during which they overviewed the consequences, essence, and goals of their fight for freedom. The resistance movement against the Soviet occupation, which represented and united all military and public formations of the Lithuanian nation resisting against the Soviet occupation and fighting with the occupation forces of the Soviet Union, was named the Lithuanian Freedom Fight Movement (*Lietuvos Laisvės Kovos Sąjūdis* or LLKS, hereinafter referred to as the LLKS). The Council and the Presidium of the Council of the LLKS were established, and Jonas Žemaitis (codename Vytautas) was appointed as Chairman of the Presidium of the Council of the LLKS and Commander-in-Chief. The meeting considered 23 questions and adopted the ensuing documents, among which the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 (hereinafter referred to as the Declaration of 16 February 1949) was one of the major documents adopted by the Council of the LLKS.

From 1949, the situation of partisans worsened. As the farmers had been forced into collective farms, food shortages were felt ever more acutely. The Soviet security forces created a network of informants to spy on the partisans and infiltrated agents into the units of resistance fighters. For these reasons, the heads of partisans allowed no more newcomers to enter their ranks.¹¹¹

The brutal repressions carried out by the Soviet occupants, the mass deportations of the Lithuanian population to the most remote and harshest regions of the Soviet Union, the forced herding of the inhabitants into collective farms, the indoctrination with communist ideology, the abolishment of basic human rights and freedoms, and other coercive measures undertaken by the occupation authorities had worn the nation out; the armed resistance against the Soviet occupants was fading away. A nearly decade-long fight largely ended in 1953, having claimed 20 000 lives of partisans and their supporters.

The years 1945–1953 marked not only the time of armed and other forms of resistance against the Soviet occupation but also one of the darkest periods in the history of Lithuania. During all this period, the Lithuanian population was mostly deported to Siberia, where in total 111 308 inhabitants¹¹² were sent, and 142 579 people were taken to camps.¹¹³ But even while incarcerated in camps, the Lithuanians sustained the spirit of

¹¹¹ Ibid., p. 317.

¹¹² Anušauskas, A., *Lietuvių tautos sovietinis naikinimas 1940–1958 [The Soviet Annihilation of the Lithuanian Nation in 1940–1958]*, footnote 55, p. 330.

¹¹³ Ibid., p. 337.

resistance: in 1953, during two uprisings, two Lithuanians were killed in a camp in Norilsk, while 10 Lithuanians were killed and nearly 30 were injured in a camp in Vorkuta.¹¹⁴

Agricultural collectivisation was shocking in both the economic and moral senses. Within the short period from 1947 to 1950, 89 per cent of the Lithuanian farmers were forced into collective farms. Agriculture suffered serious deterioration; the system of life built up over centuries was destroyed.

The national composition of the residents of Lithuania was changing. By 1950, the country saw the inflow of 130 000 Russian-speaking individuals, who took up various leading positions. The Russian language became established in official life. The Lithuanians began to feel like second-class citizens in their own native country.

The Lithuanian Catholic Church was subject to persecution: 364 priests and 4 bishops were arrested and executed; all Catholic abbeys were liquidated and 136 churches were closed.¹¹⁵ Enormous damage was inflicted on old Lithuanian culture: books published during the independence period were destroyed; about 500 sculptures and monuments were demolished; organ and jazz music was forbidden. Socialist realism was gradually implanted into the culture.

The change came with Joseph Stalin's death, when de-Stalinisation began. Those who were deported and held in camps were allowed to return to Lithuania. Lithuanian literature and the Lithuanian language gained more freedom. The possibility opened up for correspondence with citizens of foreign states, who were also allowed to arrive in Lithuania. Although carefully controlled by the Soviet authorities, cultural exchange as well as the exchange of scientists and artists with western states was established. The criminal, civil, and civil procedure codes of Soviet Lithuania were adopted. Such changes raised the hope that the Soviet regime was weakening and there was the need to seek new forms of unarmed resistance in order to overthrow it. In 1956, these hopes were embodied in the commemoration of All Souls' Day at the cemeteries in Vilnius and Kaunas. Several hundred young people gathered at Rasų Cemetery in Vilnius, where they sang the anthem "Tautiška giesmė" of independent Lithuania, Catholic hymns, and patriotic songs, and subsequently went on a demonstration to the centre of the city. The slogans "Freedom", "For the independence of Lithuania", and "Long live Hungary" (where the People's Revolution was taking place at the time) were chanted in Kaunas. The demonstrations and rallies expressed public protest against the prohibition to observe religious holidays and voiced the requirement to ensure the human rights declared in the Soviet Constitution.

Anti-Soviet underground organisations started to form. Their members disseminated proclamations, raised the Lithuanian national flag on 16 February – the Day of the Restoration of the Independence of Lithuania, and inspired the hope of independence. The unarmed anti-Soviet resistance was increasingly gaining momentum.

¹¹⁴ Ibid., pp. 376–377.

¹¹⁵ Ibid., p. 373.

It came as a shock when, in protest against Soviet rule, nineteen-year-old Romas Kalanta set himself on fire in a public square in Kaunas in 1972. Anti-Soviet demonstrations broke out in the city; the people were chanting “Freedom for Lithuania”, as well as “Occupants, go away from Lithuania”. The militia and the troops of the Internal Affairs Ministry were used to suppress the peaceful demonstrators and more than 400 people were arrested.

In 1972, the more active priests started publishing the clandestine periodical the *Chronicle of the Catholic Church in Lithuania*. An underground seminary for Catholic priests was founded and began its activity. In 1978, the Catholic Committee for the Defence of the Rights of Believers was formed; this committee prepared and sent to various world organisations around 50 documents revealing the actual situation of Catholics in Lithuania.

The year 1976 saw the beginning of the human rights movement. At the heart of this movement was the Lithuanian Helsinki Group, established to monitor the adherence of Soviet rule to the provisions of the Helsinki Final Act (1975) concerning respect for human rights, in particular freedom of conscience, religion, belief, and thought. All infringements were documented and reported to the world community. The group drew up around 30 documents.¹¹⁶

Another underground organisation – the Lithuanian Freedom League – established in 1978 announced that it would raise the issue of the independence of Lithuania in the international arena and pursue the aim of restoring the independence of the state. In 1979, the Lithuanian Freedom League initiated the Baltic Appeal, which was signed by 45 Estonian, Latvian, and Lithuanian citizens (it was later called the Memorandum of 45 Baltic Nationals). Addressed to the states of the world and the United Nations, the Baltic Appeal called for support in implementing the aspirations for independence and requested the consideration of the situation of the Baltic States in one of the UN sessions. In 1983, the European Parliament passed a resolution in support of the Baltic Appeal. Thus, as a result of the efforts of the Lithuanian Freedom League, for the first time after the Second World War, attention was paid to the Baltic States.

Lithuania had an extensive underground publishing network, which illegally produced publications featuring Catholic, national, liberal, and cultural issues. An underground printing-house was operating; up to 30 titles of periodicals were published.

At the start, the armed anti-Soviet Lithuanian partisan resistance and, later, the unarmed resistance testified that Lithuania had never faltered in its quest for independence. As the Soviet Union was taking a new course, Lithuania was one of the first to set itself the goal to regain its freedom.

Legal Status of the Resistance to the Soviet Occupation. To determine the legal status of the Resistance to the Soviet occupation, one first has to find out what the civic status

¹¹⁶ *Lietuvos Helsinkio grupė [The Lithuanian Helsinki Group]*, Vilnius: The Genocide and Resistance Research Centre of Lithuania, 1999, p. 3.

of the members of the Resistance was, i.e. whose nationals they were under international law. It is logical to assert that from the continuity of statehood follows the continuity of nationality,¹¹⁷ as nationality is dependent upon statehood.¹¹⁸ Therefore, if the continuity of an occupied state is preserved under international law, the continuity of nationality of that state has to be safeguarded as well.

As regards the continuity of nationality of the Republic of Lithuania in the light of the imposition of the Soviet nationality on Lithuanian nationals in 1940, two points have to be noted. First of all, any imposition on nationals of the occupied State of the nationality of the occupying State, as a consequence of the aggression, is illegal, null and void due to the operation of the above-mentioned principle *ex injuria jus non oritur*.¹¹⁹ Secondly, there is a specific guarantee for the continuity of nationality of an occupied State: namely, an occupying power has a specific duty not to impose its nationality on a national of an occupied territory.¹²⁰ Therefore, under international law, nationals of the Republic of Lithuania retained their nationality regardless of the imposition on them of Soviet nationality: that is why all the persons who had been nationals of the Republic of Lithuania on the day of the Soviet occupation (15 June 1940) and their descendants had to be presumed as automatically continuing nationality of the Republic of Lithuania, while the Soviet nationality imposed on them had to be regarded as null and void.¹²¹

¹¹⁷ Ziemele, I. *State Continuity and Nationality: the Baltic States and Russia (Past, Present and Future as Defined by International Law)*, footnote 1, pp. 12, 388, 391.

¹¹⁸ Crawford, J. *The Creation of States in International Law*. Oxford: Clarendon Press, 2006, p. 52.

¹¹⁹ Imposition of nationality of an occupying power on nationals of an occupied state is regarded as one of the most serious breaches of international law. See Marek, K. *Identity and Continuity of States in Public International Law*, footnote 92, p. 83.

¹²⁰ Under Article 45 of the 1907 Regulations Respecting the Laws and Customs of War on Land (footnote 33), “it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power”; that clearly includes prohibition to impose nationality of an occupying power on nationals of an occupied state. Meanwhile, according to Article 51 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (footnote 91), “an occupying power may not compel protected persons to serve in its armed or auxiliary forces”; that kind of restriction can be explained only by the continuity of nationality of an occupied state and, as its corollary, the prohibition to change that nationality.

¹²¹ As the Constitutional Court of the Republic of Lithuania noted in its 22 February 2013 Ruling (footnote 99), “from the continuity of the State of Lithuania there stems a continuity of citizenship of the Republic of Lithuania which *inter alia* implies that, from the viewpoint of international and Lithuanian constitutional law, the imposition of USSR citizenship upon citizens of the Republic of Lithuania in 1940, as a consequence of the aggression of the USSR, was an act null and void; thus, this act was not a legal ground to lose citizenship of the Republic of Lithuania. Consequently, during the years of the Soviet occupation, citizens of the Republic of Lithuania (the persons who held citizenship of the Republic of Lithuania on 15 June 1940 and their children) were also not bound by the obligations related to USSR citizenship, *inter alia* the general military obligation of the USSR introduced on the occupied territory of the Republic of Lithuania, which had been imposed upon them unlawfully”. The Court also referred to its previous Ruling of 13 November 2006 (English text available on the official website of the Constitutional Court of the Republic of Lithuania: <http://www.lrkt.lt/dokumentai/2006/r061113.htm> (last accessed on 1 December 2013)), repeating that the “citizenship of the USSR” and the “citizenship of the Lithuanian SSR” “were imposed by force, were and are null and void; even though the citizens of the Republic of Lithuania temporarily used the passports of citizens of the USSR, they could not be treated as citizens of the USSR, i.e. as citizens of the state which had declared them as its citizens against their own will”.

Thus, in general, all the members of the Resistance (both of the armed units and of the other underground organisations) were nationals of the Republic of Lithuania who could not have any commitments and obligations of loyalty towards the Soviet State¹²² (e.g. they were not obliged to comply with conscription to the Soviet armed forces). Moreover, as nationals of the illegally occupied state, they had a legitimate right to resist the occupation and to form any organisations and authorities for that purpose. Their Resistance to the occupation was legal and, as far as the armed Resistance is concerned, could be regarded as a manifestation of self-defence pursued on behalf of their State.¹²³ The corollary of that is the presumption of innocence of all those Lithuanian nationals who have been repressed by the Soviet authorities for their Resistance, irrespective of whether they have been repressed in an extrajudicial (summary) way or sentenced in accordance with judicial procedure for crimes against the Soviet State and its totalitarian regime.

Due to the continuity of the State of Lithuania and its nationality, the Resistance in Lithuania has to be differentiated from classical national liberation movements striving for self-determination by establishing an independent State. The Resistance was acting on behalf of the already existing State of Lithuania and sought to defend that state against the foreign occupation and restore its independence. Therefore, the partisan war against the Soviet occupation had to be regarded as an international armed conflict, a war between two states (the Soviet Union, as an occupying power, and the Republic of Lithuania, as an occupied State represented by the Resistance).¹²⁴

Two more conclusions regarding the status of the armed Resistance can be drawn, taking into account the continuity of the Republic of Lithuania.¹²⁵ First, it logically follows that the armed forces of the Resistance had to be regarded as belligerent forces of the Republic of Lithuania (*the armed forces of a State* rather than insurgents or rebels). Service in these forces

¹²² That was also confirmed by the Constitutional Court of the Republic of Lithuania (see footnote 121).

¹²³ That appraisal is also given by the Lithuanian legislation. e.g. it follows from the preamble of the Law of the Republic of Lithuania on the 16 February 1949 Declaration of the Council of the Lithuanian Freedom Fight Movement (Official Gazette *Valstybės žinios*, 1999, No 11-241; English text is available in: Žalimas, D. “Legal Status of Lithuania’s Armed Resistance to the Soviet Occupation in the Context of State Continuity”, footnote 84, pp. 105–110 (Annex 1)), that the armed Resistance of 1944–1953 is treated as self-defence of the State of Lithuania against the Soviet occupation. The armed fight of 1944–1953 by the forces of nationals of the Republic of Lithuania (volunteer soldiers) against the second Soviet occupation was assessed as self-defence of the Republic of Lithuania against the USSR aggression also by the 12 March 2009 Declaration of the Seimas of the Republic of Lithuania on Recognition of Jonas Žemaitis as the Head of the State of Lithuania (Official Gazette *Valstybės žinios*, 2009, No 30-1166; English text is available in: Žalimas, D. “Legal Status of Lithuania’s Armed Resistance to the Soviet Occupation in the Context of State Continuity”, footnote 84, pp. 111–112 (Annex 2)).

¹²⁴ Gailius, B. *The Guerrilla War of 1944–1953 in the Historical, Political and Legal Culture of Contemporary Lithuania: Summary of Doctoral Dissertation*. Vilnius: Vilnius University, 2009, pp. 23–24.

¹²⁵ See in more detail: Žalimas, D. “Legal Status of Lithuania’s Armed Resistance to the Soviet Occupation in the Context of State Continuity”, footnote 84, pp. 87–104.

is considered to have been service to the State of Lithuania.¹²⁶ Under international law, the members of these forces had to be entitled to the status of combatants and, in case of captivity, prisoners of war.¹²⁷ Indeed, the partisans complied with the criteria of combatants – soldiers of volunteer armed forces – provided by international law of that time¹²⁸ (e.g. with the criteria laid down in Article 1 of the 1907 Hague Regulations,¹²⁹ according to which a volunteer soldier has to be considered a combatant if he is commanded by a person responsible for his subordinates, has a fixed distinctive emblem recognisable at a distance, carries arms openly and conducts operations in accordance with the laws and customs of war).

Secondly, the leadership of the centralised armed Resistance to the second Soviet occupation, i.e. the Council of the Lithuanian Freedom Fight Movement (the Council of the LLKS) established in February 1949, is considered to have been *the legitimate government of the Republic of Lithuania*,¹³⁰ while the head of the Resistance (the Chairman of the Presidium of the LLKS Council Jonas Žemaitis) is regarded as *the then acting head of the State of Lithuania* (as was proclaimed by the 12 March 2009 Declaration of the Seimas of the Republic of Lithuania on Recognition of Jonas Žemaitis as the Head of the State of Lithuania¹³¹). In

¹²⁶ As it follows from the 22 February 2013 Ruling of the Constitutional Court of the Republic of Lithuania (footnote 79), prior to the restoration of the independence the service to the Republic of Lithuania was possible only in the survived institutions of the State of Lithuania – the diplomatic missions and consular posts abroad (the diplomatic service of the Republic of Lithuania) – and in the structures (*inter alia*, in the Lithuanian Freedom Fight Movement) of the organised armed Resistance against the occupation, which took place for a certain time on the occupied territory of the Republic of Lithuania.

¹²⁷ At least the 1907 Hague Regulations and the 1929 Geneva conventions for the Amelioration of the Condition of the Wounded and Sick in armies in the Field and on the Treatment of Prisoners of War could be applicable to both parties to the conflict (the partisan forces of the Republic of Lithuania and the USSR armed forces). See Žilinskas, J. “Status of Members of Anti-Soviet Armed Resistance (Partisans’ War) of 1944–1953 in Lithuania under International Law”, footnote 88, pp. 38–41.

¹²⁸ Gailius, B. *The Guerrilla War of 1944–1953 in the Historical, Political and Legal Culture of Contemporary Lithuania: Summary of Doctoral Dissertation*, footnote 124, pp. 15–16; Gailius, B. *Partizanai tada ir šiandien [Partisans Then and Today]*. Vilnius: Versus aureus, 2006, pp. 31–40; Žilinskas, J. “Lietuvos laisvės kovotojų statuso pagal tarptautinę teisę klausimai ir MGB agentų – smogikų bylos” [Issues of the Status of the Lithuanian Freedom Fighters and Files of the MGB Agents – Stormtroopers] in: *Genocidas ir rezistencija [Genocide and Resistance]*, 2004, Vol. 2, No 16, pp. 96–102.

¹²⁹ See footnote 33.

¹³⁰ That is reflected in Article 2(2) of the Law of the Republic of Lithuania on the 16 February 1949 Declaration of the Council of the Lithuanian Freedom Fight Movement (see footnote 123), which states that LFFM Council “constituted the supreme political and military structure leading this fight and was *the sole legitimate authority* within the territory of the occupied Lithuania”. This provision of the Law relies on paragraph 1 of the 16 February 1949 Declaration of the Council of the LKKS (English text is available on the website of the Constitutional Court of the Republic of Lithuania: < <http://www.lrkt.lt/en/legal-information/lithuanias-independence-acts/declaration-of-the-council-of-the-lithuanian-freedom-fight-movement/364>>), whereby the Council of the LKKS declared itself to be “the supreme political body of the Nation, in charge of the political and military fight for the liberation of the Nation”.

¹³¹ See footnote 123. In this Declaration, it was proclaimed, *inter alia*, that from the adoption of the 16 February 1949 Declaration of the Council of the LLKS to his death on 26 November 1954 the Chairman of the Presidium of the LKKS Council Jonas Žemaitis had been the Head of the State of Lithuania fighting against the occupation who *de facto* performed the duties of the President of the Republic. See also the commentary of the 12 March 2009 Declaration of the Seimas in: Žalimas, D. “Legal Status of Lithuania’s Armed Resistance to the Soviet Occupation in the Context of State Continuity”, footnote 84, pp. 99–102.

general, the term “government” may be characterised by two aspects: the actual exercise of authority and the right or title to exercise that authority.¹³² Against this background, the Council of the LKKS can be seen as sufficiently effective under the circumstances of the foreign occupation: contrary to any government-in-exile, it exercised a certain effective authority in the occupied country; however, it is more important that the Council of the LKKS at that time (1949–1953) was the only authority (the belligerent government) having the right and title to act on behalf of the occupied state in administering its affairs. The source of the powers of the Council of the LKKS to represent the occupied country was the sovereign will of the Lithuanian people (the corpus of nationals of Lithuania). It is clear that under the Soviet occupation there was no possibility for the Lithuanian people to form their government in accordance with the procedures provided by the last valid Constitution of the Republic of Lithuania. The only available way to establish this kind of authority was by utilising the structures of the Resistance.

THE 16 FEBRUARY 1949 DECLARATION OF THE COUNCIL OF THE LKKS

The 16 February 1949 Declaration of the Council of the LKKS may be regarded as the most important act of the Resistance with both constitutional and international legal implications. From an international legal viewpoint, the Declaration may be seen as a unilateral act of the State of Lithuania stating about the continuity of that State and expressing the will of its people to preserve that continuity. From the perspective of constitutional law, it may be treated even as a temporary mini constitution of the occupied Lithuania.

Thus, the Declaration of 16 February 1949 is a legal act of constitutional significance, laying one of the constitutional foundations for the independent State of Lithuania. This document included a programme for the restoration of the independent State of Lithuania and built the constitutional foundations for the independent State of Lithuania to be restored in the future. The Declaration of 16 February 1949 proclaimed that the Council of the LLKS, “expressing the will of the Lithuanian Nation”, during the Soviet occupation “shall be the supreme political body of the Nation, in charge of the political and military fight for the liberation of the Nation” (Article 1). It is universally recognised that the supreme political body of the nation is nothing else but the representation of the nation; therefore, the Council of the LLKS was the sole legal representation of the nation in occupied Lithuania. As already established, the Supreme Soviet of the Lithuanian SSR (Soviet Socialist Republic) and the Council of Ministers of the Lithuanian SSR, which were operating at the time in Lithuania, were not Lithuanian state authorities. These bodies were administrative establishments formed by the Soviet Union, which occupied and annexed

¹³² Crawford, J. *The Creation of States in International Law*, footnote 118, p. 57.

Lithuania. Through these establishments, with support of its army and other repressive structures, the Soviet Union carried out the governance of this territory.

The establishment and operation of the Council of the LLKS meant the continuity of the state authority of the independent Republic of Lithuania of 1918–1940 under the conditions of the Soviet occupation. The legal acknowledgment of this fact – along with other facts such as the diplomatic missions that had represented the Republic of Lithuania before the Soviet occupation and remained in operation thereafter in foreign countries; the passports of the Republic of Lithuania, i.e. citizenship of the Republic of Lithuania, which continued to be recognised; the property of the Republic of Lithuania preserved abroad, etc. – confirms not only the continuity of state authority, but also the continuity of the State of Lithuania under the conditions of the Soviet occupation, when the State of Lithuania was existing *de jure*, although *de facto* was physically suppressed.

The Declaration of 16 February 1949 laid down the constitutional foundations for the future independent State of Lithuania. In terms of the form of government, Lithuania was envisaged as a democratic republic (Article 1); the new future Constitution of Lithuania was to be compliant with human rights and aspirations (principles) for democracy (Article 14); the new Constitution of Lithuania was to be adopted by the Seimas (Article 14); the Seimas was to be elected through free, democratic, universal, and equal elections by secret ballot (Article 5); and only the Seimas and Government elected in the prescribed manner were to be authorised to exercise the governance of Lithuania (Article 5). Until the Seimas adopted a new Constitution, the restoration of the State of Lithuania was prescribed to be “implemented in accordance with the provisions declared by this Declaration and in the spirit of the 1922 Constitution of Lithuania” (Article 14).

Why did the drafters of the Declaration of 16 February 1949 refer to the 1922 Constitution of the State of Lithuania rather than the 1938 Constitution of Lithuania, which was the last Constitution valid in Lithuania? It is generally considered that the continuity of a state is best expressed by precisely the last constitution in force before an occupation, regardless of its content. The answer to the raised question is, at least partly, provided by the provisions of the Declaration that specify the institutions of state power in independent Lithuania. In contrast to the 1938 Constitution of Lithuania, the Declaration of 16 February 1949 envisaged a different system of institutions exercising state power: the 1938 Constitution provided that state power was to be executed by “the President of the Republic, the Seimas, the Government, and the Judiciary” (Article 4), while the Declaration of 16 February 1949 stipulated that state power was to be exercised by the Seimas elected through democratic and universal elections by secret ballot and the accordingly formed Government (Article 5). Under the Declaration of 16 February 1949, the bodies of state power do not include the President – the most important figure of state power according to the 1938 Constitution. The Declaration of 16 February 1949 contains no provisions defining the place of the President in the system of state bodies, his powers, or his relationships

with other branches of government. It is confined to stating that, upon “the restoration of Lithuania’s independence until the Seimas is convened, the Chairman of the Presidium of the LLKS Council shall hold the office of the President of the Republic” (Article 8), also that the “Provisional Government of Lithuania shall be formed upon the assignment of the Chairman of the Presidium of the LLKS Council” (Article 9). However, the following reservation is immediately made: “The Government shall be accountable to the Provisional National Council” (Article 9), i.e. not to the President of the Republic, as established in the 1938 Constitution of Lithuania, but exclusively to the Provisional National Council, which was stipulated to have the legislative power during the period from the end of the occupation until the democratic Seimas of Lithuania was to be convened (Article 6). It was provided that the Provisional National Council would “consist of the representatives of all the regions, districts, groups, high schools, cultural and religious organisations and movements, and nationally supported political parties fighting in Lithuania and abroad under the united leadership” (Article 7).

The provision of the Declaration of 16 February 1949 providing for the restoration of the State of Lithuania in the spirit of the 1922 Constitution of the State of Lithuania shows that the drafters of this declaration did not consider acceptable the presidential form of state government entrenched in the 1938 Constitution of Lithuania (which granted the President the powers to unilaterally appoint and remove the Prime Minister or ministers, to freely exercise his discretion to dissolve the Seimas, and to pass laws). The concentration of all the most essential powers in the hands of the President, i.e. such a framework of state power that lacked checks and balances between the branches of government, would have posed a threat to the rights and freedoms of persons, to society, and to the state. The Declaration of 16 February 1949 gave priority to the 1922 Constitution of the State of Lithuania also for the reason that, under this Constitution, the central body implementing state power was the Seimas. It should be noted, however, that even this Constitution was invoked rather cautiously. The provision “the restoration of the State of Lithuania shall be implemented [...] *in the spirit of the 1922 Constitution of Lithuania*” suggests that the drafters of the declaration found this constitution to be preferable, but not in its entirety. This is understandable, since the system of powers consolidated in the 1922 Constitution, which, in principle, provided for the all-powerful Seimas, was not flawless; it did not ensure the stability of the state and created the preconditions for the abrupt and clear radicalisation of parts of society and confrontations not only between political forces but also within society. These developments triggered the coup d’état in Lithuania in 1926.

The provisions consolidated in the Declaration of 16 February 1949 concerning the system of state authorities and their powers lead to the conclusion that the drafters of the Declaration saw future independent Lithuania as a parliamentary republic; it is characterised by the following main features: (i) the power to legislate is conferred exclusively on the Seimas, to which the Government is accountable; (ii) the Seimas alone has

the right to determine the fate of the Government through granting it the powers to act or removing it upon a motion of no confidence; and (iii) only the Seimas, as the representation of the Nation, is empowered to decide issues related to the political or legal responsibility of the highest state officials. These are also the features of the current Constitution of 1992. Thus, the Declaration of 16 February 1949 consolidated the constitutional tradition of a democratic parliamentary republic, which followed from the 1922 Constitution. Taken together with the commitment to democracy, the reference to the 1922 Constitution also meant the rejection of the authoritarian rule, embodied by the 1938 Constitution.

The Declaration of 16 February 1949 lays down broad provisions regarding human rights and freedoms as well as their guarantees. Article 15 prescribes that the “restored State of Lithuania shall guarantee equal rights for all of Lithuania’s nationals who have not committed any crimes against Lithuanian national interests”. The envisaged reform of agriculture and industry is regarded as a precondition for the “rational settlement of the social problems and the reconstruction of the State economy” (Article 20); this reform was to be “implemented at the very outset of independent existence” (Article 20). The declaration underlines the “positive influence of religion in developing the Nation’s morality and sustaining its strength during the most difficult period of the freedom fights” (Article 18). Its provisions consolidate one of the essential elements of the principle of the rule of law – justice is administered only by courts; it is prescribed that persons “who have betrayed their Homeland during the Bolshevik or German occupation by collaborating with the enemy, having by their actions or influence undermined the Nation’s fight for liberation, and have been stained by treason or blood, shall be held responsible before the Court of Lithuania” (Article 17).

In this context, one specific provision of the Declaration of 16 February 1949 deserves to be mentioned. Article 16 contains the ban on the Communist Party, as the specific legal safeguard of statehood and constitutional order: this Party was declared illegal as dictatorial and contrary to the independence and other fundamentals of the constitutional order of Lithuania. The special prohibition of the Communist Party can be explained by the circumstances and experience of that time: it was namely the Communist Party that had established dictatorship and totalitarian regime in the Soviet Union and introduced it in the occupied Lithuania; the Communist Party had been both the organiser and a tool of the Soviet aggression and repressions, it was the main pillar of the Soviet occupation. Therefore, Article 16 resembled the implementation of the concept of “democracy capable to defend itself”, which later emerged and was developed under the framework of Article 17 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. Against this background, one may recall the 20 July 1957 Decision of the European Commission of Human Rights on admissibility in the case of *Communist Party (KPD) v the*

Federal Republic of Germany,¹³³ where the Communist Party was characterised in a similar way: the Commission noted that the aim of the Communist Party, that is the establishment of “the communist social order by means of a proletarian revolution and the dictatorship of the proletariat”, was contrary to the Convention; in practice, such a Party had intended to destroy the rights and freedoms set forth in the Convention and ultimately had sought the destruction of democracy.

Thus, to sum it up, the Declaration of 16 February 1949 provided for the following main constitutional principles of the future State legal order:¹³⁴ 1) Lithuania had to be a democratic republic; 2) the sovereignty of the Nation; 3) respect for human rights and democratic aspirations; 4) universal, free and democratic elections to the parliament; 5) equality of rights of citizens; 6) respect for religion; 7) socially oriented policy of the State. Most of these principles are currently embodied by the 1992 Constitution.

One of the most important features of the Declaration of 16 February 1949 is that it outlined the principle of the geopolitical orientation of the State of Lithuania, which is also now one of the constitutional traditions and fundamental constitutional principles reflected in the 1992 Constitution. It stated that the Council of the LLKS was contributing “to the efforts of other nations to establish the world of a constant peace founded on justice and freedom and based on the full implementation of the principles of real democracy that follow from the understanding of Christian morality and are declared in the Atlantic Charter, the Four Freedoms, President Truman’s 12 Points, the Declaration of Human Rights and other declarations of justice and freedom” (Article 22). This statement meant Lithuania’s geopolitical orientation towards the democratic western world; Lithuania saw its future as linked exceptionally to the community of democratic western states. Basically, this provision reflects the principle of collective defence. After stating the foregoing, the Council of the LLKS appealed to the whole democratic world for assistance in Lithuania’s liberation fight in order for the goals of this fight to be implemented. The principal goal pursued by the Council of the LLKS was the restoration of a free, democratic, and independent State of Lithuania.

In this context, the most important is that, by virtue of Article 22 of the Declaration of 16 February 1949, the State of Lithuania, for the first time in its history, expressed its commitment to universal human rights standards: that was done by reference and commitment to the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948. The Universal Declaration of Human Rights became binding on the State of Lithuania due to Article 22 of the Declaration of 16 February 1949

¹³³ *Communist Party (KPD) v the Federal Republic of Germany*, 20 July 1957, European Commission of Human Rights, no 250/57, *Yearbook*, 1957, Vol. 1, p. 222.

¹³⁴ Sinkevičius, V. “Lietuvos Laisvės Kovos Sąjūdžio Tarybos 1949 m. vasario 16 d. deklaracija Lietuvos teisės sistemoje [The 16 February 1949 Declaration of the Lithuanian Freedom Fight Movement in the Lithuanian Legal System]” in: *Regnum est. 1990 m. Kovo 11-osios Nepriklausomybės Aktui – 20: Liber Amicorum Vytautui Landsbergiui [Regnum est. 20 Years for the 11 March 1990 Act of Independence. Liber Amicorum Vytautas Landsbergis]*, Vilnius, Mykolas Romeris universiteto Leidybos centras, 2010, pp. 61–65.

(that was confirmed by the Constitutional Court of the Republic of Lithuania,¹³⁵ who, by the same token, acknowledged that the Council of the LKKS had the powers to act on behalf of the Republic of Lithuania). It was a unique commitment, as at that time Lithuania was occupied and thus had substantial difficulty in exercising its sovereignty, but expressed its commitment to the Universal Declaration of Human Rights shortly after its adoption (only two months passed). This commitment to the Universal Declaration of Human Rights demonstrated not only the wisdom of the signatories of the Declaration of 16 February 1949. It rather reflected the turn of the State of Lithuania for the democratic order, as well as its completely different values and completely different orientation from that of the occupier – the Soviet Union (it is worth recalling here that, in the UN General Assembly, the USSR, together with its satellites, abstained from voting for the Universal Declaration of Human Rights¹³⁶).

¹³⁵ e.g. in the 18 March 2014 Ruling (English text available on the official website of the Constitutional Court of the Republic of Lithuania: <<http://www.lrkt.lt/en/court-acts/search/170/ta853/content>>), the Constitutional Court of the Republic of Lithuania acknowledges that for the first time the Republic of Lithuania undertook the commitment to follow the Universal Declaration of Human Rights by virtue of Article 22 of the Declaration of 16 February 1949.

¹³⁶ See *Official Record of the 183rd Plenary Meeting of the UN General Assembly*, Official Records of the UN General Assembly, Third Session, Supplement No A/PV.183, p. 933, <daccess-dds-ny.un.org/doc/UNDOC/GEN/NL4/812/23/PDF/NL481223.pdf?OpenElement>.

THE SAJŪDIS MOVEMENT. THE STRIVING TO RESTORE INDEPENDENCE

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In the middle of the 1980s, the effects of the new policy carried out by Mikhail Gorbachev became apparent in Lithuania: talks and discussions grew bolder, meetings took on a more liberal spirit, and more varied views were gaining ground. Momentum was primarily gathered by the ecological movement aimed to prevent the implementation of the Soviet Union's plans to extract oil in the Baltic Sea near the Curonian Spit. In the event of an accident, oil spillage could have damaged the most beautiful Lithuanian coast. For the first time in the history of Soviet Lithuania, the signatures of the residents were collected in disapproval of the Soviet Union's plans; eventually, as 200 000 signatures were gathered, the project was abandoned.

The year 1987 saw the establishment of independent public organisations, such as the *Talka* and, later, *Žemyna* and *Atgaja* clubs, which were dedicated to regional research and environmental protection. The Lithuanian Cultural Fund was established with the mission to promote the development of culture. The discussion, generated in the press by writers, on the historical novel immediately grew into broader discourse exposing the one-sidedness of the assessment given with regard to national literature, the situation of the Lithuanian language, and Lithuanian history. All these processes activated public-mindedness and democratisation while still remaining within the limits of the official reform policy. These limits were first overstepped by the anti-Soviet organisation known as the Lithuanian Liberty League: on 23 August 1987, it organised a rally near the monument to the poet Adam Mickiewicz in Vilnius. The participants of the rally charged that the policy carried out by Joseph Stalin had been criminal, since it had resulted in the occupation of Lithuania in 1940. The demands raised by the people taking part in the rally called for the liquidation of the consequences of the Molotov–Ribbentrop Pact signed between the Soviet Union and Germany in 1939, which led to Lithuania being assigned to the sphere of influence of the Soviet Union and losing its independence. In principle, such demands meant the implicit requirement to return to the situation of 1939 and restore the independence of the state.

Another event that must have stirred up society was possibly the commemoration of the 70th anniversary of the Act of Independence of Lithuania, which fell on 16 February 1988. At that time, any events to commemorate the anniversary were forbidden and semi-martial law was introduced by the Soviet authorities. This inflamed even sharper criticism of the Soviet regime. In spring 1988, the more active scholars put forward the idea of the economic autonomy of Lithuania, as well as the idea of amending the constitution. A commission, led

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by the academician Eduardas Vilkas, was swiftly formed for drafting a new constitution. A range of initiatives was introduced and projects began to evolve, although they still lacked greater streamlining and required a more vigorous impetus; the need for novel ways of thinking and a new vision of a future Lithuania was not yet met. In the paper entitled “Political Culture and Lithuania”, read at a meeting of the Artists’ Union on 20 April 1988, the philosopher Arvydas Juozaitis contended that every culture, in the broad sense of this word, aspires to sovereignty; he raised the idea of the necessity for a political movement.¹ The establishment of a public organisation was accelerated by the encouragement received from the visiting representatives of the Estonian Popular Front (*Eestimaa Rahvarinne*), founded with the aim of the democratisation of the country, to create a similar front in Lithuania. On 3 June 1988, at a meeting held in the hall of the Academy of Sciences in Vilnius, the representatives of science, art, and culture proclaimed the creation of the Lithuanian Reform Movement *Sąjūdis* (hereinafter referred to as Sąjūdis) and elected 35 members composing the Sąjūdis Initiative Group. This organisation was supposed to be reformist and avoid entering into confrontation with the Soviet authorities. However, it was obvious to all that its main thrust was a national movement, whose aims were implied but not declared. The draft programme, prepared in a short while, aimed to strengthen economic and political self-government, pursue social justice, increase publicity, develop democracy, and pay more attention to the Lithuanian language and Lithuanian history.²

In the summer of 1988, groups supporting Sąjūdis were formed in scientific and teaching establishments in cities and smaller towns. One or more members of the Sąjūdis Initiative Group were generally present on the occasion of the foundation of these groups; meetings were held to give speeches on topical questions: the necessity for democratisation, the building of civil society, and the possibility of organising its life independently. A “ride for ecology” by a group of cyclists (who travelled 900 kilometres throughout the country) and a “rock march” (series of rock concerts) through Lithuania, during which rallies were organised, contributed to stimulating the population, promoting democracy, and motivating the youth through discussions on the above-mentioned issues. The Lithuanian Communist Party had no way out but to reconcile itself to the growing influence of Sąjūdis, allow communists to engage in the movement, and accept the legalisation of not the Soviet but national tricolour flag, as well as the national anthem “Tautiška giesmė” by Vincas Kudirka – one of the ideologists of the Lithuanian national rebirth of the 19th century.³ The most remarkable event in the activity of Sąjūdis was a rally held in Vingis Park in Vilnius in summer 1988 to denounce the Molotov-Ribbentrop Pact and its secret protocols. Bringing together an estimated 200 000 to 300 000 people, it turned out to be the largest rally in the

¹ Kšanavičius, A., *Lietuvos atgimimo dienoraštis* [A Diary of Lithuania’s Rebirth], Kaunas: Nemunas, 1998, p. 14.

² Laurinavičius, Č. and Sirutavičius, V., *Lietuvos istorija. Sąjūdis: nuo “persitvarkymo” iki kovo 11-osios* [The History of Lithuania. Sąjūdis: from “Restructuring” to 11th March], Vol. 12, part 1, Vilnius: Baltos lankos, 2008, p. 86.

³ Senn, A. E., *Bundanti Lietuva* [Awakening Lithuania], Vilnius: Science and Encyclopedia Publishers, 1992, p. 73.

history of Lithuania.⁴ One of the leaders of Sąjūdis, Vytautas Landsbergis, while opening the meeting, underscored that the German–Soviet Pact had annihilated the right of peoples to self-determination, as well as their peaceful coexistence.⁵ Other speakers directed criticism at the negative consequences that the agreements signed between the Nazis and Soviets had caused for the Baltic States, condemned bureaucratic governance, and demanded the publication of the text of the Molotov–Ribbentrop Pact. The academician Antanas Buračas called for drafting a new constitution of the People’s Republic of Lithuania.⁶ The rally invigorated the population and inspired the belief in a different future of Lithuania, while advancing the spread of the ideas of Sąjūdis throughout the country.

In autumn 1988, the most prominent achievement was the convening of the Constituent Congress of Sąjūdis. The preparations began in September following the formation of the Organisational Committee. Subsequently, a total of 1 127 delegates, most of them Lithuanians (96 per cent), were elected to represent 180 000 members of Sąjūdis.⁷ The Constituent Congress opened on 22 October and, right from the first minutes, was held in a particularly exultant mood, inducing hopes for a new future and positive changes. The Congress adopted the programme, statutes, and up to 30 resolutions. The documents dealt with the issues related to society, its unity, the concept of the sovereignty of the state, economic autonomy, and the elimination of privileges and nomenclature. The proposals were made to consolidate Sąjūdis in the Lithuanian political system, to enact a law on citizenship, and even to found the constitutional court composed of seven competent persons.⁸ The speeches by the members of Sąjūdis from Kaunas stood out as especially radical: for instance, Rolandas Paulauskas spoke about the secession of Lithuania from the Soviet Union.⁹ The most memorable speech of the invited guests was the one given by the leader of the Lithuanian Liberty League, Antanas Terleckas, who articulated the requirement to withdraw the occupant troops and “leave the right to the Lithuanian nation to determine its destiny by itself”.¹⁰ Before concluding its work, the Constituent Congress elected the Seimas of Sąjūdis – the representative body consisting of 220 people, authorised to advance the changes related to statehood, and the Sąjūdis Initiative Group ceased its activity. Finally, the Seimas of Sąjūdis elected the Council of the Seimas, which comprised 35 members. On a closing note, Vytautas Landsbergis said: “Let us hope these two days have changed Lithuania”.¹¹ More than 400 correspondents from 17 countries had reported information on the Constituent Congress; during these days, Lithuania won world-wide attention.

⁴ Laurinavičius and Sirutavičius, footnote 2, p. 131.

⁵ Kšanavičius, footnote 1, p. 43.

⁶ Ibid., p. 44.

⁷ Laurinavičius and Sirutavičius, footnote 2, p. 168.

⁸ *Lietuvos Persitvarkymo Sąjūdis: steigiamasis suvažiavimas: 1988 m. spalio 22–23 d. [The Lithuanian Reform Movement Sąjūdis: The Constituent Congress] (22–23 October 1988)*, Vilnius: Mintis, 1990, pp. 217–240.

⁹ Ibid., p. 169.

¹⁰ Ibid., p. 81.

¹¹ Kšanavičius, footnote 1, p. 63.

Shortly afterwards, discussions were once again revived on amendments to the Constitution of the Lithuanian SSR. Consequently, the provisions on the leading role of the Communist Party and the concentration of all power in the Councils of People's Deputies were removed, while consideration was given to the idea that the laws of the republic must take precedence over the legislation of the Soviet Union. The issues concerning constitutional amendments were considered at a joint meeting of the representatives of the Estonian Popular Front, the Latvian Popular Front (*Latvijas Tautas fronte*), and Sąjūdis. The members of Sąjūdis promised to support their Estonian counterparts with regard to amendments on the greater sovereignty of the republic. During the meeting, Vytautas Landsbergis unexpectedly put forward the proposal to adopt an entirely new constitution of the Lithuanian SSR rather than amendments thereto. Yet, this proposal probably expressed the wish to surpass the Estonian Popular Front in terms of raising more radical demands rather than offered a realistic option.

Although the overwhelming majority of the Lithuanian Supreme Soviet was comprised of communists, pressured by Sąjūdis, on 18 November 1988, it adopted the constitutional amendments on reinstating the national status to the Lithuanian language, the national tricolour flag, and the national anthem "Tautiška giesmė"; however, the Supreme Soviet rejected the constitutional amendment asserting the supremacy of Lithuanian laws over the legislation of the Soviet Union.¹² This led to the discontent of Sąjūdis – the promise given to the Estonians was not fulfilled. Yet such a radical stance also irritated the communists in the Supreme Soviet. Sąjūdis then carried on by mounting a campaign aimed to deprecate the communists.

In order to optimise leadership over Sąjūdis, the Council of the Seimas of Sąjūdis refused collective governance and elected Vytautas Landsbergis as Chairman of the Council. The Soviet authorities cancelled the broadcast of the programmes of Sąjūdis on television and banned the publishing of its newspaper *Atgimimas* in printing houses. Tension was increasingly palpable. The growing power of Sąjūdis was confirmed as 1.8 million signatures of the Lithuanian residents were collected against the USSR constitutional amendments that did not grant the republics equal rights. To increase its influence, Sąjūdis made use of the campaign preceding the elections of delegates to the All-Union Congress of the People's Deputies of the USSR, to be held in 1989, and benefited from the runoff election to the Supreme Soviet of the Lithuanian SSR. In February 1989, all work was temporarily overshadowed by preparations for and the celebration of 16 February. By its decree, the Supreme Soviet declared the Lithuanian language the state language and 16 February a national holiday.¹³ On that day, mass rallies were held in all Lithuania, lectures were delivered, speeches were given, and monuments were unveiled, including the restored Freedom Monument in Kaunas. On the occasion of the holiday, the Seimas of Sąjūdis convened in Kaunas. During the session,

¹² Ibid., p. 67.

¹³ Ibid., p. 79.

it was underlined that Sąjūdis meant “the determination of the nation to restore its rights by peaceful means and to live independently of whatever dictate”;¹⁴ it was recalled that the international recognition of the State of Lithuania was still in force.

The period in the immediate aftermath of the festivities of 16 February was devoted to preparing for the elections of delegates to the All-Union Congress of the People’s Deputies of the USSR and drawing up an election programme. The programme underscored the right to restore political independence and legitimise sovereignty; it also included the demand to condemn the Molotov–Ribbentrop Pact and declare it illegal.¹⁵ A total of 58 deputies were to represent Lithuania at the All-Union Congress of People’s Deputies; ultimately, 36 out of 42 Sąjūdis-backed candidates were elected. These elections ensured one of the major victories of Sąjūdis, providing it with the possibility of voicing its views before the legislative body of the Soviet Union. During a rally organised in Vilnius to “see off” the delegates, the requirements set out in the programme were reiterated; a new provision was added that the republics must be allowed themselves to choose their delegates to the authority bodies of the USSR.

From the very first day of the All-Union Congress of the People’s Deputies of the USSR, which started on 25 May 1989, the members of Sąjūdis actively engaged in discussions on the agenda and regulations and took a principled stand while defending their position. Considerable disagreements erupted during the debates related to the formation of the committee of constitutional supervision of the Soviet Union. Such an institution, upon finding that an adopted law was at variance with the USSR Constitution, would have the powers to infringe on the sovereignty of the republic. As the Congress rejected the proposal of the Lithuanian delegates not to have a vote on this issue, they “voted with their feet” and left the hall. After the decision was made to postpone the consideration of the issue, the Lithuanian deputies agreed to return. Following the mandates they had accepted before their departure to the Congress, the Lithuanian deputies raised the demands to announce and condemn the secret protocols of the Molotov–Ribbentrop Pact. The Congress set up a commission to examine this question. At its following session, convened in December, the Congress admitted the existence of these documents. The Lithuanian delegates, while enjoying the right to have a different opinion and point of view, thus contributed to the democratisation of the Congress and encouraged a new phenomenon – parliamentarism – in the life of the Soviet Union.

During its session held in summer 1989, the Seimas of Sąjūdis considered the guidelines for restoring the statehood of Lithuania, drew up the provision repealing the validity of the declarations adopted in 1940 by the so-called People’s Seimas, and decided to negotiate the withdrawal of the Soviet armed forces from Lithuania. This meant that Sąjūdis went beyond the framework of the reform: it was no longer concerned with the reformation of

¹⁴ Ibid., p. 84.

¹⁵ Laurinavičius and Sirutavičius, footnote 2, p. 233.

socialism but was moving towards attaining the goal of the restoration of the independence of Lithuania.¹⁶

Meanwhile, the Seimas of Sąjūdis intensified the visits of its members to foreign countries, was building up contacts, and sought to clarify the possible reaction to the restoration of the independence of the state. For these purposes, Vytautas Landsbergis travelled to the United States and a delegation of Sąjūdis went on a visit to Sweden. A delegation led by Romualdas Ozolas met in Moscow with Jack Matlock, Ambassador of the United States to the Soviet Union. The representatives of Sąjūdis introduced to the American Ambassador the guidelines for restoring Lithuanian independence: to take control of the Lithuanian economy in January 1990, then to elect a new Supreme Soviet (to be renamed the Supreme Council), which would proclaim the re-establishment of independence and enact a new constitution, and, finally, to elect the Lithuanian Parliament – the Seimas. In his memoirs, the Ambassador would later note that he had been surprised by the courage and resolution of the Lithuanian representatives.¹⁷ Of particular significance was a visit made by a delegation of Sąjūdis to Poland to meet the activists of the Polish Solidarity Movement (*Solidarność*), who assured that, in the interests of good neighbourly relations, Poland would observe the principle of the inviolability of the borders established in 1939.

In the summer of 1989, people in Lithuania, Latvia, and Estonia came together to form the Baltic Way – a continuous 650-kilometre live chain spanning from Vilnius through Riga to Tallinn. The decision to link the capitals of the Baltic States originated on 5 July during the first meeting of the Baltic Council, set up by the Estonian and Latvian Popular Fronts and the Lithuanian Sąjūdis. During the meeting, the Baltic Council decided to connect the Baltic States by a live hand-in-hand chain on 23 August in commemoration of the 50th anniversary of the Molotov–Ribbentrop Pact and its tragic consequences. The day before, Lithuania had greeted the announcement of the conclusions by the commission of the Supreme Soviet of the Lithuanian SSR declaring that (i) the unlawful agreements between the Soviet Union and Germany had resulted in the occupation of Lithuania and its forced incorporation into the Soviet Union; (ii) the elections to the “People’s Seimas” had been carried out under the conditions of occupation and had been neither free nor democratic; and (iii) the law of the USSR of 3 August 1940 on the accession of Lithuania to the USSR had been illegal.¹⁸ These conclusions reactivated the residents of Lithuania and, on 23 August at 7 p.m., no fewer than 1.5 million Lithuanian inhabitants, joined by half a million Latvians and Estonians, remained motionless in a live chain in a peaceful expression of their pursuit for independence. The next day, the Council of the Seimas of Sąjūdis made the announcement that it would seek the full independence of Lithuania by parliamentary means.

¹⁶ Ibid., p. 308.

¹⁷ *Lietuva pasaulio galingųjų akiratyje: 1988–1991 [Lithuania in the Spotlight of World Powers: 1988–1991]*, Vilnius: Algimantas, 2005, p. 207.

¹⁸ Laurinavičius and Sirutavičius, footnote 2, pp. 543–545.

The implementation of this goal was undertaken by the members of Sąjūdis who had been elected to the Supreme Soviet of the Lithuanian SSR. During its sessions, the Supreme Soviet decided to prepare a plan for the re-establishment of independence. It was determined that all who had arrived to Lithuania during the years of Soviet government would be granted citizenship if they decided to take it within two years, while taking an oath would not be required.¹⁹ Thereafter, the Supreme Soviet declared invalid Article 6 of the Soviet Constitution, which provided for the leading role of the Communist Party. This had consequences for the Lithuanian Communist Party – it split from the Communist Party of the Soviet Union in December 1989. In the wake of these changes in the internal life of Lithuania, Mikhail Gorbachev was prompted to arrive in Vilnius himself in an attempt to prevent Lithuania's breakaway from the Soviet Union. Before his visit, Sąjūdis prepared the requirements to condemn the aggression perpetrated against Lithuania in 1940, to renounce claims to the Nation, to recognise the territory of Lithuania and its sovereignty, and to withdraw Soviet armed forces from the country. To support the last-mentioned requirement, 1.5 million signatures of the residents were collected.²⁰ A rally that called for "Freedom and independence for Lithuania" was organised in the Cathedral Square in Vilnius on the day of Gorbachev's arrival; however, Gorbachev failed to appear.²¹

Early in the beginning of 1990, the major work of Sąjūdis revolved around preparing for elections to the Supreme Soviet of Lithuania. At a conference entitled "The Path of Lithuania" on 3 February, Sąjūdis drafted an election programme; its core provision read "if you vote for the members of Sąjūdis, you vote for Independence". The agitation campaign was particularly intense, even aggressive, and effective: 72 per cent of the population took part in the election; the results of the first round of voting already made it clear that Sąjūdis had won. Out of 90 elected deputies, 72 represented Sąjūdis, whose position was subsequently further reinforced. In these elections, people cast their votes for personalities – there were many of them in Sąjūdis.

In the succeeding days, before the Supreme Soviet (subsequently, the Supreme Council) convened for its session, the elected deputies opened work on drafting the envisaged documents, considered candidates for various posts, and discussed the tactics of sittings. The decision was reached to proclaim the independence of the State of Lithuania on 11 March. Precisely on this day, as the Supreme Council promulgated the Act on the Re-establishment of the Independent State of Lithuania following the vote of 124 deputies and not a single vote cast against, Lithuania became an independent state. Sąjūdis fulfilled its duty and mission – to bring Lithuania to independence.

¹⁹ *Lietuvos TSR Aukščiausiosios Tarybos (11 šaukimo) 14 sesija: stenogramas [The 14th Session of the Supreme Soviet (of the 11th convocation) of the Lithuanian SSR: shorthand records]*, Vilnius: The Publishing House of the Presidium of the Supreme Soviet of the Lithuanian SSR, 1989, p. 153.

²⁰ Laurinavičius and Sirutavičius, footnote 2, p. 453.

²¹ *Ibid.*, p. 456.

DRAFT CONSTITUTIONS OF LITHUANIA DURING THE PERIOD OF ITS REVIVAL

Prof. Dr. Juozas Žilys

On 3 June 1988, the meeting of society was held at the Lithuanian Academy of Sciences, in Vilnius. During this meeting, the Lithuanian Reform Movement *Sąjūdis* (hereinafter referred to as Sąjūdis) was founded and the Sąjūdis Initiative Group was formed. The rising of the Lithuanian revival movement and the gatherings of people to seek freedom were also reflected in the activity of the Sąjūdis Initiative Group and in its organised massive events: meetings, demonstrations, gatherings, as well as other kinds of manifestations. During these events, hidden historical facts that had determined the fate of Lithuania were first revealed: the Soviet occupation and annexation of Lithuania in 1940 and the political, legal, and social order that was forcibly imposed and continuously implemented in Lithuania. The participants of these events painfully recalled political, administrative, and criminal post-war repressions, deportation of people to Siberia, armed resistance against the Lithuanian occupation and annexation executed by the USSR, and the continuous peaceful fight for freedom.

At mass gatherings of people and in the publications of Sąjūdis, there were sharp statements concerning most facts and phenomena of reality, the restriction of the rights and freedoms of persons, the inadmissibility of the existing political and legal system, disregard for democratic principles in the relationships between people and authorities, and, moreover, concerning the base of administrative governance established in the territory of Lithuania.

One of the means of the governance of the sovietised Lithuania was constitutions. The Constitutions of 25 August 1940 and 20 April 1978, which were imposed on Lithuania by the Soviet Union, were written according to the template that had to be followed by all the so-called allied republics forcibly united into the Soviet empire – the USSR. In accordance with the unquestionable standard, common political and economic order was established. The concept of civil rights and freedoms was based upon communist ideology. The duties were regulated with extreme precision and a breach of duties could result in various sanctions. The orders concerning the central and local government institutions of the republics had to be implemented without any deviation.

Even though the Lithuanian SSR was proclaimed to be “a sovereign Soviet socialist state”, this provision was only a constitutional fiction that had nothing in common with the traditional concept of sovereignty in international law or comparative constitutional law. Basically all political and legal powers were centralised in Moscow – the capital of the Soviet empire. The decisions, directives, and other orders of lower power adopted in Moscow had to be obeyed by all the republics, including Lithuania.

The constitutional system was based on the aggressive communist ideology that was created and implemented only by the communist party, its headquarters in Moscow and its branches in the so-called republics. Even though the constitutions of the Soviet Union and the republics declared the principle of lawfulness and other principles that seemed to be democratic, all these principles were related to the human development programmes and trends provided by the communist party. The universal dogma of “democratic centralism” meant that the administrative will of the communist party must be exercised unconditionally.

In the 1980s, when the so-called restructuring (*perestroika*) was announced in the Soviet Union, discussions started on the principle of publicity that allegedly had to include all spheres of social life and certain constitutional reforms were conceived and started. In Lithuania, it was realised that the political background occurred for seeking not only for a more comprehensive autonomy of economic activity but also for political freedoms. However, very soon it became clear that the reforms to be introduced in Moscow were not meant for increasing the independence of republics but, on the contrary, to strengthen the powers of the central administration.

In such a political context, in Lithuania, an idea of reviewing the then effective constitution started to form and the fight for “the right to have one’s own law” began. All this was described as a constitutional war that meant the continuous peaceful resistance of Lithuanian people against the political and legal dictatorship of Moscow.

The initiative to draft a new constitution was announced at the Academy of Sciences, where, on 23 May 1988, a commission was formed that had to draft the proposals concerning the problems of national relationships. It went without saying that the solution to these problems was related to the political dogmatics consolidated in the then constitution that could only be corrected by amending the constitution. Already on 13 July 1988, the President of the Academy of Sciences, Juras Požėla, and chief scientific secretary of this academy, Eduardas Vilkas, addressed the Supreme Soviet of the Lithuanian SSR with a letter in which they revealed the then public vices and set out their guidelines for constitutional restructuring that had to be followed in the process of democratisation of social life.

In the letter, it was noted that the preamble to the constitution should reveal the historical development of the State of Lithuania since ancient times, immediately restore the official status of the Lithuanian language, return to Lithuania its historical coat of arms (*Vytis*), national flag, anthem, and other heraldic signs, as well as establish the legal order for the regulation of citizenship relations of Lithuania.

All the proposals were united by the idea of “a real sovereignty of the state and its people” that had to be consolidated in the specific norms of the constitution. It was also emphasised that only the competence of institutions of the Soviet Union that had been assigned to them according the constitution and laws of the Lithuanian SSR could be established.

The political and legal beginnings of the sovereignty were expressed by the following provisions: ownership relations were to be attributed to the legal regulation of Lithuania and all the objects that were present on the territory of Lithuania were to be in its possession; enterprises, rail and air transport, post and communications were to come under the jurisdiction of Lithuania; establishments of culture, education and science, schools, institutes, the press, radio and television were to operate only under the laws of Lithuania; an independent financial, monetary, and banking system was to exist in Lithuania; the status of courts and the prosecution service were to be regulated by the legal acts of Lithuania; the constitutional court was to be established; the armed forces of Lithuania were to be created, where the military service was to be performed by Lithuanian citizens; Lithuania was to actively participate in international relations and in the formation of foreign policy.

Shortly afterwards, i.e. in September 1988, the Academy of Sciences submitted a new draft Constitution to the authorities. The draft Constitution was announced in the press of *Sąjūdis*.¹ With regard to the political situation of that time, it was a politically significant step, as though determining the willingness of Lithuanian people to seek freedom. On the other hand, it was also a public call, as well as pressure, on the political administration of Lithuania to take appropriate action to pursue the objectives of the Lithuanian nation.

The government of that time, being unable to ignore the initiatives of a new constitution, decided to no longer stifle the constitutional discussion in which all society had been involved. The Presidium of the Supreme Soviet set up a working group that not only had to summarise the proposals concerning the constitution, but also to follow them in providing a constitutional reform. This working group already included not only the representatives of those in power, but also the representatives of the *Sąjūdis* Initiative Group. The group transferred most ideas of the constitution drafted by the Academy of Sciences into the new draft Constitution that was also published not in the press controlled by the administration, but in the press of *Sąjūdis*.² This fact points to the political caution and hesitation and doubts of the then authorities on whether to commit or not to commit to this path of constitutional reforms incompatible with the political objectives of Moscow.

The members of the working group preparing the draft Constitution followed at least two main principles. First of all, the constitutions of the republics had to be adopted, which would completely disclose the constitutional guarantees of their sovereignty, and only then the constitution of the USSR based upon the relevant agreements between the republics and the USSR was to be adopted; the principle of the supremacy of the constitutions and laws of the republics before the constitution and laws of the USSR had to be in force. At the same time, the working group developed the proposals for the Supreme Soviet of the USSR

¹ *Atgimimas [Rebirth]*, 10 October 1988.

² *Ibid.*, 15 November 1988.

on the constitution of the USSR. Most of their provisions became the official position of the Supreme Soviet concerning the announced draft constitutions of the USSR.³

The provisions of the draft Constitution, whereby the aims of the real sovereignty of Lithuania had been expressed, were reflected in the General Programme of Sąjūdis as approved by the Constituent Congress of Sąjūdis that took place on 22–23 October 1988, as well as in other documents adopted at the congress. For example, in the Resolution on the concept of sovereignty of the Lithuanian SSR, it was announced: the national and state sovereignty of the Lithuanian SSR, which is guaranteed by the constitution, must be fully implemented, as must be fully implemented the right to independently choose its conduct in international relationships, its societal and political framework and to decide other questions related to the internal affairs of the state. The sovereignty must be expressed in the right of the Lithuanian SSR to independently manage, organise, and use all the naturally occurring and created property existing on its territory or in its territorial waters, as well as financial resources and values. In the said resolution, it was also stated that “In Lithuania, only the laws adopted or ratified in the Lithuanian SSR shall apply”.⁴

In its first session that took place on 13 November 1988, the Seimas of Sąjūdis, which had been elected in the Constituent Congress of Sąjūdis, adopted a resolution in which it approved the constitution of a new wording and proposed for the Supreme Soviet to adopt it.⁵

In its session held on 17–18 November 1988, the Supreme Soviet did not even start the consideration of this draft Constitution. Nor were approved the proposals of Sąjūdis concerning the immediate adoption of the Declaration on the sovereignty and property of the Lithuania SSR, as well as the amendment of those articles of the constitution that consolidate human rights and freedoms, and the determination that only the laws of the Soviet Union complying with the Constitution of the Lithuanian SSR would be effective. It was obvious that the then Supreme Soviet, the management of the Lithuanian Communist Party, hesitated to exacerbate the political conflict with the Soviet Union, tried to follow the “step-by-step” political strategy, i.e. the approach of gradual development of society.

Although no significant decisions proclaiming the sovereignty of the Lithuanian SSR were adopted, the then effective constitution of the Lithuanian SSR was supplemented

³ For more information, see: Žilys, J., “Laikinasis Pagrindinis Įstatymas Lietuvos Respublikos konstitucinėje sistemoje” [The Provisional Basic Law in the Constitutional System of the Republic of Lithuania], in *Lietuvos konstitucinė teisė: raida, institucijos, teisių apsauga, savivalda: kolektyvinė monografija* [Lithuanian constitutional law: evolution, institutions, rights, self-government: the collective monograph], Vilnius: Mykolas Römeris University Press, 2007, pp. 29–44.

⁴ *Lietuvos Persitvarkymo Sąjūdis: steigiamasis suvažiavimas* [The Lithuanian Reform Movement Sąjūdis: the Constituent Congress], Vilnius: Mintis, 1990, pp. 218–219.

⁵ *Lietuvos kelias* [Lithuanian Path], Part 1, Vilnius: The Lithuanian Reform Movement, 1989, p. 45.

by a new article declaring Lithuanian as the official language.⁶ The aim was to stop the Russification and the forced imposition of the Russian language on society in everyday life.

The Lithuanian people's aspirations for freedom were reflected in the adopted law amending the articles of the Constitution concerning the state flag and anthem.⁷ It was consolidated that the national tricolour flag consisting of three bands of yellow, green, and red colours would be the official flag of the Lithuanian SSR; it was the same flag that had been used in independent Lithuania, until the Soviet occupation and annexation of Lithuania in 1940. The Lithuanian national anthem "Tautiška giesmė," written by Vincas Kudirka, one of most famous actors and ideologists of the Lithuanian national revival, at the end of the 20th century, was reinstated into political life. This anthem replaced the imposed anthem that glorified the Soviet Lithuania.

The discussion concerning a new constitution that had arisen in Lithuania also continued after the Supreme Soviet adopted a decision to prepare a new version of the draft Constitution and set up the commission of deputies⁸. The official draft Constitution was announced in the press⁹.

The preamble mentioned the historical beginnings of Lithuanian statehood and the fight of the Lithuanian nation for its freedom and independence, as well as expressed the aim of political independence and sovereignty. It was declared that the laws and other legal acts of the Soviet Union were to be effective in Lithuania unless they violate its sovereign rights, and the Council of Ministers could suspend the work of the ministries of the Soviet Union and the functioning of the legislation of departments on the territory of the republic if they were contrary to the rights and interests of the republic. In addition to such constitutional provisions, the draft Constitution included compromise statements aimed at mitigating Moscow's reaction to it.

While expressing the targeted political objectives to extend the sovereign rights of Lithuania, Sąjūdis drafted and announced the alternative wordings of most important articles of the draft Constitution.¹⁰ The Preamble directly stated that, in 1940, Lithuania was unlawfully incorporated into the Soviet Union and experienced national genocide. Alternative wordings of 33 articles of the Constitution were based on the provision that "while drafting the constitution of a sovereign state, it is not possible to follow the concept of sovereignty that was inherited from Stalinism and that was limited to the executive

⁶ The Law on Supplementing the Constitution of the Lithuanian SSR (the Basic Law) with Article 77(1) of 18 November 1988, *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Soviet and Government of the Lithuanian SSR], 1988, No 33-358.

⁷ The Law on Amending Articles 168 and 169 of the Constitution of the Lithuanian SSR of 18 November 1988, *ibid.*, 1988, No 33-359.

⁸ The Law on the Draft Constitution of the Lithuanian SSR of the Supreme Soviet of the Lithuanian SSR of 18 November 1988, *ibid.*, 1988, No 33-360.

⁹ *Tiesa* [Truth], 28 February 1989.

¹⁰ *Lietuvai reikia tikros Konstitucijos (projektas)* [Lithuania needs a real Constitution (draft)], *Atgimimas* [Rebirth], 27 January 1989.

power of the Soviet Union; the meaning of sovereignty existing in international law must again apply for the term of sovereignty; the establishment of the rule of law in Lithuania is inseparable from legal memory recording the existence of the sovereign state in 1918–1940 and its annexation; the Constitution of a sovereign state must consolidate its unrestricted supreme power in the relationships with other states”. When describing the constitutional procedure that had taken place in the Soviet Union, it was emphasised that “the key concepts of the envisaged political and legal reform reflect the objective to preserve the model of the existing USSR, as a model of unitary cosmopolitan state.”

To summarise the fight for the constitutional reforms that took place in Lithuania, it should be noted that the idea to adopt a new integral constitution was consistently refused and it was tended to the permanent constitutional development. It meant that it was possible to implement the public policy objectives by changing the contents of the constitutional system gradually, i.e. by amending the constitutional norms establishing the political and legal status of Lithuania.

It should also be emphasised that political moods were changing all the time also in the official governance structure of Lithuania and the structure of the communist party. Under the public pressure, in these structures, there were fewer objections to Sąjūdis’ initiatives to adopt the decisions concerning Lithuania’s development into a free state. In such a political environment, there appeared more and more preconditions for the implementation of the programme provisions of Sąjūdis through the then authorities and, first of all, the quasi-parliament – the Supreme Soviet of the Lithuanian SSR.

On 18 May 1989, the Supreme Soviet amended four articles of the Constitution. These articles established that land, subsurface, internal and territorial waters, forests, and other natural resources were to be the national property of the republic and exclusive Lithuanian ownership; the contents of Lithuanian citizenship, as well as the conditions and procedure for the acquisition and loss of citizenship were to be established not by a Soviet Union law, but by a Lithuanian law; Lithuanian citizens were to have those social, economic, political, and personal rights and freedoms that were declared in the Constitution, laws, and universally recognised international laws; in Lithuania, only the laws adopted by the Supreme Soviet or by referendum were to be effective, whereas the acts of the Soviet Union were to be effective only upon their approval and registration in accordance with the established procedure by the Supreme Soviet. Their validity was subject to limitation or suspension by means of a resolution of the Supreme Soviet.¹¹

On the same day, also the Declaration on the sovereignty of the State of Lithuania¹² was adopted, in which, following the assessment of historical fights for freedom, it was held that “in 1940, on the grounds of the German–USSR pact of 1939 and additional secret

¹¹ The Law on Amending the Constitution of the Lithuanian SSR (the Basic Law) of 18 May 1989, *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Soviet and Government of the Lithuanian SSR], 1989, No 15-166.

¹² Ibid., 1989, No 15-167.

protocols, the sovereign State of Lithuania was by force unlawfully incorporated into the Soviet Union and lost its political, economic, and cultural independence.”

In 1989 and early 1990, yet before the elections to the Supreme Soviet that took place in the spring of 1990, the Supreme Soviet of the Lithuanian SSR amended most of the effective articles of the Constitution: it newly set out the provisions related to the concept of freedom of thought and conscience; it consolidated the constitutional grounds for regulating Lithuanian citizenship relations; it established that the supreme legal form of expression of people’s will and power was a referendum; and it formulated the constitutional guarantees of democratic elections. Finally, it amended the articles of the Constitution that had consolidated a monopolistic role of the Communist Party in the political system and it declared that all parties, social organisations, and social movements were to be established under the procedure prescribed by law and to function in compliance with the Constitution and laws.¹³ In this way, not only the constitutional preconditions for the communist dictatorship were removed but also the foundations for the multiparty political system were laid.

Before the end of the term of office of the Supreme Soviet of the Lithuanian SSR, the section “Economic system”¹⁴ of the Constitution was amended and supplemented. It was declared that the economic system of Lithuania was based on the property of the Republic of Lithuania, which consisted of the private property of its citizens and state property.

The new constitutional amendments influenced autonomous legal creativity; they covered essentially all political, social, and economic relations. In this respect, the resolution of the Supreme Soviet of 3 November 1989¹⁵ should be noted, as it specified the procedure for the application of Article 70 of the Constitution. In this document, pursuant to the said new wording of Article 70 of the Constitution, it was established that, in Lithuania, the laws of the Soviet Union and other acts of the institutions of the Soviet Union were to come into force only in two cases: when the norms of the said acts would be directly included (incorporated) into Lithuanian laws or other normative acts and when the Presidium of the Supreme Soviet would adopt a separate decision on the validity of these norms.

Since the aforementioned resolution, all the acts of the institutions of the Soviet Union that do not violate the interests of Lithuania started to be registered in the record book of the established form. It meant that the special legal procedure for ratifying the legal acts of the Soviet Union was launched: the admissibility of the said legal acts for Lithuania was assessed.

¹³ The Law on Amending Articles 6 and 7 of the Constitution of the Lithuanian SSR (the Basic Law) of 7 December 1989, *ibid.*, 1989, No 36-536.

¹⁴ The Law on Amending Section 2 “Economic system” of the Constitution of the Lithuanian SSR (the Basic Law) of 12 February 1990, *ibid.*, 1990, No 7-165.

¹⁵ The Resolution of the Supreme Soviet of the Lithuanian SSR on the procedure for the application of Article 70 of the Constitution of the Lithuanian SSR (the Basic Law) of 3 November 1989, *ibid.*, 1989, No 32-432.

At the same time, another process illustrating the constitutional and legal war between Lithuania and the Soviet Union was ongoing. The decisions of the Supreme Soviet suspended the validity of the laws and other acts of the Soviet Union in Lithuania. For example, on 5 July 1989, the Supreme Soviet suspended the validity of the order of the minister for transport of the USSR that had limited the use of the Lithuanian language in the railway system. On 4 November 1989, a decision to dismiss the validity of all the acts of the Soviet Union establishing various benefits for the reservists of the armed forces of the USSR was adopted. On 15 January 1990, it was announced that the law on the constitutional supervision in the USSR had not been effective in the territory of Lithuania since the day of its adoption. On 13 February 1990, it was declared that the law on prosecution service of the USSR was no longer effective. The same was done also with regard to most legal acts regulating the economic activity of the Soviet Union.

The Lithuanian determination to liberate itself from the political and administrative clutches of Moscow was evidenced also by the fundamental laws that were adopted without looking back at the directives of the Soviet Union and that laid the foundations for its own legal system.

On 18 May 1989, the Law on the Grounds of the Economic Autonomy of the Lithuanian SSR was adopted. It established the principles of economic relations and legal mechanisms of their implementation. The Law on Peasant Farming of the Lithuanian SSR of 4 July 1989 established economic, organisational, and social conditions and legal preconditions for independent farmers to operate. The 12 February 1990 Framework Law on Ownership consolidated various forms of ownership: individual ownership, family ownership, peasant farm ownership, cooperative ownership, ownership of limited liability companies, ownership of an economic association, ownership of a public organisation, ownership of a local municipality, state ownership, etc. The 13 February 1990 Law on the Bank formulated the legal basis for regulating the independent banking relations.

In addition to the aforementioned legal acts aimed at creating the possibility for undertaking an independent economic activity, a number of other laws were adopted on the grounds of which the legal system was reformed. The new laws on elections opened the opportunities for all political parties and other political organisations to stand for elections to the Supreme Soviet and municipalities on equal terms; these laws also restricted the right to stand for the election to the Supreme Soviet or municipalities of the soldiers of the USSR military units stationed in the territory of Lithuania and so to influence the results of these elections. The intensive lawmaking was culminated with the adoption of the Law on Ethnic Minorities, the Law on Local Self-Government, the Law on the Press and other Mass Media, the Law on Archives, and many other laws.

However, the Law on Citizenship was of an exceptional importance.¹⁶ It should be mentioned because of the fact that when this law was being drafted, the authors

¹⁶ The Law on Citizenship of 3 November 1989, *ibid.*, 1989, No 33-444.

looked back to the legal heritage of the Republic of Lithuania of 1918–1940. The Law on Citizenship established that the citizens of the Republic of Lithuania were, first of all, to be the persons who had been citizens of the Republic of Lithuania prior to 15 June 1940, and their children and grandchildren, as well as other permanent residents on the territory of the current Lithuania until 15 June 1940 and their children and grandchildren. After the announcement of the Restoration of the Independent State of Lithuania on 11th March 1990, actual implementation of this law started.

In view of the programme provisions of Sąjūdis that the main questions on the functioning of society and the state must be decided by all Lithuanian people – the nation, the Law on Referendum¹⁷ was adopted. As the Lithuanian nation was on the path of the restoration of independence, the citizens could follow this law while deciding on the political existence of the nation.

Before the end of its term of office, on 7 February 1990, the Supreme Soviet of the Lithuanian SSR adopted the Resolution on the liquidation of the 1939 pacts between Germany and the USSR and their consequences to Lithuania.¹⁸ It proclaimed the 21 July 1940 Declaration of the Lithuanian People's Seimas on joining the USSR to be unlawful and invalid, for it violated the principle of self-determination of the Lithuanian nation. It was also stated that “the USSR Law of 3 August 1940 on Admitting the Lithuanian Soviet Socialist Republic to the USSR was illegal and, therefore, did not bind Lithuania.” The Soviet Union was proposed to initiate the bilateral negotiations concerning the restoration of independence of the State of Lithuania. While assessing this resolution in the context of the then political processes, it should be noted that this document did not substantially change the status of the Lithuanian SSR in the Soviet empire; it only stated the unlawfulness of the forced incorporation of Lithuania into the Soviet Union and proposed to decide the question of this unlawfulness in the negotiations with the Soviet Union.

To summarise all that happened in Lithuania in the 1980s, it should be held that the main aim of the Lithuanian nation was to restore political freedom and independence. In this continuous fight, the aims of a democratic constitution and lawfulness were reflected in various draft constitutions and laws, the drafting of which was promoted and supported by Sąjūdis as one of the measures to reach for independence, as a state of full-fledged national sovereignty.

The resistance of the Lithuanian nation against the Soviet dictatorship, concrete actions related to the drafting of the Constitution or adoption of laws reflecting the interests of Lithuania were each time accompanied by the threats from Moscow to take economic and other repressive measures against Lithuania.

¹⁷ The Law on Referendum of 3 November 1989, *ibid.*, 1989, No 33-445.

¹⁸ *Ibid.*, 1990, No 8-182.

LIETUVOS RESPUBLIKOS AUŠDIAUSIOSIOS TARYBOS

A K T A S

DĖL LIETUVOS NEPRIKLAUSOMOS VALSTYBĖS ATSTATYMO

Lietuvos Respublikos Aukščiausioji Taryba, reikšdama Tautos valią, nutaria ir iškilmingai skelbia, kad yra atstatomas 1940 metais svertimos jėgos panaikintas Lietuvos Valstybės suvereniųjų galių vykdymas, ir nuo šiol Lietuva vėl yra nepriklausoma valstybė.

Lietuvos Tarybos 1918 m. vasario 16 d. Nepriklausomybės aktas ir 1920 m. gegužės 15 d. Steigiamojo Seimo rezoliucija dėl atstatytos Lietuvos demokratinės valstybės niekada nebuvo nustoję teisinės galios ir yra Lietuvos Valstybės konstituciniai pamatai.

Lietuvos valstybės teritorija yra vientisa ir nedaloma, joje neveikia jokios kitos valstybės konstitucija.

Lietuvos valstybė pabrėžia savo ištikimybę visuotinei pripažintoms tarptautinėms teisės principams, pripažįsta sienų neliečiamumą, kaip jis suformuluotas 1975 metų Europos saugumo ir bendradarbiavimo pasitarimo Helsinkyje Baigiamajame akte, garantuoja žmogaus, piliečio ir tautinių bendrijų teises.

Lietuvos Respublikos Aukščiausioji Taryba kaip suvereniųjų galių rėškėja šiuo aktu pradeda realizuoti vieną Valstybės suverenitetą.

LIETUVOS RESPUBLIKOS
AUŠDIAUSIOSIOS TARYBOS PIRMININKAS

LIETUVOS RESPUBLIKOS
AUŠDIAUSIOSIOS TARYBOS SEKRETORIUS

Vilnius, 1990 m. kovo 11 d.

Vytautas Landsbergis
V. LANDSBERGIS
L. SABUTIS

[The following block contains numerous handwritten signatures in cursive script, covering the lower half of the document. Some legible names include: Landsbergis, Sabutis, and various other names.]

The Act on the Re-establishment
of the Independent State of Lithuania (11 March 1990) with the signatures
of the Deputies of the Supreme Council of the Republic of Lithuania

The original document is held by the Lithuanian State Modern Archives,
collection of records 2, folder 1, file 1, sheet 1.

THE ACT OF 11 MARCH 1990 ON THE RE-ESTABLISHMENT OF THE INDEPENDENT STATE OF LITHUANIA

Prof. Dr. Vytautas Sinkevičius*

On 24 February 1990, the elections to the Supreme Soviet of the Lithuanian SSR took place. This was the first time in a 50-year period that genuinely free and democratic elections had been held: they involved various contesting political parties and organisations, as well as rival personalities and competing electoral programmes. As many as 472 candidates were running for 141 deputy seats.¹ With an overwhelming majority of votes, the elections were won by the Lithuanian Reform Movement *Sąjūdis* (hereinafter referred to as *Sąjūdis*). The programmes of the candidates nominated or backed by *Sąjūdis* included the explicitly stated objective to restore the independence of Lithuania. Thus, having given their votes to the candidates nominated or backed by *Sąjūdis*, the voters granted them the mandate of the nation to restore the independence of Lithuania.

Soon after the Supreme Soviet of the Lithuanian SSR had been elected, the first question to be answered was from where the independent State of Lithuania could arise. Was it to come into existence as a result of the reassertion of the right to self-determination, or the modification of the Lithuanian SSR, or the separation (secession) from the Soviet Union? Or was it the continuity of the pre-war independent Republic of Lithuania? The answer had been sought and the principled position of *Sąjūdis* had been formed even before the elections were held but, following the elections, this position needed to be converted into the will of the elected Supreme Soviet; it was necessary to devise a legal scheme for restoring the independence of the state. On the other hand, the situation called for clarity whether the elected Supreme Soviet of the Lithuanian SSR *could immediately adopt* the Act on the Re-establishment of the Independent State of Lithuania. In other words, how could the authentic will of the nation be expressed through the imposed Soviet institutions, and how could the existing Supreme Soviet of the Lithuanian SSR be used for the purpose of restoring independence while avoiding “self-legalisation” within the structures of the Lithuanian SSR?

This was precisely the issue that posed a certain danger. If it were the Supreme Soviet of the Lithuanian SSR that restored independence, from where could the independent State of Lithuania arise? With which territorial unit was the newly elected Supreme Soviet

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¹ *Lietuvos Respublikos Aukščiausiosios Tarybos (pirmojo šaukimo) pirmoji sesija: stenogramos [The First Session of the Supreme Council (of the first convocation) of the Republic of Lithuania: shorthand records]*, Vilnius: The Supreme Council of the Republic of Lithuania, 1990, p. 4.

of the Lithuanian SSR associated? If it was associated with the Lithuanian Soviet Socialist Republic, was then the Lithuanian SSR a state? Would the restoration of independence by the Supreme Soviet of the Lithuanian SSR not consequently be open to the interpretation that, having been elected in democratic and free elections, this Supreme Soviet (the representation of the nation) apparently, albeit indirectly, recognised that the Lithuanian Soviet Socialist Republic was (had been) a form of Lithuanian statehood – one of its forms?² In order to avoid the distortion of the historical truth (which was and remains to be that Lithuania was occupied and annexed by the Soviet Union in 1940), it was necessary to state very clearly that the independent State of Lithuania would come into existence exceptionally as the continuity of the pre-war independent State of Lithuania. To put it differently, the restoration of the independent State of Lithuania could and should be underpinned specifically by the continuity of the pre-war independent State of Lithuania.³ It was essential to break away from the Lithuanian SSR as a category of a state, as well as to distinctly set this democratically elected Supreme Soviet of the Lithuanian SSR apart from the Lithuanian SSR as a Soviet territorial formation, as well as from the former Supreme Soviets of the Lithuanian SSR as Soviet institutions – so that there was not the slightest

² If it were the Supreme Soviet of the Lithuanian SSR that restored independence, the following interpretation would be possible: until 1940, there was one form of Lithuanian statehood (independent state); from 1940, there existed another form – the “socialist Lithuanian state within the Soviet Union”; and, consequently, a new form of statehood was chosen in 1990. (It is precisely in this way that the development of Lithuanian statehood is interpreted in the official historiography of present-day Russia.) If so, maybe a “socialist revolution” indeed took place in Lithuania in 1940 and the nation itself refused its independence and chose “socialist statehood” and then, at the time under discussion, it once again decided to choose another form of statehood?! If so, maybe there was no Soviet occupation and annexation?! Then, why should we speak about the moral or legal responsibility of the Soviet Union, or about its duty to compensate for the damage caused, if the Supreme Soviet of the Lithuanian SSR, having been elected in democratic and free elections, as mentioned before, albeit indirectly, did recognise that the Lithuanian Soviet Socialist Republic was (had been) a form of Lithuanian statehood? No pretext whatsoever could be given for these or similar interpretations, which would be legally entirely unjustified.

³ Despite the 50 years of the Soviet occupation, there was ample evidence that the pre-war State of Lithuania continued to exist *de jure* even under the conditions of physical suppression. First of all, the diplomatic missions of Lithuania remained in operation in certain foreign countries. It is obvious that, if the State of Lithuania legally had not existed, the diplomatic missions of Lithuania would not have operated. Internationally, it was also unique that the diplomatic missions of Lithuania operated in the absence of the Government of the Republic of Lithuania. Secondly, western democratic states followed the policy of the non-recognition of the annexation of Lithuania – the USA and nearly 50 other states had never *de jure* recognised the annexation of the Baltic States and their incorporation into the Soviet Union. Thirdly, foreign states continued to recognise the passports of the citizens of the pre-war State of Lithuania, including those issued by the diplomatic missions of Lithuania in foreign states. Thus, even though in a very restricted way, the citizenship of the pre-war Republic of Lithuania was still valid. Finally, some foreign states preserved the property of the Republic of Lithuania, as well as the monetary resources and gold reserves that belonged to Lithuania and had been deposited in the banks of those states before the Soviet occupation.

Moreover, the continuity of the state authority of the pre-war Republic of Lithuania in occupied Lithuania was witnessed by the establishment, on 10 February 1949, of the Council of the Lithuanian Freedom Fight Movement, which represented all military and public formations operating and resisting against the Soviet occupation at that time in Lithuania. The Declaration of 16 February 1949, adopted by this Council, proclaimed that the Council of the Lithuanian Freedom Fight Movement was the supreme political body of the nation, in charge of the political and military fight for the liberation of the nation.

link between this Supreme Soviet, which would adopt the act on the restoration of the independence of Lithuania, and the Lithuanian SSR.

The Supreme Soviet of the Lithuanian SSR that was elected on 24 February 1990 was in substance different from the previous Supreme Soviets of the Lithuanian SSR. It was the genuine representation of the nation, elected in democratic and free elections. It was dissociated from the Lithuanian SSR by adopting the Declaration on the Powers Entrusted to the Deputies of the Supreme Soviet of the Lithuanian SSR.⁴ This was the first legal document in direct relation to the Act on the Re-establishment of the Independent State of Lithuania (hereinafter referred to as the Act of 11 March). The main provisions consolidated in this declaration were as follows: (1) the independent State of Lithuania existed and expressed its sovereign power as a nation through the sovereign institutions of the State of Lithuania until 1940; (2) in 1940, through violence and aggression, the Soviet Union restrained the sovereign power of the nation and illegally incorporated Lithuania into the Soviet Union; this foreign force eventually destroyed the structures of the State of Lithuania and imposed its own structures upon it; (3) since 1988, new possibilities arose for expressing the will of the nation, including through these imposed (existing) institutions; (4) the use of the structures forced upon Lithuania by a foreign state (Soviet Union) should not be interpreted as the recognition of its sovereignty over the Lithuanian nation and its territory, or as the recognition of the annexation executed by that foreign state; (5) on 24 February 1990, during the elections to the Supreme Soviet of the Lithuanian SSR, the nation conferred on the elected deputies of the Supreme Soviet a mandate and duty to restore the State of Lithuania and express the sovereign power of the nation through this Supreme Soviet, which, *beginning 11 March 1990, 6 p.m., would be called the Supreme Council of Lithuania*. However, it was not solely the name that was important: through its change, an entirely different institution – the Supreme Council of Lithuania – was established. Such establishment was necessary so that this institution, which was to announce the decision on the independence of the state, would be in no way connected with the Lithuanian Soviet Socialist Republic, which had never constituted a form of Lithuanian statehood.

In order to avoid any speculations as to which state was restoring independence and any attempts to associate, even if not directly, the restoration of independence with the Lithuanian SSR, the Law on the Name and Coat of Arms of the State was adopted.⁵ It provided that (1) the “Republic of Lithuania” must be used as the single official name of the state in the Constitution and in other legal enactments; (2) the Lithuanian Supreme Soviet must be referred to as the “Supreme Council of the Republic of Lithuania”; and (3) the post of the Chairman of the Supreme Soviet of the Lithuanian SSR must be referred to as the “Chairman of the Supreme Council of the Republic of Lithuania”. Thus, the adoption of this

⁴ *Lietuvos Respublikos svarbiausių dokumentų rinkinys: 1990 m. kovo 11 d. – 1990 m. gegužės 11 d. [The Collection of the Main Documents of the Republic of Lithuania: 11 March 1990–11 May 1990]*, Vilnius: Mintis, 1990, pp. 6–7.

⁵ *Ibid.*, p. 7.

law led to the emergence of an institution named the Supreme Council of the Republic of Lithuania. From the moment when all links with the Lithuanian SSR were broken, namely the Supreme Council of the Republic of Lithuania could adopt a decision on restoring the independence of the state (Republic of Lithuania).

These two legal acts – the Declaration on the Powers Entrusted to the Deputies of the Supreme Soviet of the Lithuanian SSR and the Law on the Name and Coat of Arms of the State – are often referred to in legal literature as the preparatory legal acts of the restoration of independence.⁶

The following act in the series of the documents adopted on 11 March 1990 was the Act of 11 March.⁷ Its text is brief but condensed.

The continuity of the State of Lithuania is expressed in the first two provisions of the Act of 11 March. The first provision reads: “*the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940 is re-established, and henceforth Lithuania is again an independent state*” [emphasis added by the author]. It is important to note that the document refers not to the restoration of the state itself – since, as mentioned before, although physically suppressed, it did continue to exist legally – but to the re-establishment of “the execution of the sovereign powers of the State of Lithuania”. It is also crucial that the text speaks not about the restoration of the sovereignty of the nation – it had always belonged to the nation, which had been deprived of the possibility to exercise sovereignty under the conditions of occupation – but about *the re-establishment of “the execution of the sovereign powers”*. The second provision reads: “*The Act of Independence of 16 February 1918 of the Council of Lithuania and the Resolution of 15 May 1920 of the Constituent Assembly (Seimas) on the re-established democratic State of Lithuania never lost their legal effect and comprise the constitutional foundation of the State of Lithuania.*” This provision also means that all the decisions of the so-called People’s Seimas and the subsequent puppet Supreme Soviets of the Lithuanian SSR that contradict these fundamental constitutional acts are unlawful.

The following provision of the Act of 11 March states that the territory of Lithuania is whole and indivisible, and the constitution of no other state is valid within it. The stipulation that the territory of Lithuania is whole and indivisible means, *inter alia*, that no other state may demand that Lithuania give or “return” it the Vilnius region or Klaipėda region, or any other territories. This provision also means that there may be no autonomous or other similar formations in the territory of Lithuania that could threaten the territorial integrity of Lithuania.

The fourth provision of the Act of 11 March is designed to express the position to be followed by the State of Lithuania in the area of international relations: Lithuania emphasises

⁶ Žalimas, D., *Lietuvos Respublikos nepriklausomybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės* [The International Legal Grounds and Consequences of the Restoration of the Independence of the Republic of Lithuania on 11 March 1990], Vilnius: The Institute of Democratic Politics, 2005, p. 202.

⁷ *Lietuvos Respublikos svarbiausių dokumentų rinkinys* [The Collection of the Main Documents of the Republic of Lithuania], footnote 4, p. 8.

its adherence to universally recognised principles of international law, recognises the inviolability of borders, and guarantees human, civil, and ethnic community rights.

In closing, the fifth provision of the Act of 11 March stipulates that the Supreme Council of the Republic of Lithuania, expressing sovereign power, by this Act begins to realise the complete sovereignty of the State.

As mentioned before, the Act of 11 March makes it clear that the constitution of no other state is valid in the territory of Lithuania. The State could not exist without a constitution; therefore, there was an urgent need to specify that the restored independent State of Lithuania had its constitution. But which? Initially, the draft documents of the restoration of independence referred to the democratic 1922 Constitution of the State of Lithuania. But this constitution had already been ineffective before the Soviet occupation, as the 1938 Constitution of Lithuania was in force at that time. The latter was an authoritarian one – it provided for the concentration of all power in the hands of the President and, in principle, for the secondary role of the Seimas, the representation of the Nation. Irrespective of this, however, it was the last Constitution in force before the Soviet occupation; therefore, it was necessary to restore specifically this constitution, thereby once again making it evident that the restored independent State of Lithuania was the continuity of the pre-war State of Lithuania. The validity of the 1938 Constitution of Lithuania was restored by adopting the Law on the Reinstatement of the 12 May 1938 Constitution of Lithuania.⁸ This law consolidated the following two provisions of overriding importance. Under the first of these central provisions, the Supreme Soviet of the Republic of Lithuania resolved to “annul the validity of the 20 April 1978 Constitution (Fundamental Law) of the Lithuanian SSR” and “the validity of the 7 October 1977 Constitution (Fundamental Law) of the USSR, as well as the fundamentals of the legislation of the USSR and Soviet Republics and other laws of the USSR, on the territory of the Republic of Lithuania” (this provision is directly related to the stipulation of the Act of 11 March that the constitution of no other state is valid in the territory of Lithuania). The second central provision of this law obligated the Supreme Soviet to reinstate the 12 May 1938 Constitution of Lithuania. It should be noted that the law provided for the reinstatement of the entire 1938 Constitution of Lithuania; but, as not all the institutions provided for in the 1938 Constitution of Lithuania were operating in Lithuania at the beginning of 1990, immediately, i.e. in the same sentence after the stipulation on the reinstatement of the 1938 Constitution of Lithuania, the law made the reservation “suspending [the] sections and articles governing the status of the President of the Republic, the Assembly, the State Council and the State Supervisory Body.”

This instantly posed the question whether the reinstatement of the 1938 Constitution of Lithuania meant that the laws in force at the given time were also re-established. The re-establishment of the then valid laws in a mechanical manner was unfeasible and would have led to legal chaos. Therefore, the law contained the provision stating that “the

⁸ Ibid., p. 8–9.

reinstatement of the 12 May 1938 Constitution of Lithuania does not in itself re-establish other laws in effect in the Republic of Lithuania prior to 15 June 1940”.

Following the restoration of independence, it would have been difficult, if not impossible, to live by the 1938 Constitution of Lithuania; consequently, the decision was made to suspend its validity and adopt a provisional constitution. For this purpose, the Law on the Provisional Basic Law of the Republic of Lithuania was enacted.⁹ Although there was no word “Constitution”, it did constitute the Provisional Constitution.

By adopting the Law on the Provisional Basic Law of the Republic of Lithuania, the Supreme Council resolved, first of all, to suspend the 12 May 1938 Constitution of Lithuania and, secondly, to ratify the Provisional Basic Law of the Republic of Lithuania.

The constitution has supremacy over other laws; the supremacy of the constitution is one of the principles of a democratic state governed by the rule of law; this principle means that no legal acts may contradict the constitution. How could the laws in force be brought in line with the new Provisional Constitution? If every law were to be reviewed in terms of its compliance with the constitution, such work would be excessively prolonged. There was not even certainty over the number of the effective laws or their latest wordings in force at that time. No legal chaos could be caused; therefore, the decision was reached to establish that the laws and other legal acts that did not contradict the Provisional Basic Law of the Republic of Lithuania would continue in effect in the Republic of Lithuania.

This logic underlay the drafting process of the above-mentioned documents and the legal framework of the restoration of independence.

Why was independence restored specifically on 11 March? Why could not this be done earlier, for instance, soon after the elections of 24 February 1990, or on the first days of March, or later, e.g. on 12 March?

This could not have been achieved earlier, for the sole reason that only 90 out of 141 deputies were elected during the elections of 24 February 1990. Under the then valid Constitution of the Lithuanian SSR, a session of the Supreme Soviet was considered legitimate if not less than two thirds of deputies, i.e. not less than 95 deputies, were present. Therefore, it was necessary to wait until the runoff election, when the sufficient number of deputies would be elected. The runoff election took place on 4, 7, 8, and 10 March. By the evening of 10 March, when the session of the Supreme Soviet of the Lithuanian SSR started, 133 out of 141 deputies of the Supreme Soviet of the Lithuanian SSR had been elected. It was decided to convene a session on 10 March, i.e. after closing the runoff election, so that there was the guarantee that the maximum possible number of deputies supporting the restoration of independence would be elected. This was of crucial importance: in the event that the Act on the Re-establishment of the Independent State of Lithuania had been

⁹ *Lietuvos Respublikos svarbiausių dokumentų rinkinys* [The Collection of the Main Documents of the Republic of Lithuania], footnote 4, p. 9.

adopted by a very narrow majority, it would have been more difficult to convince the world that Lithuania genuinely aspired to become an independent state.

Why was it important to restore independence not later than 11 March? The following day, i.e. on 12 March, the Congress of the People's Deputies of the Soviet Union was scheduled to start in Moscow. Formally, the Congress of the People's Deputies was the highest state authority of the Soviet Union at that time. The Congress was to elect the first President of the Soviet Union. This post was envisaged to be taken up by Mikhail Gorbachev, Secretary General of the Central Committee of the Communist Party of the Soviet Union. This was exactly what happened; he was elected the first and, ultimately, the last President of the Soviet Union, as the Soviet Union ceased to exist – was dissolved – a year and a half later. It was feared that the elected President of the Soviet Union, while being vested with substantial powers, might attempt to declare a state of emergency in Lithuania. Declaring a state of emergency would have meant the takeover of all authority in Lithuania by the military of the Soviet Union and its commandants, the severe restriction of human rights and freedoms, permission for the military to use armed force, etc. Obviously, in these circumstances, the elected Supreme Council of Lithuania would have been unable to convene, act, and proclaim the restoration of the independent State of Lithuania. In other words, it was necessary to pre-empt the All-Union Congress of the People's Deputies of the USSR and to promptly take advantage of the opportunity created through the will of the nation and afforded by history. This was indeed accomplished on 11 March 1990.

LIETUVOS RESPUBLIKOS
Į S T A T Y M A S

D E L L I E T U V O S R E S P U B L I K O S L A I K I N O J O
P A G R I N D I N I O Į S T A T Y M O

Lietuvos Respublikos Aukščiausioji Taryba, atsižvelgdama į būtinumą suferinti statutus 1938 m. gegužės 12 d. Lietuvos Konstitucijos nuostatas su pakitusiais politiniais, ekonominiais ir kitais visuomeniniais santykiais, n u t a r i a:

1. Nustatyti 1938 m. gegužės 12 d. Lietuvos Konstitucijos galiojimą.

2. Patvirtinti Lietuvos Respublikos laikinąjį Pagrindinį Įstatymą.

3. Nustatyti, kad Lietuvos Respublikoje ir toliau galioja tie iki šiol veikę Lietuvoje įstatymai bei kiti teisės aktai, kurie neprieštaruja Lietuvos Respublikos laikinajam Pagrindiniam Įstatymui.

4. Šis įstatymas įsigalioja nuo jo priėmimo momento.

LIETUVOS RESPUBLIKOS

AUKŠČIAUSIOSIOS TARYBOS PIRMININKAS

LIETUVOS RESPUBLIKOS

AUKŠČIAUSIOSIOS TARYBOS SEKRETORIUS



V. LANDSBERGIS

L. ŠARUTIS

Vilnius, 1990 m. kovo 11 d.

Mr. I-14

LIETUVOS RESPUBLIKOS LAIKINASIS PAGRINDINIS
ĮSTATYMAS

1 e k i r a m i s

BENDRIEJI NUOSTATAI

1 straipsnis. Lietuvos Respublika yra suvereni demokratine Valstybe, išreiškianti Lietuvos liaudies bendrą valią bei interesus.

2 straipsnis. Suvereni Valstybės valdžia priklauso Lietuvos liaudiui. Liaudis savo suvereninę galią įsiviešija per įstatymų sumanymo iniciatyvą, deputatų rinkimus, piliečių arba deputatų balsavimą konstituciniuose klausimuose, ir demokratiską referendumą. Niekas negali varžyti šios galios ar jos panaivinti.

Valstybinę valdžią Lietuvoje vykdo Lietuvos Respublikos Aukščiausioji Taryba, Lietuvos Respublikos Vyriausybė ir Teisėms.

3 straipsnis. Svarbiausi Lietuvos valstybinio bei visuomeninio gyvenimo klausimai sprendžiami liaudies svarstymu, taip pat sprendžiami referendumu.

Referendumą skelbia Lietuvos Respublikos Aukščiausioji Taryba savo iniciatyva arba kai to reikalauja trys šimtai tokančių rinkimų teisę turinčių Lietuvos piliečių.

Svarbiausių valstybinio gyvenimo klausimų sprendimo liaudies svarstymu ir referendumu vykdymo tvarką nustato įstatymai.

A fragment of the facsimile of the Law on the Provisional Basic Law
of the Republic of Lithuania (11 March 1990)

The original document is held by the archive of the Seimas of the Republic of Lithuania,
folder 1, file 2, sheets 20–50.

THE PROVISIONAL BASIC LAW OF THE REPUBLIC OF LITHUANIA

Prof. Dr. Juozas Žilys

On 11 March 1990, the Lithuanian Parliament – the Supreme Council of the Republic of Lithuania (hereinafter referred to as the Supreme Council) proclaimed the restoration of an independent State of Lithuania and immediately started considering the grounds upon which the re-established independent state would be based. The Supreme Council acted by unconditionally following the principle of the continuity of Lithuanian statehood, which, according to international law, meant that the Lithuanian occupation and annexation could not deny and, therefore, did not deny the fact of the *de jure* existence of the State of Lithuania.

All this also presupposed the consolidation of the provisions of the historical documents of 11 March concerning the 1918–1940 constitutions – the constitutional heritage of the Republic of Lithuania. In its Declaration on the powers of the deputies of the Supreme Soviet of the Lithuanian SSR, looking back at the historical political and legal beginnings of the Lithuanian State, the Supreme Soviet noted that the 1 August 1922 Constitution of the State of Lithuania was important in expressing the democratic nature of the State of Lithuania and the sovereign powers of the Lithuanian nation.¹

In the Law on the Restoration of the Validity of the 12 May 1938 Constitution of the Republic of Lithuania,² it was held that the validity of the Constitution of 12th May 1938 was unlawfully suspended “when the USSR exercised aggression in respect of the independent State of Lithuania and annexed it on 15 June 1940”. This law terminated the validity of the Constitutions of the Lithuanian SSR and USSR and laws of the USSR and restored the validity of the 1938 Constitution of Lithuania in the entire territory of the country. This legal provision was not absolute, as it immediately suspended the validity of those chapters and articles of the Constitution that regulated the status of the President of the Republic, the Seimas, the State Council, and the State Control. It was also held that “the restoration of the validity of the 12 May 1938 Constitution of Lithuania does not in itself re-establish other laws in effect in the Republic of Lithuania prior to 15 June 1940”.

Thus, the Supreme Council took account of the political and social reality of that time, i.e. of the fact that a lot had changed as a result of the 50-year-long occupation and annexation. By having forcibly imposed an alien political and economic system on Lithuania, a targeted new base for the social and political relationship was formed. The

¹ Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1990, No 9-220.

² Ibid., 1990, No 9-223.

state power institutions, courts, and other administrative structures of all levels functioned under the Soviet model. Private property relations were completely destroyed and replaced by absolute state ownership and the so-called right of personal ownership was limited in all respects. Because of such a state of society, the full restoration of the validity of the 1922 Constitution of the State of Lithuania and the 1938 Constitution of Lithuania could raise a lot of negative phenomena and regulatory turmoil. The choice of such a direction for constitutional development would have added additional problems in tackling the tasks of re-establishment of the independence of the state.

It is often stated that the provisions of the documents adopted by the Supreme Council on 11 March 1990 concerning the restoration of the validity of the 1938 Constitution of Lithuania were only symbolic. This might be true; however, first of all, it should be borne in mind that these apparently symbolic postulates coded political and legal meanings: no new state was established, but the tradition of the Lithuanian statehood, which had been implied by the constitutional expression of Lithuania in 1918–1940, was continued. Therefore, in this context, not a concrete legal regulation established in the aforementioned constitutions was recalled but the constitutions as symbols, clearly pointing to the political history of the State of Lithuania and its links with the present.

On 11 March 1990, the Supreme Council adopted the Law on the Provisional Basic Law of the Republic of Lithuania³ and, “with regard to the necessity to harmonise the provisions of the restored 12 May 1938 Constitution with the changed political, economic, and other public relations”, terminated its validity and approved the Provisional Basic Law of the Republic of Lithuania (hereinafter referred to as the Provisional Basic Law). It was also established that, in the Republic of Lithuania, the laws and other legal acts of Lithuania that had been valid by that time and that did not contradict the Provisional Basic Law, remained in force. After the Supreme Council announced that this law was to come into force as from the moment of its adoption, a temporary constitutional regulation became effective. It was in force until 25 October 1992, when, in the referendum, by the will of the citizens of the State of Lithuania, the permanent Constitution of the Republic of Lithuania was adopted and announced.

The form of the Provisional Basic Law, as well as the content of its norms and provisions, were first of all determined by the programme provisions of the Lithuanian Reform Movement *Sąjūdis* (hereinafter referred to as *Sąjūdis*), which were formulated at the Constituent Congress of *Sąjūdis* that took place on 22–23 October 1988 and in the General Programme of *Sąjūdis* and resolutions of the Constituent Congress of *Sąjūdis*, as well as in the subsequent documents of the Seimas of *Sąjūdis* and the Council of the Seimas of *Sąjūdis*.

The Provisional Basic Law was drafted on the basis of the draft constitutions that had been drawn up, announced and considered publicly until 11 March 1990. It is especially

³ Ibid., 1990, No 9-224.

worth noting the Sąjūdis publication “Lithuania needs a real Constitution (draft)”, which included the wordings of 33 articles of the then effective Constitution.⁴

This material of “constitutional training” (in particular, the provisions determining the content of the relationships between the state and a citizen, as well as the basis of human rights and freedoms and their constitutional guarantees) was used as much as it addressed the needs of the constitutional regulation of the re-established independent Lithuania. In addition, the Declaration of the Rights of the Baltic Nations was also recalled; it was announced on 14 May 1989 by the Baltic Assembly: the Council of representatives of the Popular Front of Estonia (*Eestimaa Rahvarinne*), the Dūma of the Popular Front of Latvia (*Latvijas Tautas fronte*), and the Seimas of the Lithuanian Reform Movement Sąjūdis.⁵

Before the 24 February 1990 elections to the Supreme Soviet, the draft election platform “Lietuvos žmogui!” [For the People of Lithuania]⁶ of Sąjūdis was announced in the press. In the platform, Sąjūdis stated that it would unconditionally seek to restore the independent State of Lithuania and that, first of all, independence would have to be announced and the Constitution of the Republic of Lithuania would have to be drafted. This document outlined the framework of the constitution of the independent state: “Free Lithuania is founded as a state under the rule of law, by reviving the democratic traditions of the Republic of Lithuania and taking account of the experience of statehood of other democratic states and the institutes of the historically developed democracy. In the republic, citizens are guaranteed all human rights and freedoms and political rights and freedoms that are typical for a civilised society, as well as all persons’ equality before the law and the unrestricted possibility of judicial defence of the rights and freedoms of a person”. The future form of state governance was described as a parliamentary republic, as “it provides most guarantees for the development of democracy”.

The platform provided that the announcement of the re-establishment of the independent State of Lithuania will be followed by the transitional period of constitutional regulation. According to the authors, from the very beginning, the state structures must be created so that “they would create the necessary preconditions for the consistent implementation of the principles of a parliamentary republic, including changeability of the government and possibility of early dissolution of Parliament. During the transitional period, the functions of the head of state will remain within the collegial body of the Parliament – the Presidium of the Supreme Soviet”.

The platform also provided with the establishment of a new system of state power institutions and municipalities, review of the principles of the formation of the government, and ensuring the parliamentary control of its activity. While reforming the constitutional

⁴ *Atgimimas [Rebirth]*, 27 January 1989.

⁵ *Lietuvos kelias [Lithuanian Path]*, Part 1, Vilnius: The Lithuanian Reform Movement Sąjūdis, 1989, p. 89.

⁶ *Atgimimas [Rebirth]*, 26 January – 2 February 1990.

basis of the functioning of judicial power, the establishment of the constitutional court and other specialised courts was provided.

The future constitutional breakthroughs were defined more specifically in the election programme of Sąjūdis followed by the candidates supported by Sąjūdis during the elections of deputies to the Supreme Soviet.⁷ The leitmotif of the programme was the following: “Independence – for reborn Lithuania, Democracy – for independent Lithuania, A decent life – for democratic Lithuania! Democracy, independence and well-being are inseparable!”

It was noted that after the Supreme Soviet of new composition was elected, the first task was “to annul, in a parliamentary and constitutional way, the annexation of Lithuania and to announce the act of re-establishment of the Lithuanian State”. The programme provided for the necessity to immediately declare that the 1940 election of the so-called People’s Seimas was illegal and that the declarations and resolutions of the People’s Seimas were illegal and invalid from the moment of their adoption. In defining the geopolitical situation of the re-established independent State of Lithuania, the following main objectives of the foreign policy were specified: to support the idea of a nuclear-free zone in the Baltics and demand urgent removal of nuclear and other mass weapons from the territory of Lithuania; to seek neutrality as the essential principle of Lithuanian foreign policy; to seek observance of international law in the decolonisation of Lithuania; to restore diplomatic international contacts and return to the European and world community.

In addition to all other actions, it was provided for to immediately reconstruct the Constitution in force: to amend or annul all articles of the Constitution which treat Lithuania as a constituent part of the USSR; to amend the constitutional norms about the USSR armed forces, also to repeal the article regarding the duty of citizens of the Lithuanian SSR to serve in the USSR armed forces; to supplement the Constitution by the prescriptive provision that citizens of Lithuania cannot be forcibly taken outside Lithuania for work, imprisonment or military service; to amend or annul all articles of the Constitution establishing the duties to the citizens to the Soviet Union.

In the election programme of Sąjūdis, it was specified that it was necessary to adopt a provisional constitution of Independent Lithuania. Even though there were no more concrete references concerning its content, the principle guidelines were clear: “It has to consolidate a democratic order of parliamentary republic based on the well-defined separation of the three branches of government (legislative, executive, and judicial powers) by popular and free elections [...] The functions of the President are performed by a collective body of government – the Presidium of the Supreme Council. Popularly elected bodies of the government must have the power to appoint and to control all other bodies of government within the limits defined by law. The Constitution and laws must guarantee all fundamental human and civil rights and freedoms and their defense in a country of law.”

⁷ Sąjūdžio rinkiminė programa [The Election Programme of Sąjūdis], *Atgimimas [Rebirth]*, 2 February – 9 February 1990.

The programme also declared the obligation of the re-established independent state to maintain the territorial integrity and indivisibility of Lithuania, to set up a system of national defence, including Lithuanian police, security bodies, customs services, and state control; to consolidate a multi-party system as a guarantee of democracy; to legitimise all forms of ownership and the economic relations determined by them. The programme also included the requirement that the ethnic communities residing in Lithuania would be given cultural autonomies, and the relationship between the State and the Church would be enhanced according to democratic principles. Finally, it was held that the human rights and freedoms would be proclaimed in the Constitution in accordance with the principles and specific documents of international law.

The main characteristics of the political and legal content of the Provisional Basic Law. Although the provisional constitution of the re-established independent state reminded the Constitution of Soviet Lithuania, which had been in force before, it was still an act establishing the constitutional order of the already sovereign Republic of Lithuania. This act consolidated the ideas of the documents of 11 March and implemented the political programme of Sąjūdis concerning the constitutional regulation of the transitional period.

All this was expressed in the introductory provisions of the Provisional Basic Law that no longer included the socialism spirit of the Soviet Constitution: “The Republic of Lithuania shall be a sovereign democratic state expressing the general will and interests of the people of Lithuania”; “The sovereign state power shall belong to the people of Lithuania. The people shall express their sovereign power through the exercise of legislative initiative, the election of deputies, votes on constitutional matters, and democratic referenda. No one shall have the right to restrict this power or to appropriate it”; even though the all-encompassing principle of separation of powers was not formulated yet, but its essence was expressed by prescribing that “the Supreme Council of the Republic of Lithuania, the Government of the Republic of Lithuania, and the Judiciary shall exercise state power in Lithuania”. The former dogmatics of “democratic centralism”, denying, in principle, the existence of three independent branches of the state power, was no longer included in the said Constitution too.

Given the provision of the Act on the Re-establishment of the Independent State of Lithuania of the Supreme Council that the State of Lithuania recognises the principle of inviolability of borders “as formulated in the Helsinki Final Act adopted at the Conference on Security and Co-operation in Europe”, the integrity and indivisibility of the territory of Lithuania was declared. The adoption of this constitutional norm was stimulated by the internal and external threats, as the Soviet Union inspired and supported the aim of the internal hostile forces to set up autonomous entities in certain Lithuanian regions after having established there the structures alternative to the Lithuanian authorities.

In the provisional constitution, the Lithuanian political system was based on the multi-partyness; this constitution prescribed that political and public organisations, as

well as public movements, were to be established according to the procedure prescribed by law and to function within the limits of the Provisional Basic Law and other laws of the Republic of Lithuania.

The identity of the independent state was expressed through the constitutional provision that the Lithuanian language was to be the state language of the Republic of Lithuania and that the signs that had meant the independent Republic of Lithuania before its occupation and annexation were recognised as official heraldic symbols. Even though the historical tricolor flag featuring three horizontal bands of yellow, green, and red and the National Anthem (*Tautiška giesmė*) written in the 19th century by Vincas Kudirka, one of the leaders of Lithuanian national revival, were legitimised yet in autumn 1988, their consolidation into the Provisional Basic Law had an essentially different political meaning – the state symbols already meant the fully fledged, instead of ambiguous, identity of the State of Lithuania. The Coat of Arms of the State of Lithuania, known as *Vytis* – the white knight in a red field, was reintroduced into the political circulation. It reminded the historical origins of the state and the Republic of Lithuania of 1918–1940. The city of Vilnius, a centuries-old Lithuanian capital, was proclaimed to be the capital of the Republic of Lithuania. This stipulation implied that, since the earliest times, Vilnius had always been the centre of political civilisation of Lithuania.

The chapter “Lithuanian citizenship” of the Provisional Basic Law regulated citizenship relationships of Lithuania and established that the conditions and procedures for receiving and losing citizenship were to be defined by the Law on Citizenship. Moreover, this law had been adopted by the Supreme Soviet of the Lithuanian SSSR and its content met the needs of restored independence; meanwhile, after 11 March 1990, political and legal conditions emerged to implement this law to the full extent. The law declared equal rights of all persons before the law irrespective of race, sex, origin, social and material status, social views, religion or nationality. The law emphasised equal rights between women and men and revealed their constitutional guarantees.

The law also consolidated the equality of rights of Lithuanian citizens of different races and nationalities, i.e. the principle of non-discrimination: any direct or indirect restriction of the rights of Lithuanian citizens, any direct or indirect establishment of privileges on the basis of social origin, public views, beliefs or nationality, the humiliation of a citizen on the basis of these characteristics, as well as all kinds of propaganda of racial or national exclusiveness, discord, or disdain were to be prosecuted by law.

The Soviet socialist relicts and ideological stamps were removed from the system of the norms of the Provisional Basic Law that defined the rights, freedoms, and duties of citizens; this system of norms no longer included the provisions that rights and freedoms must serve “for the purposes of the creation of communism”, “for the public interests”, that the aim was “to strengthen and develop the socialist order”, “the unity of Soviet society”, etc.

The third chapter declared the fundamental political freedoms of citizens: the right to referendum; the right to elect and to be elected; the right to participate in managing state affairs; the right to collect and disseminate information; the freedom of speech, press, assembly, mass meetings, and demonstrations; the right to join political and other social organisations; and the freedom of thought and conscience. The formerly implemented church discrimination policy and official atheism ideologies were refused. The law established that the Church and other religious organisations were to have independent legal status and they were to be guaranteed the right to independently conduct their internal affairs.

The provisional constitution revealed the content of the right to work, to rest, to healthcare and material maintenance in old age, in case of illness or inability to work, the right to housing, to education, and the right to avail oneself of cultural achievements. It should be noted that these and other constitutional guarantees of the social welfare of citizens were based on Sąjūdis' objective that social justice was to be ensured by the state.

The Provisional Basic Law also consolidated certain duties of citizens. At that time, the concept that the implementation of rights and freedoms is inseparable from the fulfilment of duties had not yet been refused; however, also in this regard, the constitutional text was cleaned from communist ideological dogmatics, i.e. from the postulates stating that everyone must "observe the rules of the socialist common life", "uphold the dignity of Soviet citizenship", "strengthen friendship of the nations and nationalities of the multinational Soviet state", and "be uncompromising toward anti-social behaviour".

The provisional constitution still included the chapter "The economy", though its content was amended beyond recognition. It no longer involved such a notion as "socialist ownership" and such provisions as "State property, i.e. the common property of Soviet people, is the principal form of socialist property" or "The economy of the Lithuanian SSR is a unit of an integral economic complex [...] on the territory of the USSR". This chapter still included the provision that the property of the Republic of Lithuania consisted of the private property of its citizens, the property of groups of citizens, and state property. The Republic of Lithuania guaranteed, to all holders of property, the possibility of the independent management of objects that belonged to them according to the Law on Property, as well as the use and disposal of such property according to the laws of Lithuania. Uniform legal remedies were to be established for the defence of the rights of ownership.

The basis of the constitutional status of the Supreme Council. The provisional constitution established that the Supreme Council was to be the highest body of the state power in the Republic of Lithuania. It was the Supreme Council that adopted the historical decisions to restore independence, lay the political, social, and constitutional foundations of the state, and to implement comprehensive reforms.

The Provisional Basic Law prescribed the status of the Supreme Council and attributed the following powers only to the competence of the Supreme Council: to adopt the constitution; to call for elections; to approve the programmes of economic and social

development and the state budget; to form state bodies accountable to it; to form the government; to establish ministries; to establish the systems of the prosecution service, courts and other judicial bodies, the procedure for conduct of their activities, as well as to form their composition; to decide questions of the administrative-territorial structure of the Republic of Lithuania and to establish the procedure for resolving these matters; to ratify and renounce international treaties of the Republic of Lithuania; to establish state awards; to issue acts of amnesty; to repeal directives and decrees of the Council of Ministers (the Government), as well as decisions of regional councils and municipal councils of the republic if they conflicted with existing legislation.

It was established that the right of legislative initiative at the Supreme Council was to reside with the deputies of the Supreme Council of the Republic of Lithuania, the Supreme Council Presidium, the Chairman of the Supreme Council, the standing committees of the Supreme Council, the Government, the Supreme Court, and the Prosecutor-General of the Republic of Lithuania, as well as to political parties and social public organisations.

The rules governing the law-making process were consistently specified in the Regulation of the Supreme Council of the Republic of Lithuania with regard to the traditions and experience of parliamentary democracy.⁸

The Provisional Basic Law prescribed that the deputies of the Supreme Council met on an annual basis for its regular spring and autumn sessions: the spring session opened on March 1 and closed on June 30 at the latest; the autumn session opened on September 1 and ended on December 15. Special sessions could be called by the Presidium of the Supreme Council either on its initiative or at the request of no less than one-third of the deputies of the Supreme Council. Even though the periodicity and duration of regular sessions had been established in the provisional constitution, due to the political situation and circumstances of that time, these sessions used to be extended; special sessions or sittings of the Supreme Council were called more than once.

Under the Provisional Basic Law, the Supreme Council was to be composed of 141 deputies elected in voting districts having an equal number of voters. The provisional constitution specified that in his/her activities, a deputy was to be guided by the interests of the state, to take into consideration the needs of the people of his/her constituency, and to seek for the implementation of his/her *constituents' mandate*.

When a deputy was appointed or elected to the state bodies formed by the Supreme Council, i.e. appointed as a minister, the appropriate powers of the deputy were to be limited as provided for by law. In the Regulation of the Supreme Council, it was specified that, in the given situation, the deputy was to lose the right: (1) to vote during the sittings of the Supreme Council; (2) to elect or to be elected to any position of the Supreme Council and

⁸ Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1991, No 14-359.

standing commissions and to propose candidates to such positions; (3) address the heads of state institutions with questions.

The Provisional Basic Law still included the constitutional relic of the Soviet period of time – the so-called principle of the imperative mandate. It meant that a deputy had to give an account of his/her activities to constituents, political parties, public organisations, and movements that had nominated the candidate to the post of a deputy. A deputy, who had not justified the trust of his constituents, could be recalled at any time by a decision of the majority of voters.

Most aspects of the status of a deputy were concretised in the 11 April 1990 Law on the Status of a Deputy of the Supreme Council of the Republic of Lithuania.⁹ This law established that a deputy's term of office could be terminated in the following cases: (1) when a deputy is recalled by his/her constituents; (2) when, at the deputy's own request, the Supreme Council adopts a resolution accepting the surrender of his/her powers; (3) upon the loss of Lithuanian citizenship; and (4) upon the passage of a criminal sentence against said deputy.

Later, one more ground for losing the mandate of a deputy was prescribed: a deputy lost his/her mandate if it transpired that he/she had cooperated with the special services of other states. The Law on the Verification of the Mandates of the Deputies Accused of Consciously Collaborating with Special Services of Other States,¹⁰ which was adopted on 17 December 1991, established that if it was alleged after the elections that a deputy had been a conscious collaborator with the special agencies of the Soviet Union or agencies of other states (security, intelligence or counterintelligence), a special commission of deputies was to be established for the investigation of facts and it had to question the accused deputy, familiarising him with the facts indicating his collaboration, as well as listen to his explanations and evaluate the facts showing his innocence. The commission of deputies could address courts concerning the legal assessment of the accumulated facts and had to forward, without delay, its conclusion together with a court judgment to the Supreme Council. The Supreme Council then, without consideration, had to adopt a resolution assigning the electoral commission of the republic with organising, in a concrete electoral district, the voting concerning the confirmation or annulment of the mandate of a deputy and a resolution concerning the suspension of the powers of a deputy until the completion of the verification of his mandate. The mandate of a deputy was considered to be confirmed if he had received more than one half of the votes of voters listed in the electoral list of the election district. If less than one half of the voters had confirmed the mandate of a deputy, his/her mandate was considered to be annulled, i.e. no longer in force as from the day of the vote.

⁹ Ibid., 1990, No 12-366.

¹⁰ Ibid., 1992, No 1-1.

The analogous procedure concerning the deputies of the local (municipal) councils had to be organised by the councils of relevant cities, regions, territorial units, and settlements.

The Law on the Status of a Deputy of the Supreme Council prescribed the material and social maintenance of the activities of a deputy, as well as legal guarantees of inviolability of a person. A deputy could not be held criminally liable and arrested, or his freedom could not be deprived in any other manner without the consent of the Supreme Council, no administrative penalty could be imposed on a deputy under judicial proceedings without the consent of the Supreme Council, with the exception of cases when a deputy was caught in the act of committing a crime (*in flagranti*). In these cases, the Prosecutor General had to inform the Supreme Council of such a violation without delay. Upon receiving the consent of the Supreme Council concerning the initiation of proceedings against a deputy, the deputy could not be arrested in the building of the Supreme Council.

The Presidium of the Supreme Council. This institution was one of the most important structural units of the internal policy of the Supreme Council, which influenced the content of most decisions of the Supreme Council and, sometimes, even determined it. The Presidium was a body accountable to the Supreme Council, guaranteeing the organisation of work of the Supreme Council and implementing other powers within the limits of the Provisional Basic Law of Lithuania and other laws.

The members of the Presidium comprised the following: the Chairman of the Supreme Council, deputies to the Chairman of the Supreme Council, the Secretary of the Supreme Council, and the chairmen of the standing committees of the Supreme Council. Other members of the Presidium were chosen by the Supreme Council from the candidates proposed by the standing committees or a group of deputies of at least 15.

The norms of the Provisional Basic Law establishing the constitutional status of the Presidium were also partially transferred from the Soviet Constitution; however, they were amended with regard to the statement of the election programme of Sąjūdis that “under the provisional constitution, the functions of the President are performed by a collective body – the Presidium of the Supreme Council”. Some powers of the Presidium were obviously identical with the traditional duties of the head of state, the President, provided for in constitutions or other acts of the supreme power of most countries. Thus, the Presidium performed the following functions: granted citizenship, decided on the issues of loss of citizenship and granting of asylum; granted awards and conferred honorary titles; granted pardon to persons who had been sentenced by courts of Lithuania; appointed and recalled Lithuanian diplomatic representatives in foreign countries; and accepted the letters of credence and recall of the diplomatic representatives of foreign countries. In the light of internationally recognised diplomatic protocol, the latter function was later delegated to the Chairman of the Supreme Council, who, under the provisional constitution, was the highest official representative of the Republic of Lithuania.

Another part of the powers of the Presidium was the organisation of the sessions of the Supreme Council: consideration of the work programmes of sessions, consideration of the draft agendas of the sittings of a week and their submission to the Supreme Council; assessment of draft laws and submission of proposals concerning these laws to the Supreme Council; coordination of the preparation of draft laws; assessment of draft laws and submission of proposals concerning these draft laws to the Supreme Council; where necessary – formation of working groups and commissions for the preparation of draft acts and other documents; and submission of proposals to the Supreme Council concerning the acts of the Government that were incompliant with laws.

The constitutional status of the Presidium was consolidated by the provisions that the Government of the Republic of Lithuania – the Council of Ministers – was to be responsible to the Supreme Council of the Republic of Lithuania and accountable to it, and during the period between the sessions of the Supreme Council – to the Presidium of the Supreme Council. Even though this principle of *accountability* was not fully revealed in other legal acts, in practice, it was quite usual to invite the heads of governance institutions (ministers) and other officials to the sittings of the Presidium and to listen to their reports on the considered questions. For some time, the *common meetings* of the Presidium and the Government were organised. The most important domestic and foreign issues were tackled by means of common statements and addresses. In those cases, when the decisions concerning the issues considered in the Presidium had to be adopted by the Government, it was commissioned or recommended to do that; moreover, sometimes the Government was obliged to take appropriate actions.

The Presidium not only fulfilled its constitutional obligations to appoint Lithuanian diplomatic representatives, but also ensured the implementation of the objectives of the Lithuanian foreign policy in other way – by approving the accession to conventions and other international agreements and by obliging the Government and other state institutions to sign or ratify bilateral or multilateral agreements. In preparation for the negotiations with foreign states, by means of the resolutions of the Presidium, working groups, expert groups or negotiation delegations were set up. Official statements of the Presidium, addresses or other documents expressed the Lithuanian position on the most relevant issues of foreign policy.

The Commissions of various statuses were functioning under the Presidium. For example, the Clemency Commission, the Citizenship Commission or the Awards Commission that, under their competence, submitted conclusions and proposals to the Presidium. The Lithuanian Heraldry Commission, the State Commission of the Lithuanian Language, the Resistance Participants' Rights Commission, the State Commission for Regional Problems, and other commissions came under the jurisdiction of the Presidium. The working groups set up by the Presidium investigated the problematic political and social phenomena and provided with conclusions; the temporarily formed teams of lawyers

prepared the draft Civil, Criminal, and Labour Codes, as well as draft Codes of Civil Procedure and Criminal Procedure.

The constitutional status of the Chairman of the Supreme Council. The Provisional Basic Law prescribed: “The Chairman of the Supreme Council of the Republic of Lithuania shall be the highest official representative of the Republic of Lithuania and shall represent the Republic in international relations”.

The constitutional status of the head of the Lithuanian Parliament was defined in the same way in the political and legal discussion concerning the constitutional future of Lithuania, which took place yet in 1989, and in the then drafted constitutions. Although the preconditions for restoring the institution of the President were already debated among society, this action was suspended based upon the opinion that the question had to be decided only upon the restoration of independence and the establishment of the foundations of the setup of the state in the new constitution of Lithuania.

On 11 March 1990, Vytautas Landsbergis, Head of the Council of the Seimas of Sąjūdis, was elected as the Chairman of the Supreme Council. When summarising all functions delegated to the Chairman of the Supreme Council, it is obvious that his powers could be attributed to two areas: the first area covered his duties and rights, as the head of the Parliament, such as “presiding over the preparation of questions which are to be discussed by the Supreme Council”; the second area was linked to the traditional duties of the head of state, the President, which are known in comparative constitutional law and maintained in the political systems of both parliamentary democracy and presidential democracy.

1. The status of the Chairman of the Supreme Council, as the head of the Parliament. Such a status of the Chairman of the Supreme Council was guaranteed by the following powers:

- to preside over the sittings of the Supreme Council; the content of this prerogative is described in more detail in the Regulation of the Supreme Council; it provided that also the deputies to the Chairman could preside over the sittings; during the sittings of the Supreme Council or its standing or ad hoc commissions, the Chairman could, at any time, express his opinion or the opinion of the Presidium on any discussed question; at a request of the Chairman, a closed sitting of the Supreme Council could be held and extraordinary breaks between the sittings could be made;

- to preside over the meetings of the Presidium of the Supreme Council; given the powers of the Presidium in organising the activity of the Parliament, this prerogative of the Supreme Council expanded the possibilities of the Chairman of the Supreme Council in the political process even more;

- to establish the spheres of activity of the deputies to the Chairman of the Supreme Council; these officials exercised the powers and certain functions of the Chairman when “the Chairman was absent or was unable to perform his duties”;

– the right of legislative initiative. At the time when the Supreme Council was operating, the Chairman was an active participant of the law-making process, who submitted, promoted, or supported the draft judicial decisions. In this regard, the political documents of the Supreme Council – statements, addresses, letters, and declarations that were initiated by either the Chairman himself or on behalf of the Presidium, were of particular importance. By means of these documents, the Council responded to the most important events in Lithuania and international policy issues. That was how the law of parliamentary resolutions or the so-called soft law evolved.

2. *The fragments of the functions of the Head of State, the President, falling within the competence of the Chairman of the Supreme Council.* The provisional constitution described the Chairman of the Supreme Council as “the highest official representative of the Republic of Lithuania” and established the specific powers meeting this status for him.

The powers of the Chairman of the Council in the areas of foreign policy and international relations. At that time, the Supreme Council operated under extreme conditions, as the political leadership of the Soviet Union not only threatened Lithuania with various economic and political sanctions, but also imposed them. Lithuania was prevented from contacting with the Western states while seeking the official international recognition of the re-established independent state. The above-mentioned and other circumstances determined that the Supreme Council became the most important centre of resistance against the expansion of the Soviet Union. The political power gathered in the Parliament of independent Lithuania in order to fight against the objective of the Soviet Union to isolate Lithuania from the outside world. That was the situation of political and social tension in which the Supreme Council, the Government, as well as other levels and officials of the state apparatus, operated, and in which the meaning and role of the Supreme Council and its President in ensuring the implementation of the external functions of the state became clear.

The Provisional Basic Law established that “The Chairman of the Supreme Council of the Republic of Lithuania [...] shall represent the Republic in international relations”. Another constitutional norm simply consolidated that the President “hold talks and sign international treaties of Lithuania, submitting them for ratification to the Supreme Council”. The latter provision was concretised in the 21 May 1991 Law on International Treaties of the Republic of Lithuania¹¹ by establishing that the Chairman of the Supreme Council, the Prime Minister, and the Minister of Foreign Affairs of the Republic of Lithuania had the right to negotiate the conclusion of international treaties of the Republic of Lithuania, to adopt their texts or sign them.

The definition of the powers of the Chairman of the Supreme Council in the areas of foreign policy and international relations, as presented in the provisional

¹¹ Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1991, No 16-415.

constitution, only formally and partially reflected his role in ensuring the implementation of the purposes and interests of the State of Lithuania at the given historical period. The individual actions of Vytautas Landsbergis, Chairman of the Supreme Council, meant to pursue the implementation of the policy guidelines formulated by the Supreme Council and the Government, were of particular importance. By means of his letters, statements, and other documents, the Chairman of the Council addressed the heads of states of the Soviet Union and other foreign countries, parliaments, and governments on more than once occasion and requested to officially recognise the independence of Lithuania, to end the occupation and annexation of the state, and withdraw the troops of the Lithuanian SSR and so demilitarise not only the territory of Lithuania but also of other Baltic States.

Here is a quotation from one of the first letters of Vytautas Landsbergis, Chairman of the Supreme Council, addressed to the Chairman of the Supreme Soviet of the USSR “His Excellency Mikhail Gorbachev” on 12 March 1990. Notifying on the acts adopted by the Supreme Council of the Republic of Lithuania on 11 March 1990 whereby the independent State of Lithuania was re-established, the Chairman hoped that “[...] You and all the leaders of the Soviet Union will treat our decisions with understanding and in good faith, and the Union of Soviet Socialist Republics will recognise the re-established independent Republic of Lithuania [...] Please consider this address as an official proposal to start negotiations on the regulation of all questions in connection with the re-establishment of the independent State of Lithuania”.

The Chairman of the Supreme Council headed the delegations of the State of Lithuania for starting the negotiations with the Soviet Union by signing the treaties on inter-state relations between the Republic of Lithuania and the Russian Soviet Federal Socialist Republic. On 12 May 1990, the Declaration on Unity and Cooperation by the Republic of Estonia, Republic of Latvia, and Republic of Lithuania was signed by Arnold Rüütel, Chairman of the Supreme Council of the Republic of Estonia, Anatolijs Gorbunovs, Chairman of the Supreme Council of the Republic of Latvia, and Vytautas Landsbergis, Chairman of the Supreme Council of the Republic of Lithuania.

These are just a few episodes revealing the objectives of Lithuanian foreign policy and its diplomatic activities. After the military putsch failed in Moscow in August 1991, a universal international recognition of Lithuania started, diplomatic relations with foreign states were restored, the Republic of Lithuania joined the United Nations and became a fully fledged member of international community. New guidelines and tasks of Lithuanian foreign policy emerged and they were to be implemented by the Supreme Council, its Chairman, and the Government.

Reports of the Chairman of the Supreme Council on the situation of the Republic and on important questions of domestic and foreign policy of Lithuania. The source of such a prerogative was the Provisional Basic Law. The Regulation of the Supreme Council specified that the Chairman or, under his authority, his deputy were to submit the above-

mentioned reports at least once a month. While providing for this function, account was taken of the tradition of presidential democracies where such reports are always presented by the heads of states – the Presidents. The provision that these reports had to be presented “at least once a month” was resulted by the difficult internal political situation and the need of a regular update of dynamically changing political environment in Lithuania and international situation, as well as of the need to publicly notify on it.

Quite often these reports were defined as political reports and information and sometimes – as a foreword or speech by the Chairman. After 11 March 1990, for a certain period of time, the reports were presented every day because it was necessary to keep the deputies of the Supreme Council regularly informed on the reaction of Moscow and political authorities of foreign states to the declaration of independence. This was done also after 13 January 1991, when the Soviet Union took military action in Vilnius, due to which people died, there were hundreds of them injured and permanently disabled, as well as during the military putsch that took place in August 1991 in Moscow.

Some particular characteristics of the contents of this report could be distinguished. One of the main topics was domestic political circumstances and realities. The political development of Lithuanian society and the state, the activity of anti-independence forces, and most other phenomena were assessed. The second group of topics was related to the foreign policy of the Republic of Lithuania within an international context. More general tendencies, specific facts, and their relation to the practical factors of Lithuanian state institutions were fully assessed. In other words, wide panorama of Lithuanian political and social existence was revealed. The reports often included specific tasks of the officials of the Lithuanian Parliament, the Government, and other institutions. The Chairman informed on the efforts of the Presidium or himself to implement the instructions, on the visits to foreign countries, and meetings with their political leaders.

The constitutional powers of the Chairman of the Supreme Council in the formation of the Government and appointment of the most important state officials. Special mention should be made of the prerogative of the Chairman to recommend, for the consideration of the Parliament, a candidate for the appointment to the post of the Prime Minister, i.e. to initiate the procedure of the formation of the Government. This right was obviously equivalent to the presidential right of the head of state of parliamentary democracies, i.e. having discussed with the leaders of the political parties that had won the elections and with the political groups in the Parliament, to propose a candidate for the post of the head of the executive power to the Parliament.

The constitutional duty of the Chairman of the Supreme Council to recommend for the consideration of the Supreme Council a candidate to the post of the Prime Minister, as consolidated in the Provisional Basic Law, was established more specifically in the Regulation of the Supreme Council. The information about the nominated candidate had to be announced at least five days before his/her official presentation. The conclusions

about the candidate could be expressed by the standing commissions and political groups of deputies. The candidate to the post of the Prime Minister had to present his political programme.

Under the provisional constitution, the Chairman of the Supreme Council also had the right to recommend, for the consideration of the Supreme Council, candidates for the appointment to the posts of the Chairman of the Supreme Court, the Prosecutor-General of the Republic of Lithuania, and heads of other state institutions accountable to the Supreme Council.

The constitutional duty to sign legal acts. The Chairman of the Supreme Council signed all laws and other acts adopted by the Supreme Council in order to complete the legislative process. The signature of the Chairman evidently meant that a legal act was adopted in accordance with all the regulatory rules and had to be implemented.

It should be noted that this obligation of the Chairman only partially resembled the traditional discretion to promulgate, which is known in comparative constitutional law and related not only to signing of a legal act but also to the possibility to veto a law and refer it back to the Parliament for reconsideration. In this regard, the function of signing acts was, in principle, not the right, in the true sense of the word, but an obligation without alternative.

The Interim Management of Defence of the Republic of Lithuania (Lietuvos Respublikos laikinoji gynybos vadovybė – LGV) and the constitutional status of the Chairman of the Supreme Council. In the light of the extent of the military aggression of the Soviet Union in Lithuania, the Resolution of the Supreme Council on defence measures of the Republic of Lithuania¹² of 12 January 1991 provided the measures of resistance against the aggression and other measures. In the early hours of the morning of 13 January 1991, following the tragic events of the night, the Supreme Council adopted the Resolution on the formation of the Interim Management of Defence of the Republic of Lithuania;¹³ the members of the LGV formed by the above-mentioned resolution were Vytautas Landsbergis, Chairman of the Supreme Council and the heads of the Government, armed forces, internal affairs, and security services. When the composition of the LGV was announced, the head was not specified; however, it was assumed that, in accordance with his duties, the Chairman of the Supreme Council will lead it. The resolution established the main functions of the LGV, the essence of which was to manage the actions of physical (military), political, information, and other kinds of defence, until the Soviet Union would stop military aggression against Lithuania. The LGV was accountable to the Supreme Council.

Later, on 30 July 1991, the Supreme Council adopted the Law on the Powers of the Interim Management of Defence,¹⁴ which prescribed that, in the event of extreme danger,

¹² *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania]*, 1991, No 3-56.

¹³ *Ibid.*

¹⁴ *Ibid.*, 1991, No 23-597.

the LGV would have the right to adopt immediate decisions aimed at defending the state and binding on all institutions of the executive power. These decisions could not limit the constitutional rights and freedoms of citizens. Having established that the LGV had to inform the Supreme Council about the adopted decisions and performed actions, this law also established that the Supreme Council could suspend or revoke any decision.

The fact that, in organising the activity of the LGV, the Chairman of the Supreme Council performed the role of coordination did not officially mean that his individual legal powers were extended; however, his role in concentrating the efforts of state institutions to resist aggression was obviously comprehensive.

The Government of the Republic of Lithuania. Under the Provisional Basic Law, the executive power of the Republic of Lithuania was to be vested in the Government (the Council of Ministers). It consisted of the Prime Minister, deputy prime ministers, and ministers. Later, the post of a minister without portfolio was created.

The Government addressed all issues of state governance if, under the provisional constitution, they did not fall under the competence of the Supreme Council, the Presidium of the Supreme Council, and the Chairman of the Supreme Council. Specific powers and main activities were provided in the Law on the Government of the Republic of Lithuania¹⁵ of 22 March 1990 and in other laws.

The Government was headed by the Prime Minister. He was appointed by the Supreme Council on the recommendation of the Chairman of the Supreme Council. Deputy prime ministers and ministers were appointed by the Supreme Council on the recommendation of the Prime Minister. The competence of the Prime Minister comprised not only organising and presiding over the sittings of the Government but also appointing deputy ministers, heads of state services and inspectorates and their deputies and dismissing them from duties, submitting the proposals to the Supreme Council on the reorganisation of the Government, adopting, in cases of emergency, decisions on issues related to state governance under competence of the Government, and notifying the Government on them. In the event of a disagreement between the members of the Government on fundamental questions pertaining to the activity of the Government, the Prime Minister had the right to address the Supreme Council concerning the replacement of individual members of the Government.

The Government was responsible and accountable to the Supreme Council, and during the period between the sessions of the Supreme Council – to the Presidium of the Supreme Council. This principle of accountability meant that the Government had to account for its work to the Supreme Council at least once a year and to answer the questions of deputies on the current issues every week.

The Supreme Council could express no confidence in the Government or a minister. The decision of no confidence could be passed if not less than 2/3 of all the deputies voted in

¹⁵ Ibid., 1990, No 11-330.

favour thereof. Upon the issuance of a vote of no confidence, the entire Government or an individual minister had to resign. In the case of the resignation of the Prime Minister, the entire Government would have had to resign as well.

The main unit of the system of governance was the ministries. They had to implement the policy of the Government and to draft economic and social development programmes. At that time, the following ministries were established: the Ministry of Economy, the Ministry of Energy, the Ministry of Finance, the Ministry of National Defence, the Ministry of Culture and Education, the Ministry of Material Supply, the Ministry of Forestry, the Ministry of Industry, the Ministry of Commerce, the Ministry of Communications, the Ministry of Construction and Urban Planning, the Ministry of Social Security, the Ministry of Health, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, and the Ministry of Agriculture.

The Government could establish other state services and inspectorates for addressing the issues of state governance. The Government had the right to repeal acts of the ministries of the Republic of Lithuania and other bodies under its jurisdiction if they contradicted laws of the Republic of Lithuania, or resolutions and orders of the Government.

The Government was granted the legal possibilities to react to decisions adopted by municipalities. It had the right to suspend and protest the decisions of upper local governments at the council of those respective local governments and, in the event of a dispute, the final decision on the issue rested with the Supreme Council.

Municipalities in the constitutional structure of the Republic of Lithuania. The foundation for the administration of local self-government was administrative-territorial units of the Republic of Lithuania: 427 local territorial units, 19 settlements, 80 towns under regional jurisdiction, 44 regions, and 12 cities under the Republic's jurisdiction.

Local self-government was based on a two-level system. The *lower* level embraced local territorial units, settlements, and towns under regional jurisdiction, whereas the *higher* level embraced regions and cities under the Republic's jurisdiction. In these administrative-territorial units, councils were formed of elected deputies.

The content of self-government and the basis for its organisation were regulated by the Provisional Basic Law and the Law on the Fundamentals of Local Self-Government.¹⁶ The procedure of the election of deputies to municipal councils of all levels was established in the Law on the Election of Deputies to the Local Councils of People's Deputies of 7 December 1989.¹⁷

The Law on the Fundamentals of Local Self-Government established that "the councils of people's deputies shall constitute the representative state power body of local government within its territory". Such a definition also implied the respective competence

¹⁶ Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Soviet and the Government of the Lithuanian SSR], 1990, No 7-170.

¹⁷ Ibid., 1989, No 36-538.

of councils. The basic form of work of the council was its sessions. The work of the council of local government of the lower level was organised by the chairperson of the council and the work of the council of local government of the higher level – by the presidium of the council.

One of the most important functions of the councils was the formation of local governance institutions and the appointment of relevant officials. The chief of a local territorial unit or a settlement and the mayor of a town under regional jurisdiction were elected by the appropriate councils of local government of the lower level by secret ballot. The chief, the mayor, and their deputies were responsible and accountable to the council that had elected them. Upon the proposal of deputies, they could be dismissed before termination of their term of office.

The work of the local government of the higher level was organised and the activity of deputies was coordinated by the presidiums of councils consisting of the chairperson of the council, his deputy, chairpersons of the standing committees of councils, and other deputies. In these local governments, the governance functions were implemented by regional managers and mayors of cities elected by respective councils by secret ballot. The deputies and secretary of these councils were also appointed upon the recommendation of the above-mentioned regional managers and mayors. The regional board and the city board were formed; they were collective executive bodies that comprised of the regional manager, in the cities – the city mayor, their deputies, the secretary, and other members. The members of the board could not, at the same time, be deputies of the relevant councils.

The council of local government of higher level had the right to suspend the decisions of the bodies of local government of the lower level if they contradicted the laws. In the event of disagreement, the final decision on the issue was taken by the Supreme Council. In turn, the council of local government of the lower level had the right to contest, at the Supreme Council, decisions adopted by the bodies of local government of the higher level on issues assigned to the exclusive powers of local government of the lower level.

The activity of local governments was controlled also by other state institutions: the prosecution service observed the lawfulness of the legal acts of the executive bodies of local government and the prosecutors could object to these acts and require abolishing them. All legal and natural persons had the right to appeal against the decisions of executive bodies and officials of local government to the court, arbitration or appropriate council.

Under the Law on the Fundamentals of Local Self-Government, the Supreme Council could dissolve the council of local government and suspend the activity of its executive bodies if the activity of the bodies of local government contradicted the Constitution or laws, as well as in other cases. Upon dissolution of the council of local government, the Supreme Council could decide to hold, within three months, extraordinary elections to the appropriate council, empowering an authorised official of the Government to perform the governing functions or to suspend the laws of local government on its territory and to

introduce administrative rule for a period of up to one year. The procedure of implementation of such a system of governance was regulated by means of the Law on Direct Governance of Administrative Territorial Units¹⁸ of 27 December 1990.

On 7 July 1992, the Supreme Council adopted the Law on Amending and Supplementing the Provisional Basic Law of the Republic of Lithuania and Amending the Title of the Supreme Institution of the State Power of the Republic of Lithuania,¹⁹ whereby it annulled the section “The System of the Councils of People’s Deputies and the Principles Guiding Their Activity” of the provisional constitution. This meant that the relic of the Soviet political system, i.e. the provision that “Councils of People’s Deputies shall be comprised of the Supreme Council of the Republic of Lithuania, regional, municipal, township and rural district councils of people’s deputies, and form a unified system of the representative state power bodies of Lithuania” was irreversibly refused. The laws amended the name of local institutions of state power, the councils of people’s deputies; it was decided to further call them as municipal councils.

The Court. The Provisional Basic Law established the essential constitutional grounds of the judiciary. The Law on the Court System and Status of Judges²⁰ of 13 February 1990 was effective insofar as its provisions were not in conflict with the provisional constitution. On 11 March 1990, the Supreme Council adopted the resolution “On the Extension of Powers of Some State Bodies of the Republic of Lithuania”.²¹ The Supreme Court, the regional and city courts, and other state institutions were commissioned to exercise their existing powers until the Supreme Council formed the new state institutions.

The Provisional Basic Law prescribed that justice in the Republic of Lithuania had to be exercised solely by the court and that courts with extraordinary powers could not be established in Lithuania. At that time, the courts of the Republic of Lithuania were the Supreme Court and regional (city) courts that were composed of the elected judges and court assessors. The judges of courts were elected by the Supreme Council. The assessors of regional (city) courts were elected by municipal councils, and the assessors of the Supreme Court – by the Supreme Council. The judges of courts were elected for a term of ten years, the assessors of courts – for a term of five years. It was announced that judges and assessors of courts were independent and had to obey only the law. Interference by state and governance institutions, by political parties, public organisations, public movements, persons in official positions, and other citizens, into the activities of the judges and court assessors when they were exercising justice, was prohibited and subject to criminal liability in the manner established by law.

¹⁸ *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Soviet and the Government of the Republic of Lithuania], 1991, No 2-27.

¹⁹ *Ibid.*, 1992, No 22-634.

²⁰ *Ibid.*, 1990, No 8-185.

²¹ *Ibid.*, 1990, No 9-219.

The Law on Amending and Supplementing Certain Articles of the Provisional Basic Law of the Republic of Lithuania²² of 16 January 1992 provided for the Lithuanian judicial reform. It was prescribed that the courts of the Republic of Lithuania were the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts. The new procedure for the appointment of judges was consolidated. The Supreme Council was commissioned to appoint the Chairman of the Supreme Court of Lithuania, chairpersons, and judges of this court, and Presidium of the Supreme Council – to appoint the judges of regional courts, local courts, and the Court of Appeal. However, the judges of the Court of Appeal that were appointed by the Presidium of the Supreme Council had to be approved by the Supreme Council.

On 6 February 1992, the new Law on Courts²³ was adopted. It established the competence of courts of all levels, requirements for judges, the procedure of the appointment, dismissal, and recall of judges and their responsibility, specified the status of chairpersons of courts and their deputies, social guarantees of judges and guarantees of their independence. By means of this law, the institute of assessors was liquidated and the implementation of justice was transferred to professional judges. Under this law, in local courts, a judge investigated cases alone. In regional courts, the Court of Appeal of Lithuania, and the Supreme Court of Lithuania, cases were heard by chambers of three judges.

Full implementation of the law encountered a delay, as it was necessary to establish new courts and to amend most laws, including the Civil Code and the Code of Criminal Procedure. The reform was implemented gradually: on 12 March 1992, new local courts²⁴ were established and became operational, on 29 October 1992, i.e. already after the referendum in which the Constitution of the Republic of Lithuania of 25 October 1992 was adopted, regional courts, the Court of Appeal of Lithuania, and the Supreme Court of Lithuania²⁵ were established.

The Bar. The Provisional Basic Law prescribed that legal aid to citizens and organisations was to be provided by the chambers of lawyers composed of advocates. In cases provided by law, legal aid to citizens was provided free of charge.

On 16 September 1992, the Supreme Council adopted the Law on the Bar, which substantially altered the legal status of advocates, consolidated the guarantees of independence and autonomy of advocates and the principles of free corporation.²⁶ Persons, who met the requirements of the law and were included in the list of advocates of the Republic of Lithuania, could practice and identify themselves as advocates.

²² Ibid., 1992, No 3-42.

²³ Ibid., 1992, No 8-208.

²⁴ The Republic of Lithuania's Law on Establishing Local Courts and Territories Boundaries of Their Activity of 12 March 1992, *ibid.*, 1992, No 10-240.

²⁵ The Republic of Lithuania's Law on Establishing Regional Courts, the Court of Appeal of Lithuania, and the Supreme Court of Lithuania and on Supplementing Article 15 of the Republic of Lithuania's Law on Courts of 29 October 1992, *ibid.*, 1992, No 32-976.

²⁶ Ibid., 1992, No 30-911.

Exceptional guarantees were provided by the prohibition on preventing an advocate from meeting with a client in private. An advocate could not act as a witness and submit clarification on the circumstances that he/she had become familiar with due to professional activity. Nobody could examine, inspect or take the practice documents of an advocate containing information related to his professional activities.

The activity of the Bar Association was based on self-governance and advocates could join into various associations in order to defend their professional interests. Advocates met annually at the general meeting (conference) of advocates of the Republic of Lithuania, in which the Council of the Lithuanian Bar, its Chairperson, and the Auditing Commission was elected. The disciplinary proceedings against advocates were conducted by the Disciplinary Court of Advocates.

The Arbitration. This institution resolved economic disputes between enterprises, institutions, and organisations. In its activity, it followed the legal acts of the institutions of governance that had been effective until 11 March 1990 and was in force insofar as it was not in conflict with the provisional constitution and other laws of the Republic of Lithuania. Eventually, the functions of the arbitration were transferred to the courts of general jurisdiction.

The Prosecution Service in the system of state powers. The norms of the Soviet Constitution regulating the status of the Prosecution Service had been amended even before 11 March 1990. Without changing the institutional structure of the Prosecution Service, it was established that the regulation of the activity of the Prosecution Service was not subject to the jurisdiction of the Soviet Union but subject to the jurisdiction of Lithuania and, in particular, that not the Prosecutor General of the USSR but the Supreme Council of the Lithuanian SSR was to appoint the Lithuanian prosecutor who was responsible and accountable to it (the Supreme Council).²⁷ With regard to the new constitutional provisions, the validity of the norms of the Law on the Procuracy of the USSR, which were in conflict with the Constitution of the Lithuanian SSR, was suspended in the territory of Lithuania.²⁸

The need for a new legal regulation of the activity of the Prosecution Service was determined by most factors and especially by the fact that, at that time, in addition to the Prosecution Service of the independent Republic of Lithuania, alternative branch of the Procuracy of the USSR operated in Lithuania that followed the laws of the Soviet Union and restrained the activity of the Prosecution Service of Lithuania. After the absolute majority of prosecutors, investigating magistrates, and other employees of prosecution services refused

²⁷ The Law of the Supreme Soviet of the Lithuanian SSR of 13 February 1990 on Amending and Supplementing Section 18 of the Constitution of the Lithuanian SSR (the Basic Law), *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Soviet and Government of the Lithuanian SSR], 1990, No 7-174.

²⁸ The Resolution of the Supreme Soviet of the Lithuanian SSR of 13 February 1990 on suspending the validity of the norms of the Law of the USSR of 30 November 1979 on the Procuracy of the USSR as being in conflict with the provisions of Section 18 of the Constitution of the Lithuanian SSR, *ibid.*, 1990, No 7-175.

to cooperate with the envoys of the Prosecutor General of the USSR in Lithuania, the armed soldiers occupied the building of the Prosecution Service and terrorised the officials.

By its Law on Amending and Supplementing the Provisional Basic Law of the Republic of Lithuania²⁹ of 27 July 1990, the Supreme Council amended the legal status of the Prosecution Service and the title of the Prosecutor of the Republic of Lithuania – it became the Prosecutor General of the Republic of Lithuania; Section 15 “The Prosecution Service” of the Provisional Basic Law was set out in a new wording. On the same day, the Law on the Prosecution Service³⁰ was also adopted. Among other functions, this law established the right of prosecutors to assess whether the acts of the Government, other governance institutions, bodies of local state powers and governance, participants of commercial economic activity, trade unions, and other social organisations were not in conflict with the Basic Provisional Law and other laws.

According to the general competence of the prosecutor, the prosecutor had the right to verify whether laws were observed by the above-mentioned institutions, their officials, and citizens. Having established that the adopted acts were unlawful, the prosecutor could lodge a protest with that institution. Provided that the protest was not upheld, the prosecutor could apply to court concerning the annulment or amendment of an unlawful act. Upon establishment of the incompliance of the legal acts adopted by the Government with the Provisional Basic Law or other laws, the prosecutor had to inform the Supreme Council on this issue.

Additionally, prosecutors could protest against the decisions, judgments, and rulings of courts and arbitration. The Prosecutor General had to inform the Supreme Council if the rulings of the plenum of the Supreme Court of Lithuania concerning the case-law did not comply with laws; he/she also had the right to address the plenum of the Supreme Court of Lithuania with a proposal to submit to courts the guiding clarifications on issues concerning the application of laws that arise while considering cases in courts.

²⁹ Ibid., 1990, No 23-556.

³⁰ Ibid., 1990, No 23-556.

THE CONSTITUTIONAL LAW ON THE STATE OF LITHUANIA

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To gain understanding of why the Supreme Council of the Republic of Lithuania adopted the Constitutional Law of the Republic of Lithuania on the State of Lithuania on 11 February 1991, it is necessary to consider the circumstances leading to its adoption.

The Supreme Council restored the independence of Lithuania on 11 March 1990; however, the Soviet Union did not wish to accept this. On 15 March 1990, the Congress of the People's Deputies of the Soviet Union adopted a resolution declaring that the decision of the Supreme Council of 11 March 1990 on restoring the independence of Lithuania contradicted the Constitution of the Soviet Union and, hence, was invalid. The Soviet Union disregarded the fact that, on 15 June 1940, it perpetrated military aggression against the independent Republic of Lithuania by occupying it and, subsequently, annexing and illegally incorporating it into the Soviet Union. The Soviet Union likewise ignored the evidence that the independence of the State of Lithuania was restored by the Supreme Council after it had been given the mandate by the nation and assumed the obligation to do so following the general elections of 24 February 1990. The independence of the State of Lithuania could not be restored on the grounds of the Constitution of the Soviet Union, which had occupied Lithuania. From the point of view of international law, Lithuania had never legally belonged to the Soviet Union; this meant that the Constitution of the Soviet Union had never been valid in Lithuania. Notably, the restoration of the independence of Lithuania rested upon the will of the Nation, was based on international law, and embodied the continuity of the independent Republic of Lithuania that existed in 1918–1940. The Lithuanian nation had not been obliged to ask and had not asked the occupant for permission to restore the independent State of Lithuania.

On 23 March 1990, preparing to overthrow the legitimate Lithuanian government by means of military force, the Soviet Union deployed additional army units in Lithuania (approximately 3 000 military forces), which took control of the state institutions of the Republic of Lithuania and other buildings, one after another. Lithuania was threatened with being deprived of part of its territory. On 31 March 1990, the then President of the Soviet Union, Mikhail Gorbachev, addressed the Supreme Council and demanded that it revoke the Act on the Re-establishment of the Independent State of Lithuania. The absolute majority of the Lithuanian population supported the decision adopted by the Supreme Council on 11 March 1990 to restore the independent State of Lithuania and backed its efforts to reinforce the statehood; consequently, the Supreme Council did not satisfy the

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requirements pressed by the Soviet Union. Following the failed attempts by means of threat to force the Supreme Council to reverse the Act on the Re-establishment of the Independent State of Lithuania, the Soviet Union issued an ultimatum on 14 April 1990. It pressured Lithuania to cancel its declaration of independence within two days. In the event of failure to comply, Lithuania was warned that it would face a suspension in the deliveries of key raw materials (gas, oil, etc.) and vital goods from the Soviet Union. After the Supreme Council defied the ultimatum, the Soviet Union virtually cut off the supplies of gas, oil, and other crucial products to Lithuania. The imposed economic blockade did severe damage to the Lithuanian economy, leading to a rise in inflation, deteriorating standards of living, and serious social problems; nevertheless, the Supreme Council did not agree to revoke the Act on the Re-establishment of the Independent State of Lithuania. As threats by the Soviet Union continued, there were fears that it might resort to armed military force against Lithuania and its citizens. In an attempt to avoid such an outcome, some western democratic states (France, Germany) encouraged the Supreme Council *to temporarily suspend* rather than revoke the Act on the Re-establishment of the Independent State of Lithuania; this, in their opinion, would have allowed Lithuania and the Soviet Union to start negotiations in order to solve the existing situation. These proposals were rejected by the Supreme Council; even if introduced on a temporary basis, the suspension of the declaration of independence could have been interpreted as meaning that, purportedly, Lithuania temporarily renounced its independence and the Constitution of the Soviet Union regained its effect in Lithuania. It was unacceptable to put independence, which had just been declared, at such a risk. The situation escalated by mid-1990 and called for political decisions. On 29 June 1990, the Supreme Council adopted a statement in which it declared that, seeking interstate negotiations between the Republic of Lithuania and the Soviet Union, it would announce a 100-day moratorium on the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania, subject to the start of negotiations with the Soviet Union, i.e. the Supreme Council announced that it would *suspend the legal actions stemming from this act* once negotiations with the Soviet Union began.

Thus, the statement of the Supreme Council was set out in such a way that the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania remained intact and the moratorium was to come into effect exclusively on the legal actions stemming from this act once negotiations with Moscow began. The wording “interstate negotiations” implied the recognition by the Soviet Union of the Republic of Lithuania as a sovereign state. Being aware of this meaning contained in the wording of the statement, the Soviet Union only imitated its preparation for negotiations with the Republic of Lithuania. Nevertheless, the word “moratorium” allowed the Soviet Union to respond to the insistent calls by western democratic states to lift the economic blockade against Lithuania; subsequently, gas and oil supplies resumed and the economic sanctions were eased. As the interstate negotiations between the Republic of Lithuania and the Soviet Union had never started, the moratorium

remained inoperative. In view of the actions taken by Lithuania towards strengthening the protection of its borders, building an independent national defence system, reforming its economy according to market rules, setting up a separate banking system, disconnecting its state budget from the state budget of the Soviet Union, starting the privatisation of state property, as well as other actions aimed at reinforcing its statehood, the Soviet Union once again enforced an economic blockade on Lithuania, this time without officially announcing it. Internal tensions dramatically increased in Lithuania: the Soviet Union stirred up the disobedience of the Russian-speaking residents to the legitimate Lithuanian government, encouraged them to strike, created the so-called associations of workers, and instigated the formation of various autonomous territorial entities (e.g. in the administrative units with Polish populations) while threatening to separate these territories from Lithuania. The confrontation grew between the Government, inclined to follow a more flexible policy in relations with the Soviet Union, and the majority of the Supreme Council, insisting that the Government did not yield to the pressure of the Soviet Union. Meanwhile, the acts of economic, political, and military coercion by the Soviet Union multiplied. In various ways, it sought to spark national conflicts and unrest, destabilise the situation, and create the parallel structures of power, which would be able to take the reins of government and “return Lithuania into the composition of the reformed Soviet Union” in the event of the subversion of the legitimate government. The Soviet Union did everything to overthrow the legitimate Lithuanian authorities. On 1 December 1990, the President of the Soviet Union, Mikhail Gorbachev, passed a decree authorising the Soviet military troops stationed in Lithuania to use force to ensure the conscription of the Lithuanian youth into the Soviet army. It was obvious that the Soviet Union would not stop at this point and was preparing to use armed force against the Republic of Lithuania and its legitimate government. The Soviet Union was trying to invent any formal pretext for beginning military activities. At its sitting on 4 January 1991, the Lithuanian Government decided to raise the prices of essential foodstuffs. Within a matter of days, on 8 January, a protesting crowd of Russian-speaking Lithuanian residents, joined by a fairly large number of Soviet servicemen disguised as civilians, gathered outside the seat of the Supreme Council. The crowd attempted to invade the building and break up a sitting of the Lithuanian Parliament. The attempt failed, as thousands of Vilnius residents – supporters of the Supreme Council – flocked to the place to defend the Parliament against the subversive attack. Although the Supreme Council reversed the decision of the Government to raise prices, the Soviet-inspired protests by the Russian-speaking residents (mostly those who arrived in Lithuania from different parts of the Soviet Union after Lithuania had been occupied by the Soviet Union on 15 June 1940) outside the building of the Supreme Council did not cease. The Soviet military helicopters were dropping leaflets urging the residents to bring down the Supreme Council. On 9–10 January 1991, the military of the Soviet Union blocked the building of the Lithuanian Radio and Television Committee, the TV tower, and the bridges in Vilnius. On 10 January, Mikhail

Gorbachev sent an ultimatum to the “Supreme Council of the Lithuanian SSR”, ordering to immediately revoke the Act on the Re-establishment of the Independent State of Lithuania and reinstate the validity of the Constitution of the Soviet Union in Lithuania. The unfolding events were rapid. On 11 January, the military troops of the Soviet Union seized the key Lithuanian state buildings; *Yedinstvo* together with other pro-Russian organisations called for compliance with the requirements raised by Mikhail Gorbachev, or warned they would install the “National Salvation Committee”. In response to the ultimatum, the Supreme Council contended that it had neither the right nor the mandate of the voters to renounce the independence of the Republic of Lithuania and refused to comply with the ultimatum. The tension eased to some extent on 12 January 1991, after the Supreme Soviet of the Soviet Union made the statement that it was “extremely important to act through political methods”, and the news came that it was sending its delegation to Lithuania. The delegation was supposed to arrive on 12 January; however, it stayed in Minsk (Belarus) overnight from 12 to 13 January. Most probably, this was not a coincidence; on the night of 13 January, the Soviet Union undertook the outright acts of armed aggression against the re-established independent Republic of Lithuania. The Soviet military troops and special units, armed with tanks, armoured vehicles, and machine guns, mounted an attack on the unarmed civilians defending the TV tower and the building of the Radio and Television Committee, and occupied these objects. In the aftermath, 14 unarmed people lost their lives and over 500 were injured in defence of the freedom of Lithuania. As the news spread about the ruthless brutality of the Soviet military and the killed civilians, thousands of residents from Vilnius and other locations of Lithuania, forming a human shield, surrounded the building of the Supreme Council. Less than an hour after the massacre, the foreign journalists staying in Vilnius reported to the world that the Soviet Union had used tanks, armoured vehicles, and automatic firearms against unarmed Lithuanian people in clashes causing human loss and many injuries. On the night of 13 January, the Supreme Council appealed to the states of the world, informing them that the Soviet Union had waged an undeclared war against the Republic of Lithuania; that there were losses of innocent lives and a threat that the legitimate Lithuanian government elected in democratic elections might be ousted by force by a foreign state. Democratic states of the world denounced the acts of the Soviet Union. A decisive factor why the Soviet army troops had not dared that night to continue with an assault on the seat of the Lithuanian Parliament was the negative reaction of the heads of the leading states and their societies and, in particular, the offensive at the TV tower and the building of the Lithuanian Radio and Television Committee, leaving over a dozen people dead and many others wounded, while the building of the Supreme Council was encircled by thousands of unarmed Lithuanian residents not intimidated by the Soviet tanks and armed paratroopers. The independence and freedom of the Lithuanian State was defended.

The Soviet leadership, facing the evidence that the Soviet Union would not be able to exist in its former shape, tried to halt its demise. A decision was taken to hold a referendum

on the future of the Soviet Union on 17 March 1991 in the whole territory of the Soviet Union. The position of Lithuania regarding the referendum organised by the Soviet Union was unquestionable: since 11 March 1990, when the independent State of Lithuania was restored, any laws of the Soviet Union were invalid in Lithuania; therefore, the attempt by the Soviet Union to hold a referendum in Lithuania was gross and unwarranted interference in the internal affairs of the Republic of Lithuania and represented yet another trespass on its sovereignty. The Supreme Council announced that no referendum organised by the Soviet Union would take place in Lithuania, since Lithuania was an independent state, which was not and, under international law, had never been part of the Soviet Union.

In order once again to make it clear to the world community that the Lithuanian nation had already chosen the independence of its state (the will of the nation was expressed in the act of 11 March 1990 by the deputies of the Supreme Council (Reconstituent Seimas) elected in democratic and free elections), as well as seeking to encourage the heads of foreign states (including western democratic states) to recognise the independence of the State of Lithuania at the earliest possible time, the Supreme Council adopted the resolution of 16 January 1991 on the General Poll of the Population of the Republic of Lithuania. During the general poll, the Lithuanian population was requested to reply whether they supported the statement of the new Constitution of the Republic of Lithuania, which was being drafted at that time, that the State of Lithuania was an independent democratic republic.

The general poll (plebiscite) of the population was held on 9 February 1991. For this purpose, 2 087 constituencies were formed in Lithuania and 5 constituencies were created outside the country: in Moscow, Smolensk, the Kogalym city (Tyumen region, Russia), Artik (Armenia), and Tallinn (Estonia). The lists comprised the names of 2 652 738 voters above the age of 18, who were the citizens of Lithuania or had the right to citizenship of Lithuania. The ballot papers were received and cast at polls by 2 247 810 people, which accounted for 84.43 per cent of all the voters. Out of this number, the statement “The State of Lithuania is an independent democratic republic” was approved by secret ballot by 2 028 339 voters (90.47 per cent), i.e. three quarters of all the population of Lithuania with the electoral right. The statement was not supported by 147 040 persons, i.e. 6.56 per cent of the population taking part in the poll.¹ The analysis of the poll results showed that the statement “The State of Lithuania is an independent democratic republic” was supported not only by the Lithuanians but also the persons of various other nationalities living in Lithuania.² It should be noted that the general poll (plebiscite) was not aimed at clarifying

¹ The report by Juozas Bulavas, Chairman of the Electoral Commission of the Republic, at the sitting of the Supreme Council of the Republic of Lithuania on 11 February 1991, *Lietuvos Respublikos Aukščiausiosios Tarybos (pirmojo šaukimo) antroji sesija: stenogramos (Nr. 25)* [The Second Session of the Supreme Council (of the first convocation) of the Republic of Lithuania] (shorthand records No 25), Vilnius: The Publishing House of the Seimas of the Republic of Lithuania, 1993, pp. 437–438.

² Žilys, J., “Iš konstitucionalizmo istorijos. 1991 m. vasario 9 d. apklausa (plebiscitas) Lietuvos konstitucionalizmo požiūriu” [“From the History of Constitutionalism. The General Poll (Plebiscite) of 9 February 1991 from the Perspective of Lithuanian Constitutionalism”], *Justitia*, 2001, No 1, p. 11.

whether the Lithuanian citizens approved the act of 11 March 1990: no subsequent conclusive legitimisation of this act by means of a general poll or referendum was required. On 11 March 1990, the independence of the State of Lithuania was restored by adopting a non-recurring, irrevocable, and undeniable decision by the representatives of the Nation; it was restored both legally and legitimately; and the deputies of the Supreme Council, having all necessary powers conferred on them by the nation for acting so, implemented the will of the nation in good faith. At the sitting of 11 February 1991, Vytautas Landsbergis, Chairman of the Supreme Council, said: “[...] demands are still made that we hold some sort of referendum so that, while becoming reckless, we would ourselves recognise that the acts of 11 March are purportedly insufficient and, thus, would be caught in the familiar noose of the ‘non-secession law’. Therefore, being aware of the deceit, we would refuse and would remind them that the mandate given to us by voters to restore independence also constitutes the expression of the nation’s sovereign power, which we – the elected deputies – have merely proclaimed and continue progressively to implement in practice. But this time, we ourselves *decided to verify it* [...] And we have verified it. The people virtually did not express any doubt over independence; rather, to the contrary, they were even more firmly resolved and confident; their votes confirmed that 11 March was necessary and correct, and now the time has come to go further.”³ By its declaration of 11 February 1991 on the Participation of the Republic of Lithuania as an Equal Member of the World Community of Nations, the Supreme Council addressed all states, their parliaments, and their governments; encouraging them to take into account the results of the general poll (plebiscite) of 9 February 1991, the Supreme Council requested that they lend their support to Lithuania in its struggle for freedom and democracy.⁴

Although three quarters of all the Lithuanian population with the electoral right voted in the general poll (plebiscite) that the newly drafted constitution would consolidate the provision “The State of Lithuania is an independent democratic republic”, the will of the citizens expressed through the general poll (plebiscite) did not in itself directly create any legal norm binding on everyone, since the will of the citizens was expressed by means of a general poll (plebiscite), not a referendum. The Supreme Council could not disregard the will of the citizens and decided to give it a special legal form, in line with the significance of the decision made by the nation. On 11 February 1991, it enacted the Constitutional Law on the State of Lithuania. This constitutional law was the first legal act of this type in the Lithuanian legal system: no constitutional laws had ever been previously adopted in Lithuania. The provision of this constitutional law that more than three quarters of the population of Lithuania with the active electoral right voted that “the State of Lithuania would be an independent democratic republic” means that, “by this expression of sovereign powers and

³ *Lietuvos Respublikos Aukščiausiosios Tarybos (pirmojo šaukimo) antroji sesija [The Second Session of the Supreme Council (of the first convocation) of the Republic of Lithuania]*, footnote 1, p. 441.

⁴ *Ibid.*, pp. 495–496.

will, the Nation of Lithuania once again confirmed its unchanging stand on the independent State of Lithuania". The law also stipulates that the results of the general poll (plebiscite) are regarded as "the common determination to strengthen and defend the independence of Lithuania and to create a democratic republic". Article 1 of this constitutional law consolidates that the statement "The State of Lithuania shall be an independent democratic republic" is a constitutional norm of the Republic of Lithuania and a fundamental principle of the State. This means that the statement "The State of Lithuania shall be an independent democratic republic", which was approved in the general poll (plebiscite) by three quarters of all the Lithuanian citizens with the electoral right, acquired a constitutional legal status. Consequently, the new constitution being drafted and other laws and legal acts alike were to be based on the provision that the State of Lithuania is an independent democratic republic. This provision not only entrenched the form of government of the independent State of Lithuania – republic, but it also determined the content of the future constitution, since it became requisite to establish therein a considerable number of the elements of democracy: the sovereignty belonging to the nation, democratic and free elections, human rights and freedoms, the limitation of the scope of power, the separation of powers and checks and balances, the independence of courts, the presumption of innocence, the freedom of the media, and other elements, in the absence of which the state could not be considered democratic. In addition, this constitutional law provided for the special protection of the provision "The State of Lithuania shall be an independent democratic republic": this stipulation is a constitutional norm and a fundamental principle of the state and it "may be altered only by a general poll (plebiscite) of the Nation of Lithuania provided that not less than three quarters of the citizens of Lithuania with the active electoral right vote in favour thereof" (Article 2).

Since, under the Constitutional Law on the State of Lithuania, the provision "The State of Lithuania shall be an independent democratic republic" is a constitutional norm and a fundamental principle of the state, this led to its consolidation in Article 1 of the Constitution of the Republic of Lithuania that is currently in force. This article of the Constitution is also given special constitutional protection: in its ruling of 11 July 2014, the Constitutional Court of the Republic of Lithuania held that "the innate nature of human rights and freedoms, democracy, and the independence of the state are such constitutional values that form the foundation for the Constitution as a social contract, as well as the foundation for the Nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself"; consequently, neither the Seimas, nor the nation by means of a referendum, may alter the provision of Article 1 of the Constitution consolidating that the state is independent and democratic. The Constitutional Law on the State of Lithuania, adopted by the Supreme Council on 11 February 1991, is integrated into the Constitution as its constituent part (Article 150 of the Constitution); therefore, it has supreme legal force along with all other provisions of the Constitution.

THE CONSTITUTIONAL ACT ON THE NON-ALIGNMENT OF THE REPUBLIC OF LITHUANIA TO POST-SOVIET EASTERN UNIONS

Prof. Dr. Vytautas Sinkevičius*

The Constitutional Act of the Republic of Lithuania on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions (hereinafter referred to as the Constitutional Act) was adopted by the Supreme Council of the Republic of Lithuania on 8 June 1992. This was the response of the State of Lithuania to the proposals, submitted in various ways, to join the Commonwealth of Independent States (established on the basis of the disintegrated Soviet Union) and other post-Soviet unions, which were planned for the future. Russia's suggestions aimed to draw the independent Republic of Lithuania into the political, military, economic, customs and other unions of the former Soviet republics caused concern among residents who feared that, if Lithuania adopted these proposals, it would lose its independence again. The Supreme Council, in order to dispel this concern and to prevent Lithuania from joining at any time in the future any union founded on the basis of the former Soviet Union, decided to clarify its principled position on this issue. This was done in the Constitutional Act, whose main provision is this: the Republic of Lithuania will never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former Soviet Union. The preamble of the Constitutional Act specifies the legal grounds on the basis of which the Supreme Council formulated this determination: the provision of Lithuania's Act of Independence of 16 February 1918 proclaiming the restoration of the independent State of Lithuania founded on democratic principles; the provision of the Act of 11 March 1990 on the Re-establishment of the Independent State of Lithuania that "henceforth Lithuania is again an independent state"; the will of the nation expressed during the general poll (plebiscite) held on 9 February 1991 that Lithuania must be an independent democratic republic. The above will of the nation was legally consolidated in the Constitutional Law of the Republic of Lithuania on the State of Lithuania, adopted on 11 February 1991, which stipulates that "The statement 'The State of Lithuania shall be an independent democratic republic' is a constitutional norm of the Republic of Lithuania and a fundamental principle of the State". All specified legal acts have constitutional significance and form the basis for the State of Lithuania. The provision of the Constitutional Act that the Republic of Lithuania will "never join, in any form, any new political, military, economic, or other

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unions or commonwealths of states formed on the basis of the former USSR” ensures that the independence of Lithuania declared by the above-mentioned acts will be preserved and strengthened.

The preamble of the Constitutional Act states that the Supreme Council was prompted to adopt this Act by “the attempts to preserve, in any form, the former Union of Soviet Socialist Republics with all its conquered territories, and the intentions to draw Lithuania into the defensive, economic, financial, and other ‘spaces’ of the post-Soviet Eastern bloc”. Although the Constitutional Act does not name any specific country seeking to preserve the former Soviet Union in its new form and to draw Lithuania into the spaces of the post-Soviet Eastern bloc, the material used during the deliberation on this act at the Supreme Council shows that it was Russia. The notion “post-Soviet Eastern bloc” used in the preamble of the Constitutional Act names the bloc of the European part of the former Soviet Union, in particular Russia, and the Central Asian countries – Turkmenistan, Kyrgyzstan, etc. – that used to belong to the Soviet Union. Choosing not to specify the name of any particular country or countries forming the said “post-Soviet bloc”, it was named by using a more general phrase, “post-Soviet Eastern bloc”. Such a definition of the bloc meant that it was not important how many countries comprised it at the time of the adoption of the Constitutional Act, or how many countries would comprise it in the future. The main criterion was not the number of the countries making up the bloc at a given moment or in the future, but rather that this bloc had been created on the basis of the so-called “union republics”, which used to belong to the former Soviet Union and later became independent states.

The notion “spaces” used in the preamble is even more general. The preamble specifies only some of the most important “spaces” of the post-Soviet Eastern bloc – defensive, economic, and financial. However, their list is not exhaustive (final), as there may be any other spaces, such as customs, currency, banking, education, etc.

The Constitutional Act sets out the principled position of Lithuania on unions or commonwealths formed on the basis of the former Soviet Union: the Republic of Lithuania will never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former Soviet Union (Article 1). This does not mean the termination of economic, cultural, and other relations with countries (the so-called former union republics) that used to be part of the former Soviet Union. The Constitutional Act states that Lithuania will develop mutually advantageous relations with each state that was formerly a component of the Soviet Union (Article 1). Thus, the Constitutional Act prohibited Lithuania from joining any new political, military, economic, and other unions and commonwealths of states formed on the basis of the former Soviet Union, but did not prevent the possibility of concluding mutually beneficial bilateral and multilateral economic and other treaties with the countries that used to be part of the former Soviet Union.

The provision of the Constitutional Act that the Republic of Lithuania will “never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR” reflects the geopolitical orientation of Lithuania – it does not belong to the Eastern area. Although the Constitutional Act did not state directly that Lithuania was seeking to join the political, economic, and other unions created by Western democracies, Lithuania saw its future as being part of the community of Western democratic states, which was obvious from numerous statements made by the Supreme Council and addressed to the Western democratic countries, requesting help to preserve the independence of Lithuania and to counter the attempts of the former Soviet Union to overthrow the legitimate government of Lithuania.

The Constitutional Act consolidates the principled provision that “There may be no military bases or army units of Russia, the Commonwealth of Independent States or its constituent states on the territory of the Republic of Lithuania” (Article 3). This provision is related to Article 137 of the Constitution of the Republic of Lithuania, which was adopted later, on 25 October 1992, under which there may not be any foreign military bases on the territory of the Republic of Lithuania. In its ruling of 15 March 2011,¹ the Constitutional Court of the Republic of Lithuania held that “the provision of Article 137 of the Constitution [...] means, *inter alia*, that, on the territory of the Republic of Lithuania, there may not be any such military bases that are directed and controlled by foreign states. Such a prohibition, *inter alia*, does not mean that, on the territory of the Republic of Lithuania, there may not be any such military bases that, subsequent to international treaties of the Republic of Lithuania, *inter alia*, the collective defence treaty ratified by the Seimas, are directed and controlled by the Republic of Lithuania jointly (together) with states-allies”.

The imperative “There may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania” established in Article 3 of the Constitutional Act means that, on the territory of the Republic of Lithuania, there may not be any such military bases or military units *the presence or use of which is directed and controlled by Russia, or the Commonwealth of Independent States or its constituent states*.² However, as stated in the above-mentioned ruling of the Constitutional Court, “Such a prohibition does not mean that, subsequent to the international treaties of the Republic of Lithuania, *inter alia*, the collective defence treaty ratified by the Seimas, and subsequent to the laws adopted for the purpose of the implementation of these treaties, any such short-term presence of the limited-size military units of Russia, or the Commonwealth of Independent States or its constituent states, in international military exercises held on the territory of the Republic of Lithuania and directed and controlled by the Republic of Lithuania jointly (together) with its states-allies is not allowed”. The Constitutional Court also held that “The said

¹ The Constitutional Court’s ruling of 15 March 2011, Official Gazette *Valstybės žinios*, 2011, No 3-1503.

² Ibid.

constitutional prohibition also does not mean that, subsequent to the international treaties of the Republic of Lithuania and subsequent to the laws adopted for the purpose of the implementation of these treaties, it would not be allowed to invite any limited-size military units of Russia, or the Commonwealth of Independent States or its constituent states, for a short time to participate in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, when the grounds, purpose, and character of such an invitation for help are clear and constitutionally justified and when such measures are directed and controlled by the Republic of Lithuania". According to Article 135 of the Constitution, the legislature, when paying regard to the limitations and prohibitions consolidated in the Constitutional Act, may also establish such a legal regulation designed for the implementation of the international treaties of the Republic of Lithuania, *inter alia*, the collective defence treaty ratified by the Seimas, that would provide, *inter alia*, for short-term participation of military units of Russia, the Commonwealth of Independent States, or its constituent states in the exercises of the defence treaty Parties and of other states arranged on the territory of the Republic of Lithuania where such exercises are directed and controlled by the Republic of Lithuania jointly (together) with states-allies, as well as the invitation of such military units in international measures to help to remove the consequences of catastrophes, epidemics, natural or other calamities on the territory of the Republic of Lithuania, when the grounds, purpose, and character of such an invitation for help are clear and constitutionally justified and when such measures are directed and controlled by the Republic of Lithuania.

The provision "There may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania" consolidated in the Constitutional Act was also aimed at achieving another purpose – to persuade the Russian Federation not to delay the bilateral negotiations between itself and the Republic of Lithuania on withdrawing from the territory of Lithuania the troops of the former Soviet Union that remained in Lithuania (the said troops, after the collapse of the Soviet Union, became Russian troops). The Republic of Lithuania was seeking the withdrawal of the Russian troops from Lithuania in 1992, but Russia wanted them to stay here for a longer period of time. The consolidation of the provision "There may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania" in the Constitutional Act considerably strengthened the negotiating position of the Lithuanian state delegation in the negotiations with Russia on the withdrawal of its troops from Lithuania.³

In order to ensure the implementation of the Constitutional Act, it stipulates that any activities seeking to draw the State of Lithuania into any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former

³ The Russian troops withdrew from Lithuania on 1 September 1993, i.e. they withdrew from the then German Democratic Republic and some other European countries one year later.

Soviet Union are regarded as hostile to the independence of Lithuania, and liability for them is established by law (Article 2).

The Constitutional Act was passed together with the resolution for its implementation. By means of the latter, the Supreme Council instructed the Government of the Republic of Lithuania and the State Delegation for Negotiations with Russia on the Withdrawal of the Troops to strictly comply with the provisions of the Constitutional Act and continue to insist that all Russian troops should be unconditionally withdrawn from the territory of the Republic of Lithuania in 1992. In addition, the Government of the Republic of Lithuania and the Ministry of National Defence were obliged to immediately take control of the Lithuanian state borders on land and at sea, as well as of the Lithuanian air space.

In the course of drafting the Constitutional Act, the question arose whether the provisions desired to be set out therein had to be included in the 1990 Provisional Basic Law (Provisional Constitution). The purpose was to give them greater legal force; besides, it would have been more difficult to change them. This idea was abandoned on the grounds that Lithuania's position on the non-participation in any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former Soviet Union had to be delivered as soon as possible, whereas adopting the amendments to the Provisional Basic Law would have taken more time. Another important factor spurring the consolidation of the specified provisions precisely in the Constitutional Act rather than the Provisional Basic Law was the beginning of the work on a new constitution: it was planned that these provisions would be reflected in the new constitution. And this was done on 25 October 1992, when the nation adopted the new Constitution by referendum, making the Constitutional Act an integral part of the Constitution (Article 150 of the Constitution). As well as the other provisions of the Constitution, the Constitutional Act has the supreme legal force.

THE DRAFTING AND ADOPTION OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

Prof. Dr. Juozas Žilys

When the Provisional Basic Law of the Republic of Lithuania – the provisional constitution – that had been approved on 11 March 1990 was in force, it became increasingly clear that it was necessary to replace the provisional constitutional regulation by a new one, i.e. to start drafting and adopt the permanent Constitution of the Republic of Lithuania; it would not only reflect the historical constitutional heritage of Lithuania but also the experience of the development of democratic constitutionalism recently gained in Europe and world-wide.

The necessity for a new constitution was obviously proved by the political, social, and legal needs of the independent Republic of Lithuania: it was necessary to form the constitutional foundations of a modern political system, define the principles of separation and cooperation of the state powers, the institutional competences and their interaction, to constitutionally assess, on the grounds of international law standards, human rights and freedoms, to establish the legal means for ensuring the security of the constitution – the review of the constitutionality of legal acts and the responsibility for the violations of the constitution.

The development of social life was so rapid that, by means of the norms of the Provisional Basic Law of the Republic of Lithuania, despite the fact that they were regularly amended, it was simply impossible to ensure the development of a democratic system, and the number of problems of constitutional regulation in the political and legal reality increased. A new constitution had to express the political and legal identity of the Republic of Lithuania that was recognisable in international community.

First steps towards the adoption of the Constitution. By its Resolution of 7 November 1990 on the drafting of the Constitution of the Republic of Lithuania, the Supreme Council of the Republic of Lithuania set up a working group for the preparation of the draft Constitution. The head of this group was Vytautas Landsbergis, Chairman of the Supreme Council, and the members comprised the deputies of the Supreme Council and the lawyers, experts in constitutional law.¹

The vision of the constitution had matured in a dramatic political environment, as the military troops of the USSR were more and more active in demonstrating their

¹ *Lietuvos Respublikos Aukščiausiosios Tarybos ir Lietuvos Respublikos Aukščiausiosios Tarybos Prezidiumo dokumentų rinkinys* [The Collection of Documents of the Supreme Council of the Republic of Lithuania and the Presidium of the Supreme Council of the Republic of Lithuania], Vol. 2, Vilnius: The Publishing House of the Supreme Council of the Republic of Lithuania, 1991, pp. 600, 601.

military power. In autumn 1990 and in January 1991, the regular armed forces of the USSR expanded military operations in Lithuania. The armed forces seized and destroyed state objects and law enforcement establishments, blocked roads, and prevented the traffic and communications. Having evaluated the nature and scope of the events, the Supreme Council named the actions as “open military aggression which had to be terminated immediately”. The Interim Management of Defence of the Republic of Lithuania was established and the structures of the interior and national defence were granted the right to oppose any attackers.

The information that the USSR would introduce presidential governance in Lithuania spread across the country. Mikhail Gorbachev, President of the USSR, announced his address to the non-existent Supreme Soviet of the Lithuanian SSR and required to recognise the validity of the Constitution of the USSR in Lithuania. In response to this ultimatum, on 11 January 1991, the Supreme Council stated that “it had neither the right, nor an electoral mandate to refuse the sovereignty of the Republic of Lithuania” and that all the controversial issues had to be decided not by military force and not by blackmail but in compliance with the principles of negotiations and treaties that are recognised by the international community.

The culmination of the political and military aggression shown by the USSR was the 13th of January 1991. In Vilnius, during the night to 13 January, the military of the USSR occupied by force the Press House, the building of the Radio and Television of Lithuania, the Television Tower, the Vilnius Radio Station, and the buildings of other establishments. 13 civilians defending these buildings were killed and hundreds were injured. There was a real threat that the elected legitimate power of Lithuania – the Supreme Council and the Government that had been democratically elected could be removed. The Supreme Council noted that “the Union of SSR had started undeclared war against the Republic of Lithuania”.

The political and military intentions of the USSR were not then implemented in Lithuania, the Lithuanian people stopped the aggression by peaceful means, and the parliaments and heads of foreign countries, as well as the international democratic community, firmly condemned the actions of the USSR.

Particularly in such, in all respects, a difficult and dramatic environment, the working group that had set itself the task to create a new constitutional model of the Republic of Lithuania started its work. As a result, the document under the title “The Conceptual Framework of the Constitution of the Republic of Lithuania” (hereinafter referred to as the Framework) was created. Under the decision of the Presidium of the Supreme Council, it was announced in the press.²

The title of the document was an indication that there was no aim to have an integral text of the future Constitution. In fact, it was a constitutional concept, or, to be more precise, the broad lines of the concept that raised the main relevant issues considered

² *Lietuvos aidas* [*The Echo of Lithuania*], 10 May 1991.

at the general discussion concerning the future of the constitutional order of Lithuania that was starting among people.

The Framework consolidated the democratic nature of the State of Lithuania and defined the form of government of the state: “According to the form of its government, the Republic of Lithuania is a democratic Republic, where state power shall be executed by the democratically elected Seimas, the President of the Republic and the Government, and the Judiciary.”

The principle of separation of state powers was recognised as a fundamental law of the organisation of the state, and the functions of each power were established: the Seimas was the only legislature, the President and the Government shared the functions of the executive power, and courts administered justice. In order to emphasise the institutional interaction of the state powers, the following was specified: all the institutions of state power were interrelated, the Constitution and laws prescribed their interrelations, as well as the methods and forms of control of their activity. The checks and balances of the state powers meant that no state institution could enjoy all and absolute power, all of them controlled each other. It was declared that the Republic of Lithuania was a uniform (unitary) state; therefore, its territory could not be divided into any state units.

It was emphasised that the Republic of Lithuania was *a state under the rule of law*; thus, no legal acts or actions could be in conflict with the Constitution. The state guaranteed the constitutional review so that a state power would act in accordance with the Constitution. The provision governing the creation of a state under the rule of law was expressed by establishing the main legal grounds of the interaction between the state and a person and by consolidating the human rights and freedoms.

The Framework was created under difficult political conditions, i.e. at the time, when it was necessary to counter the political and military aggression of the USSR and, at the same time, to lay the legal and political foundations of the Republic of Lithuania and to seek for international recognition. It established the constitutional framework to be, first of all, considered while creating the permanent Constitution. The essential decided question was the constitutional framework of the state power. It was a multifaceted issue linked to the expectations of various social and political groups, as well as to cultural, legal phenomena, or the phenomena of political ideology. The Framework obviously expressed favour with the priorities of parliamentary democracy, in other words, with such principles of constitutional order that had been consolidated in the Constitution of the State of Lithuania of 1 August 1922.

The publication of the Conceptual Framework of the Constitution of the Republic of Lithuania gave rise to a discussion on the model of the future constitutional regulation and, in particular, on the form of state governance and the organisation of the state. At that time, the first alternative draft constitutions also emerged.

For instance, the Commission on Constitutional Law of the Lithuanian Lawyers' Association, together with the representatives of the Lithuanian Philosophers' Association, prepared the principles of draft Constitution of Lithuania.³ The authors of these principles obviously tended to grant more comprehensive constitutional powers to the President of the Republic. This was illustrated only by the provision that "in the State of Lithuania, the executive power shall belong to its President, who shall implement Lithuanian laws himself and through the Government that is formed at his discretion". The legislative power had to belong, exclusively, to the Seimas (Parliament) composed of the Houses of Elders and the Houses of Representatives.

The draft Constitution by the American authors Lowry Wyman and Barnabas D. Johnson was also published in the press; however, it was nothing more than a modified version of the constitutional system of the USA adapted to Lithuania.⁴

One of the most notable phenomena in the political process of that time was to immediately restore the constitutional institute of the President, without waiting until the new Constitution was adopted. In September 1991, this was declared by the Lithuanian Independence Party. Later, Sąjūdis not only supported this objective but also took specific actions to implement this idea. The proposals to restore the institute of the President were also endorsed by other political parties and social organisations. In November 1991, the first draft legal acts on the President were announced, whereby it was proposed to amend the Provisional Basic Law; in other words, the concept of a *strong* President was evolved. Sąjūdis resolutely encouraged the Supreme Council to immediately adopt the laws on the President and, failing that, would call a referendum.

Even though such a constitutional development was supported by many people in Lithuania, acute polemics in relation to it arose both in the Supreme Council and in society. Few objected to the restoration of the functions of presidential power, however, another position was gaining ground – all this had to be modelled and established not in the provisional Basic Law, but in the Constitution of the Republic of Lithuania that would consolidate the checks and balances of institutional powers of state institutions and the fact that the founded constitutional court would review the compliance of laws and other legal acts with the Constitution.

The emerging broad political movement concerning the restoration of the institute of the President was one of the most important factors not only describing the political environment of that time in Lithuania but also encouraging to speed up the drafting and adoption of the Constitution.

In October 1991, the deputies of the Supreme Council belonging to various political groups initiated the discussion concerning the stages of drafting the Constitution

³ Vilčinskis, S., *Lietuvos Konstitucijos projekto principai [The Principles of the Draft Constitution of Lithuania]*, Vilnius: Viltis, 1991.

⁴ The Draft Constitution of the Republic of Lithuania. *Atgimimas [Rebirth]*, 20–27 June 1991.

and political social conditions to be taken into account while establishing the guidelines of constitutional regulation. Then, the problems of the organisation of activity and the presumptions of early elections came to light. The drafting of the Constitution was objectively influenced by the experience of parliamentary democracy and its development after 11 March 1991, as well as by the obvious need to create such a constitutional model that the state powers would not only be separated and their powers – limited, but also that they would cooperate in implementing the internal and external functions of the state. The need for the new Constitution was also confirmed by the programmes of the re-establishing and newly establishing political parties. The drafting of the Constitution was determined by the international recognition of the State of Lithuania and the becoming of the Republic of Lithuania as an organic part of the international community of the democratic countries in which modern constitutions were adopted after the Second World War.

The consequence of the discussions was the Resolution of the Supreme Council on the development of the constitutionality of the Republic of Lithuania⁵ of 5 November 1991. This document provided for the main directions for drafting the Constitution and political, social, and legal preconditions to be taken into account when preparing the text of the Constitution. It was particularly emphasised that the Constitution had to reflect the formation of new social relations. It was established that, in accordance with the principle of continuity, all stages of the development of the State of Lithuania had to be related to the then expression of statehood. The adoption of the Constitution was related to immediate withdrawal of the army of occupation of the USSR, the implementation of economic reform, and the enactment of the Law on Citizenship, as well as reorganisation of the administrative territorial system, self-governance, and legal system.

In implementing the Resolution of the Supreme Council on the development of the constitutionality of the Republic of Lithuania, the ad hoc Commission of the Supreme Council for Drafting the Constitution (hereinafter referred to as the Commission)⁶ was set up. It was agreed to include the representatives of all political groups into this Commission according to the number of deputies belonging to these political groups. Deputy Kęstutis Lapinskas was appointed as the Chairperson of the Commission. The Presidium of the Supreme Council approved the regulations of the ad hoc Commission for drafting the Constitution, set up a working group, and appointed its members and experts.⁷ The Presidium established the general milestones of values for the future draft Constitution:

⁵ *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania]*, 1991, No 32-874.

⁶ The Resolution of the Supreme Council of 10 December 1991 on the formation of the ad hoc Commission of the Supreme Council for Drafting the Constitution, *ibid.*, 1991, No 36-978.

⁷ The Resolution of the Presidium of the Supreme Council of 22 January 1992 on the organisation of work of the ad hoc Commission of the Supreme Council for Drafting the Constitution, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Lietuvos Respublikos Aukščiausiosios Tarybos Prezidiumo dokumentų rinkinys [The Collection of Documents of the Supreme Council of the Republic of Lithuania and the Presidium of the Supreme Council of the Republic of Lithuania]*, Vol. 4, Vilnius: The State Publishing Centre, 1992, p. 588–590.

to follow the centuries-long experience of statehood and to take account of the Conceptual Framework of the Constitution of the Republic of Lithuania and the constitutions of the State of Lithuania of the interwar period, as well as democratic beginnings of constitutions of European states and other countries.

The draft Constitution and political peripeteias. The main factor that had determined the difficulty of the preparation of the draft Constitution was the different political and legal positions of the Supreme Council and society on the relationships of the presidential power with the Parliament and the Government and on the role of the head of state in the structure of state powers in general. All this instigated sharp political polemics also at the Commission that had initiated drafting the specific constitutional model.

Most members of the Commission unconditionally observed the priorities of parliamentary democracy and it was reflected in the drafted texts. After intensive discussions, on 21 April 1992, the Supreme Council approved the draft Constitution⁸ prepared by the Commission and it was announced in the press.⁹

Already during the first sittings of the Commission, the group of right-wing members presented alternative formulas of the provisions of the draft, and later – all the draft Constitution. It was done on the grounds that the Constitution “should not guarantee the model of parliamentary or presidential form of government and the dominance of one or the other power, but the viability of the state powers”. The said members assessed critically the definitions of the human rights and freedoms, the constitutional interrelations of the Seimas, the President, and the Government, certain aspects of the status of a member of the Seimas, etc. In summary, a provision was observed that the powers of the President should not be only representative.

The alternative draft Constitution prepared by a group of members of the Commission was supported by other political powers: in 1992, the Declaration of the Constitution of Lithuania was announced that had been signed by Sąjūdis, the Lithuanian Democratic Party, the Lithuanian Christian Democratic Party, and the Lithuanian Nationalist Union. The Declaration reported on the formation of a coalition for preparing the draft Constitution and on the aim for it to be adopted.¹⁰ In the press, the draft Constitution by the working group of the Sąjūdis coalition “For the Democratic Lithuania” was published.¹¹

⁸ The Resolution of the Supreme Council of 21 April 1992 on the publication of the draft Constitution of the Republic of Lithuania for a public consultation, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Lietuvos Respublikos Aukščiausiosios Tarybos Prezidiumo dokumentų rinkinys* [The Collection of Documents of the Supreme Council of the Republic of Lithuania and the Presidium of the Supreme Council of the Republic of Lithuania], Vol. 5, Vilnius: The Publishing House of the Supreme Council of the Republic of Lithuania, 1992, p. 100.

⁹ *Lietuvos aidas* [The Echo of Lithuania], 1 May 1991.

¹⁰ *Ibid.*, 6 May 1992.

¹¹ *Ibid.*, 14 May 1992.

This was how alternative draft constitutions emerged that also determined the contents of the political process even until the elections to the Seimas and the adoption of the Constitution in the referendum on 25 October 1992.

At least a few distinctive features of these drafts should be noted. One of them is the constitutional status of the future Parliament, the Seimas. The draft Constitution of the Commission provided that the Seimas was only responsible to the nation, “thus, no one, under any pretext, could restrict, terminate or cease its activity”. Following such a provision, no preconditions were provided for dissolving the Parliament and holding extraordinary elections. The alternative draft included the norms that constitutionally legalised the cases when extraordinary elections to the Seimas could be held.

Another aspect is the fact that the draft Constitution prepared by the Commission prescribed that the Seimas consisted of 140 deputies elected for a four-year term and that half of the Seimas was to be elected every two years. The authors of the alternative draft were convinced that, in the country of parliamentary democracy, such a procedure of the composition of the Seimas would be a destabilising factor, therefore, the Seimas should be composed of 120 members (representatives of the nation) who would be elected for the period of four years under the majority system of elections.

The constitutional status of the President of the Republic was also established differently. The draft Constitution of the Commission did not include the following constitutional prerogatives of the relationships between the President and the Seimas that were provided for in the alternative draft Constitution: the head of state could supplement the agenda of an extraordinary session, submit the questions of the agenda of the Seimas to be considered first, require the consideration of any law or question at the Seimas out of turn, and adopt a law as a matter of urgency. The same could be said about the powers of the President with regard to the Government. He had the right not only to participate in the sittings of the Government, but also to chair them, reorganise the Government, suspend the resolutions and orders of the Government that were in conflict with laws, and propose the Seimas to annul them.

The approach to constitutional review also differed. Under the draft Constitution prepared by the Commission, this function was to be performed by the constitutional court, while the drafters of the alternative constitutions were convinced that the compliance of the legal acts with the Constitution had to be assessed by the supreme tribunal, defined as the supreme court, i.e. the highest level of the judicial system.

In this context of political events and phenomena, it should also be noted that some political parties that were acting in Lithuania independently prepared their own constitutional models and specific drafts.

The draft Constitution was prepared by the commission set up by the council of the Lithuanian Democratic Labour Party, which was headed by Juozas Bulavas, a

member-correspondent of the Lithuanian Academy of Science.¹² The priorities of this draft were the values of parliamentary democracy consolidated by establishing the organisation of the state, the competence of the institutions of the state power, and human rights and freedoms. The draft emphasised that “The parliamentary democracy of the Republic of Lithuania is based on the functional division of power into three independent systems of state bodies – legislative, governance, and judicial. State power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary”.

The board of the Liberal Union of Lithuania announced the draft new wording of the 1938 Constitution of Lithuania which was aimed at “continuing the traditions of constitutionality of the Republic of Lithuania”.¹³ In assessing this draft, it should be noted that although the principle of continuity of the 1938 Constitution of Lithuania was declared, its text and contents were essentially amended. The idea of “the Leader of the nation” was refused, a modern concept of human rights and freedoms was formulated, and the checks and balances of the state powers were established. It was not only proclaimed that “any law contrary to the Constitution had no power,” but also the institutional form of the implementation of this principle was consolidated. Even though it was focused on a more significant role of the President in the composition of the state powers, however, his constitutional powers were subordinated in respect of the powers of other state institutions.

There were other drafts as well; although they were not announced, these drafts approved the connection to the principles of parliamentary or presidential democracies. In this regard, the Lithuanian emigrants living in the USA played an active role: they encouraged not to deviate from the legal and political philosophy and declared the priorities of the presidential power.

The process of the creation of a new and permanent constitution was also accompanied by other factors, one of them being the efforts to restore the institute of the President and to grant exceptional constitutional powers to the head of state. The above-mentioned initiative that had arisen in autumn 1991 not only did not fade away; but, more importantly, it did increase: it was required to hold a referendum on this question. The steering group that had been registered at the municipal council of the Vilnius City organised the collection of signatures of voters in support of a referendum. During the Third Congress of Sąjūdis, which took place in December 1991, the Resolution on the restoration of the institute of the President of the Republic¹⁴ was adopted. The Congress obliged the Council of the Seimas of Sąjūdis to continue the initiated work so that the aim would be achieved constructively and as soon as possible; and the deputies of the Supreme Council were asked to fully support the restoration of an institute of the President.

¹² *Tiesa [Truth]*, 23 April 1992.

¹³ *Lietuvos aidas [The Echo of Lithuania]*, 25 February 1992.

¹⁴ *Ibid.*, 19 December 1991.

The consideration of the question of announcement of the referendum at the Supreme Council included the confrontation between the political groups and other groups of deputies. When the political fight became more intense, on 12 March 1992, the Supreme Council finally adopted a resolution on holding a referendum on the President on 23 May 1992.¹⁵ The texts of the draft laws submitted for the referendum were announced in the press.¹⁶

The laws on which it was voted at the referendum of 23 May 1992 were not adopted. 59,18 % of the electorate participated at the referendum. 69,27 % of the participants voted in favour of the laws; however, the overall turnout at the referendum was only 40,99 %. Under the Law on the Referendum, the draft laws did not get the required approval by the voters.

While assessing the referendum and its results in the context of constitutional development, it should be noted that the will of Lithuanian citizens was an important factor in choosing the form of government of the State of Lithuania and in establishing the institutional capacities of the state powers. The results of the referendum represented the nation's favouring such a constitutional structure in which the mechanisms of balance of the state powers really worked and in which the Parliament was the only legislature that also controlled the executive power. The decision adopted by citizens at the referendum set relevant milestones also for the drafters of the Constitution.

The political tension that had existed at the Supreme Council and in society until the referendum not only remained but, in the light of new political disagreements, determined the focuses of political life and forced to seek for agreements and decisions. Due to the political tension, the so-called parliamentary resistance, after the referendum, such a situation occurred when the parliament could not adopt any more significant decisions. The perspective of the early elections became more and more apparent.

The direction of the political process – early elections to the Parliament and the adoption of the Constitution. In order to overcome the political crisis, it was finally decided to announce the early elections to the Supreme Council on 25 October 1992, to prepare the harmonised draft Constitution, to approve it at the Supreme Council and to submit it for the referendum of Lithuanian citizens, which had to be held together with the elections. This path was also complicated as there actually existed two above-mentioned constitutional concepts.

Since mid-June, informal groups of deputies from various political groups started their activity at the Supreme Council; they sought assumptions of a common agreement. A group for harmonising constitutional problems was also established. Its activity

¹⁵ The Resolution of the Supreme Council of 12 March 1992 on the referendum concerning the restoration of the institute of the President of the Republic, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1992, No 7-169.

¹⁶ Draft constitutional Law of the Republic of Lithuania on the President of the Republic of Lithuania and draft Law of the Republic of Lithuania Amending and Supplementing the Provisional Basic Law of the Republic of Lithuania by Restoring the Institute of the President of the Republic of Lithuania, *Lietuvos aidas* [The Echo of Lithuania], 7 May 1992.

was constructive, as since 4 August 1992, the Supreme Council approved the prepared consolidated protocol that had defined the essential positions on the future Constitution and, thus, avoided harsher polemics.¹⁷

The protocol provided that the bases for the preparation of the harmonised draft Constitution would be the drafts prepared by the Commission and the working group of the Sąjūdis coalition “For the Democratic Lithuania”. It was established that the harmonised text of the draft Constitution would be a common text or a common text with alternative wording of individual articles. The results of the work had to be presented to the Supreme Council and the draft Constitution had to be approved by the absolute majority of all deputies and only then it could be submitted to the referendum.

Even though a step was taken towards the exit from the situation of political stalemate, the situation was still difficult. When it became clear that the harmonisation of two drafts was impossible, the Commission made a conclusion that, due to such circumstances, it would independently develop its draft and prepare a new version of the Constitution. The political organisation that had been established before the elections and had united the right political forces and was named as “Santara “For Democratic Lithuania”” also announced a new draft Constitution. It was presented as a part of their election programme.¹⁸

With a view to seeking political and legal compromises regarding the main constitutional provisions, an informal team representing all political groups of the Supreme Council was set up and it was headed by Vytautas Landsbergis, Chairman of the Supreme Council. It was understood that the preparation of the draft Constitution integrating all the ideas was a task of particular importance and the results of the work would determine the development of the society and the state and the long-term constitutional future.

After the intense debate, the text of the draft Constitution finally emerged and, with appropriate reservations, was acceptable to the majority of deputies. The Draft was considered at the sittings of the Supreme Council and meetings of the political groups. Even though there still existed different opinions concerning certain provisions, the Supreme Council approved the text¹⁹ of the draft Constitution by a large majority of votes, announced it in the press,²⁰ and submitted to the referendum.²¹

Looking at the political and legal peripeteias of the final stage of the drafting of the Constitution and the efforts to find compromises, it should be emphasised that one of

¹⁷ The Resolution of the Supreme Council of 4 August 1992 on approving the protocol of the group for harmonising constitutional problems of the Supreme Council, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1992, No 24-708.

¹⁸ *Atgimimas* [Rebirth] (supplement “Teisė” [“Law”]), 5 October 1992.

¹⁹ The Resolution of the Supreme Council of 13 October 1992 on the draft Constitution of the Republic of Lithuania, *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1992, No 31-954.

²⁰ *Ibid.*

²¹ The Resolution of the Supreme Council of 13 October 1992 on submitting the draft Constitution of the Republic of Lithuania to the referendum, *ibid.*, 1992, No 31-957.

the assumptions of the agreement was Article 153 of the draft Constitution. It specified the norms of the Constitution that could be amended by the elected Seimas until 25 October 1993 under the simple procedure, i.e. by a 3/5 majority vote of all the members of the Seimas. Most of these provisions were linked to the constitutional status of the Seimas, the members of the Seimas, the President, and the Government. Thus, Article 153 of the Constitution was a very important factor allowing to reach compromises not only on the Constitution as a whole, but also on specific constitutional norms, as the possibility was provided for the elected Seimas to amend, for one year, certain constitutional definitions on preferential conditions.

For the referendum of 25 October 1992, not only the draft Constitution was submitted, but also the draft Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania.²²

The adoption of the Constitution. In the Supreme Council, there prevailed a general approach that the Constitution had to be adopted not in the Parliament but by referendum, thus, expressing the common will of the citizens of the Republic of Lithuania on the constitutional order of society and the state. The organisation and implementation of a referendum was regulated by a special Law on the Referendum for Adopting the Constitution of the Republic of Lithuania²³ of 13 October 1992.

Under this law, taking part in the referendum was to be free and based upon the democratic principles of the right of elections: universal, equal, and direct suffrage and secret ballot. Any direct or indirect restrictions of the rights of citizens to take part in the referendum due to one's origin, social and material situation, race, nationality, gender, education, language, religion, political convictions, the duration of living at a particular place, and the kind and nature of occupation were prohibited. All political parties and social-political movements, as well as citizens, were granted the right to agitate, without hindrance, for or against the Constitution. For the implementation of this right, premises and the possibility to use the information tools had to be provided. In organising and implementing the referendum, the bases of publicity were followed, and the costs were paid by the state.

The referendum was organised and implemented by the Central Electoral Commission, as well as regional and local electoral commissions. The voting procedure of citizens was analogous to the procedure of the elections of the members of the Seimas.

The provisions of the draft Constitution were repeated that the Constitution would be deemed to have been adopted provided that more than half of the citizens of the Republic of Lithuania with the electoral right would give their consent to this Constitution in the referendum. If the majority of all citizens did not vote in favour of the Constitution,

²² The Resolution of the Supreme Council of 23 October 1992 on the Law of the Republic of Lithuania "On the Draft Procedure for the Entry into Force of the Constitution of the Republic of Lithuania", *ibid.*, 1992, No 31-956.

²³ *Ibid.*, 1992, No 31-955.

an alternative was envisaged: if more than half of all citizens with the electoral right participated in the referendum and more than half of the voters of the referendum gave their consent to the Constitution, an advisory referendum would be deemed to have taken place. In such an event, with regard to the results of an advisory referendum, the Seimas would establish a further procedure of the drafting, consideration, and adoption of the Constitution.

The referendum was to be deemed not to have taken place if fewer than half of the citizens with the electoral right would have taken part in it. The referendum could be considered null and void if, during the referendum, the documents had been falsified or other unlawful actions had been carried out to have had essential influence on the results of the voting.

The referendum took place: 75.25 percent of all the electorate participated in the voting. 75.42 percent of the citizens participating in the voting were in favour of the Constitution, and it covered 56.75 percent of the total number of voters. It was an impressive historical fact indicating the determination of the nation to create strong democratic foundations for further development of the statehood that would become a long-term programme for the development of the state and society. The Constitution met the expectations of the Lithuanian people that were linked to the law and justice, the harmony of social relations, and the social order based on the well-being.

The entry into force of the Constitution. The “Final Provisions” of the Constitution consolidated that the Constitution would come into force on the day following the official publication of the results of the referendum provided that more than half of the citizens of the Republic of Lithuania with the electoral right give their consent to this Constitution in the referendum. The Constitution and the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania adopted by referendum had to be signed and, within 15 days, promulgated by the Chairman of the Supreme Council.

On 6 November 1992, at the Sitting Hall of the Presidium of the Supreme Council, which was later renamed into the Constitutional Hall, the ceremony of signing the Constitution was held. In the solemn environment, with the participation of the members of the Presidium of the Supreme Council, the Government, the heads of the standing commissions and parliamentary groups of the Supreme Council, the hierarchs of Lithuanian religions, the representatives of political parties, movements, and social organisations, and the diplomats of foreign states accredited to Vilnius, Vytautas Landsbergis, Chairman of the Supreme Council, with reference to Article 154 of the Constitution, signed the Constitution and the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania.²⁴ On the grounds of the notice of the Central Electoral Commission on the

²⁴ For more information on this event, see “Kertinis valstybės akmuo. Paskelbta trečioji nuolatinė Lietuvos Respublikos Konstitucija” [“The Cornerstone of the State: the Third Permanent Constitution of the Republic of Lithuania has been announced”], *Lietuvos aidas* [The Echo of Lithuania], 7 November 1992.

official results of the referendum, it was proclaimed that the Constitution would come into force on 2 November. This date of its entry into force was later approved also by the Constitutional Court of the Republic of Lithuania in one of its constitutional justice cases.²⁵ The text of the Constitution was announced in the press.²⁶

²⁵ The ruling of the Constitutional Court of 21 April 1994, Official Gazette *Valstybės žinios*, 1994, No 31-562.

²⁶ *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1992, No 33-1014.

THE ESSENCE AND MAIN FEATURES OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA OF 1992

Prof. Dr. Juozas Žilys

In assessing the Constitution of the Republic of Lithuania in the historical context, it should be noted that it was adopted in the period, which is, in the comparative constitutional law, identified as the fourth stage of the worldwide development of constitutionalism. This stage, which started in the 1980s, is characterised by the collapse of totalitarian regimes in Central and Eastern Europe. The political and social transformation was the result of the aspiration of the peoples to liberate themselves from the oppression and dictatorship of the Soviet Union's empire. It was then that, in this part of Europe, new constitutions were born and meant the end of socialist constitutional systems in Europe.

In implementing the constitutional reforms, the sustainable constitutional values, which had matured in the enduring fight of the peoples for democracy and freedom, were followed. New constitutions were based upon the experience of the development of democratic constitutionalism, and in the states already having the traditions of constitutional regulation – upon the national legal heritage.

In the light of the dramatic historical experience, the drafters of constitutions sought to create the structure of the state power capable of ensuring a democratic evolution. In accordance with the principle of separation of powers, the political, social, and legal mechanisms were sought in order to harmonise the checks and balances of the representative institution, i.e. the Parliament, and the executive power. Given that, in almost all Central and Eastern European countries, the constitutional institute of the President was established or restored, there were intensive discussions on the role of the Head of State in the political system. The reform of the judiciary took place everywhere, by which it was sought to ensure political and legal conditions for the functioning of an independent court. In these countries, constitutional courts were founded and their duty was to ensure that the constitutional norms would not be political abstractions but a real factor in the functioning of the state and society. Thus, particular importance was granted to the rule of law, as the beginning of democracy.

A similar process also took place in Lithuania. As a result, the Constitution of the Republic of Lithuania was adopted, and this marked a new level of the constitutional development of an independent democratic State of Lithuania.

This Constitution reflects the social contract – an obligation democratically assumed – by all the citizens of the Republic of Lithuania to the current and future

generations to live under the fundamental rules as consolidated in the Constitution and to obey those rules so that the legitimacy of state power and decisions, as well as human rights and freedoms, would be ensured. This Constitution, as the highest-ranking legal act and social contract, is based on universal and unquestionable values, such as the sovereignty belonging to the nation, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, the limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law.¹

THE PRINCIPLES OF THE CONSTITUTION AND OTHER LEGAL PARTICULARITIES

The principles of the Constitution are unconditionally connected with all the *fabric* of constitutional regulation, as they are an important factor revealing the integrity of this regulation. In other words, constitutional principles determine all the legal structure and define its value orientations.²

The Constitution as a legal reality is perceived not only as a text and not only as explicit provisions formulated in this text. It is considered to be a more complex political and legal phenomenon merely because, in addition to the norms (provisions) that are graphically expressed and having a specific linguistic expression, it includes constitutional principles. In the constitutional jurisprudence, it is held that some of the constitutional principles are consolidated *expressis verbis* in formulated constitutional norms, while others, although not consolidated in the said norms, are derived from the entirety of constitutional norms and meaning of the Constitution.³

Constitutional principles may be considered as a key factor determining the nature and character of the constitutional normative fabric, as if *fusing* all constitutional norms into one organic system. In such a way, the consistency and coherence of constitutional regulation is ensured.

In the scientific concepts, the constitutional principles are classified into *primary, complex, and derivative*. *Primary* constitutional principles are those that are directly *expressis verbis* consolidated in the Constitution. Such principles would be the principle of integrity of the territory of the State of Lithuania (Article 10), the principle of Lithuanian as the state language (Article 14), and the principle of the innate nature of human rights and

¹ The Constitutional Court's ruling of 25 May 2004, Official Gazette *Valstybės žinios*, 2004, No 85-3094.

² For more information, see Kūris, E., "Lietuvos Respublikos Konstitucijos principai" ["The Principles of the Constitution of the Republic of Lithuania"] in *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law]*, 2nd edition, Vilnius: The Law University of Lithuania, 2002, pp. 201–272.

³ The Constitutional Court's ruling of 25 May 2004, Official Gazette *Valstybės žinios*, 2004, No 85-3094; the Constitutional Court's ruling of 13 December 2004, *ibid.*, 2004, No 181-6708.

freedoms (Article 18). The constitutional provisions that the State of Lithuania is created by the nation and sovereignty belongs to the nation (Article 2) and that no one may restrict or limit the sovereignty of the nation or arrogate to himself the sovereign powers belonging to the entire nation (Article 3) are also to be attributed to the primary constitutional principles.

Complex principles are reflected in various constitutional provisions. For instance, the principle of the supremacy of the Constitution, although not defined in a specific linguistic expression in the text of the Constitution, is expressed in most of the constitutional provisions: any law or other act which is contrary to the Constitution is invalid (Paragraph 1 of Article 7); the most significant issues concerning the life of the state and the nation are decided by referendum (Paragraph 1 of Article 9); the scope of power is limited by the Constitution (Paragraph 2 of Article 5); in the Republic of Lithuania, justice is administered only by courts (Paragraph 1 of Article 109).

Derivative principles are considered to be those principles that are not directly consolidated in the Constitution but stem from the content of constitutional norms and other principles defined in the Constitution itself. These constitutional laws are fully developed in the constitutional jurisprudence, i.e. in the official constitutional doctrine formulated by the Constitutional Court of the Republic of Lithuania. For instance, in the Constitution, the principle of separation of state powers is not formally defined, however, in constitutional justice cases, having assessed the whole of the constitutional fabric, the Constitutional Court holds that namely this law is essential and consolidating the political and legal grounds of the organisation of the state powers.⁴

In constitutional law, coordinating and determining principles are *found* and postulated. The first ones imply that constitutional norms are united by a coherent and logical system that is also determined by the descriptions of a more general content. The principle of a state under the rule of law, which is proclaimed in the Preamble to the Constitution, could be an example of coordinating principles. *Determining* principles are significant by the fact that they establish the essential laws of functioning of other branches of law. For instance, having announced that the human person is inviolable (Paragraph 1 of Article 21), other laws specify the guarantees of the implementation of this right. Having declared in the Constitution that property is inviolable, ordinary law reveals the legal forms of the implementation of this objective.

The supremacy of the Constitution in the legal system. The Constitution is the main law of the country, supreme law of Lithuania, the normative foundation for the functioning of the state community. It is the most important source of national law on the grounds of which the functioning of Lithuanian legal system is based. Thus, the Constitution is the core of Lithuanian law, the most important political-legal factor, which also determines the practice of the application of law in concrete political and societal relationships.

⁴ The Constitutional Court's ruling of 21 April 1998, *ibid.*, 1998, No 39-1044.

The Constitution occupies an exceptional – the highest – place in the hierarchy of legal acts, as no one is allowed to violate it. This means that constitutional order must be defended and the Constitution itself consolidates a mechanism enabling to establish whether legal acts are in conflict with it. In this regard, the principle of the supremacy of the Constitution is inseparable from the constitutional principle of a state under the rule of law – a universal constitutional principle upon which the Lithuanian legal system and the Constitution itself are based. Violation of the principle of the supremacy of the Constitution would mean that the constitutional principle of a state under the rule of law is also violated.⁵

The Constitution not only establishes that any law or other act that contradicts the Constitution is invalid but also provides for the legal mechanism of protection of the Constitution. The lawfulness of legal acts implies that all the participants of the law-making process must harmonise the drafted and adopted legal acts with the Constitution. In Lithuania, no advance control of the lawfulness of the legal acts that are being drafted is carried out; however, there is a subsequent control, i.e. the verification of the compliance of laws and other legal acts, which have already been adopted and have come into force, with the Constitution.

The stability of the Constitution. This characteristic of the Constitution relates to the principle of the supremacy of the Constitution as the sustainability of the constitutional regulation is one of the most important constitutional values. Since, in the hierarchy of legal acts of the State of Lithuania, the Constitution, as the highest-ranking legal act, plays a particular role, the drafters of the Constitution sought, first of all, to ensure the stability of the constitutional text. This objective was expressed by having established the special norms and procedures for amending the Constitution and supplementing it with new provisions.

The Constitution falls into a category of *rigid (strict)* constitutions merely because it may not be altered or supplemented by any subject having the traditional right of legislative initiative, but only by a group of not less than 1/4 of all the members of the Seimas (i.e. the Parliament) or not less than by 300 000 voters. During a state of emergency or martial law, the Constitution may not be amended.

The Seimas must consider draft amendments of the Constitution and vote on them twice. There must be a break of not less than three months between these votes. A draft law on the alteration of the Constitution is deemed adopted if, during each of the votes, not less than 2/3 of all the members of the Seimas vote in favour thereof. A failed amendment to the Constitution may be submitted to the Seimas for reconsideration not earlier than after one year.

The provisions of Chapter I “The State of Lithuania” of the Constitution and those of the Chapter XIV “Alteration of the Constitution” thereof may be altered in an even more complicated manner, i.e. only by referendum.

⁵ The Constitutional Court’s ruling of 24 December 2002, *ibid.*, 2002, No 19-828.

Particular legal protection is provided for in Article 1 of the Constitution, which establishes that “the State of Lithuania is an independent democratic republic”. This constitutional norm may only be amended by referendum and only if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof.

One of the most important legal factors ensuring the sustainability of the Constitution is the constitutional jurisprudence. The official constitutional doctrine, which is formulated in the acts of the Constitutional Court, allows to disclose the deep potential of the Constitution without changing its text and, at the same time, to adapt it to the changes of social life and to ensure its viability. Thus, the interpretation of the content of the principles and norms of the Constitution in constitutional justice cases, when their real meanings are found and revealed, reduces the need for interference into its text.

In the constitutional jurisprudence, the Constitutional Court regularly emphasises the stability of the Constitution, as a legal value securing the continuity of the state and respect for the constitutional order and law, as well as ensuring the implementation of the objectives declared in the Constitution by the Lithuanian nation, upon which the Constitution itself is founded. The text of the Constitution does not have to be corrected once there is a change in the terminology or any legally regulated societal relationships.⁶ The Constitutional Court emphasises that any amendment to the Constitution and the adjustment of its text must be based upon solid arguments and reasoning and not the short-term political interests.

The integrity of the Constitution – one of the essential features of constitutional regulation. While consolidating in Article 6 of the Constitution that “the Constitution is an integral and directly applicable act”, not only the rudiment of the Constitution of theoretical nature is identified. This provision acquires practical significance while implementing the constitutional principles and applying the constitutional norms in the political, social, and legal reality.

The integrity of the Constitution implies that the constitutional provisions are interrelated not only formally, under the structure of their setting-out, but also under their content. Thus, the Preamble to the Constitution, its sections and articles make a meaningful whole of the Constitution.⁷ No provision of the Constitution may be interpreted in such a way that the content of another constitutional provision would be distorted or denied, since thereby the essence of the whole constitutional regulation would be distorted and the balance of the constitutional values would be disturbed. It should also be noted that the norms and principles of the Constitution may not be interpreted on the basis of the acts adopted by the legislature and other law-making subjects, as the supremacy of the Constitution in the legal system would be denied.⁸

⁶ The Constitutional Court’s ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

⁷ The Constitutional Court’s conclusion of 24 January 1995, *ibid.*, 1995, No 9-199.

⁸ The Constitutional Court’s ruling of 12 July 2001, *ibid.*, 2001, No 62-2276.

The law on constitutional integrity covers not only its structural parts and the constituent norms but also the constitutional principles. The constitutional principles reveal not only the letter, but also the spirit of the Constitution – the values and objectives enshrined in the Constitution by the nation who chose a certain textual form and verbal expression of its provisions. There is no conflict between the constitutional principles and norms, as well as between the spirit and letter of the Constitution.⁹ This is exactly the concept of the Constitution that prevails in the scientific doctrine and is developed in the constitutional jurisprudence when the overall constitutional regulation and the interaction between constitutional provisions are interpreted.

In the constitutional jurisprudence, the Constitution is considered as supreme law without interruption of the constitutional regulation. The nature of the Constitution as the highest-ranking legal act and the idea of constitutionalism imply that the Constitution may not have nor does it have any gaps.¹⁰ It means that, in this regard, constitutional law differs from the system of ordinary law, in which there may be legal gaps or *legislative omissions* meaning that even though the legal regulation of relevant societal relationships is not established in the legal acts, however, there is a need of such a regulation and it must be established, as this is required by a higher-ranking legal act or the Constitution itself.¹¹

Consequently, as the Constitution has no legal gaps, there may not be and there is no any legal regulation established in lower-ranking legal acts that could not be assessed from the viewpoint of its compliance with the Constitution.

The Constitution as a directly applicable act. Such a definition is included in the Constitution, thus, such an assessment of the Constitution is not a theoretical concept. This provision must be followed in implementing constitutional provisions in the lawmaking, in the activity of all state institutions, while ensuring the human rights and freedoms, and in the jurisprudence of courts of general jurisdiction and administrative courts. Under the Constitution, the legislature does not have the right to establish such a legal regulation that would limit or deny the possibility of applying the Constitution directly.¹²

The Constitution is not just a political document postulating abstract political values and establishing social orientation. Its most important characteristics is that it is, first of all, the main act of legal norms, whose established rules are effective and binding on everyone.

Attention should be drawn to the fact that the principle of the direct application of the Constitution is specified in other norms of the Constitution itself: “Everyone may defend his rights by invoking the Constitution” (Paragraph 2 of Article 6). It means that all natural and legal persons, regardless of their social and legal status, may seek for their

⁹ The Constitutional Court’s ruling of 25 May 2004, *ibid.*, 2004, No 85-3094.

¹⁰ The Constitutional Court’s ruling of 13 December 2004, *ibid.*, 2004, No 181-6708.

¹¹ The Constitutional Court’s decision of 5 November 2008, *ibid.*, 2008, No 130-4993.

¹² The Constitutional Court’s ruling of 24 December 2002, *ibid.*, 2002, No 19-828.

legitimate interests to be ensured and justified by the human rights and freedoms that are announced in the Constitution. From this constitutional provision, a reasonable conclusion should be drawn that the assumptions of the defence of rights and freedoms may not be limited by means of ordinary legal regulation and by establishing the additional obstacles that are not provided for in the Constitution.

The constitutional provision “A person whose constitutional rights or freedoms are violated has the right to apply to a court” (Paragraph 1 of Article 30) is particularly important. Violated rights may be defended in court, irrespective of whether or not the right of a person that is guaranteed in the Constitution is mentioned in a law or substatutory legal act.¹³

The right to apply to a court is an absolute one.¹⁴ It means that the constitutional principle of judicial defence is universal and that the legislature has the constitutional duty to lay down such a legal regulation by means of which all disputes regarding the violation of the acquired rights and freedoms of persons could be settled in a court. A prelitigation procedure for settling disputes may also be established by means of legal acts; however, it is not permitted to establish such a legal regulation that would deny the right of an individual to defend his/her rights and freedoms in a court.¹⁵

The direct application of the Constitution is the reality of the Lithuanian legal system, which is based on the principles and norms of the Constitution. The implementation of this law in specific legal situations is one of the most important ways to ensure the real impact of the Constitution on societal relationships and to protect the constitutional values that are, in a relevant legal form, *framed* in the text of the Constitution. The direct application of the Constitution does not deny the importance of the ordinary legal regulation. However, in all cases, the lower-ranking legal acts may not violate the constitutional principles and norms, and their lawfulness, i.e. compliance with the Constitution, may be verified by considering constitutional justice cases.

THE FORM AND STRUCTURE OF THE CONSTITUTION

While assessing the Constitution from the viewpoint of comparative constitutional law, it should be noted that it is to be attributed to the category of *complex codified* constitutions. Such a conclusion may be drawn from the structure of the Constitution and the system of constitutional norms, which makes the whole fabric of constitutional regulation. In addition to the main text, the Constitution comprises of the Preamble and the “Constituent Part of the Constitution of the Republic of Lithuania” (hereinafter referred to as the constituent part) which is made of 4 legal acts of constitutional power.

¹³ The Constitutional Court’s ruling of 4 March 1999, *ibid.*, 1999, No 23-666.

¹⁴ The Constitutional Court’s ruling of 30 June 2000, *ibid.*, 2000, No 54-1588.

¹⁵ The Constitutional Court’s ruling of 7 February 2005, *ibid.*, 2005, No 19-623.

In the theory of Lithuanian constitutional law, the general opinion is that it is not a whole of separate documents, but a uniform system of constitutionally significant norms that are organically related, which expresses the political, legal, and value orientation of society and the state.

The structure of the Constitution is grounded on the experience of constitutional development of most democratic countries worldwide and the constitutional heritage of the State of Lithuania. While drafting the Constitution, the drafters followed the idea that it should reveal the historical and political beginnings of the State of Lithuania, the principles of organisation of the state, the interaction between the state power and society, i.e. the limits of the powers of state authorities, human rights and freedoms, the fundamentals of the harmonisation of the functions of governance and local self-government, and other things describing the functioning democratic political and legal system.

The text of the Constitution comprises of: (1) the Preamble; (2) the main part (Chapters I–XIV); (3) “Final Provisions”; (4) the constituent part of the Constitution.

All structural parts of the text of the Constitution, having regard to the political and legal priorities and the specificity of the regulation of concrete constitutional relations, reveal and consolidate the constitutional values on which the constitutional order of the Republic of Lithuania is based. All the provisions of the Constitution are interrelated not only formally but also under their content: the content of some provisions of the Constitution determines the content of others. The provisions of the Constitution make a harmonious system, and there is a balance between the values enshrined in the Constitution, they may not be opposed to one another.¹⁶

The Preamble to the Constitution. In the Constitution of 1992, the constitutional tradition of Lithuania is continued, as both the Constitution of the State of Lithuania of 1 August 1992 and the Constitution of Lithuania of 12 May 1938 are initiated by the Preamble. What unifies them is the fact that here is raised the historicity of the State of Lithuania and the efforts of people to ensure the political and legal existence of the state and its development.

The Preamble emphasises the historical role of the Lithuanian nation in establishing the state and laying sustainable foundations for its functioning. The Preamble states that the Lithuanian nation created the State of Lithuania centuries ago, based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania, for centuries staunchly defended its freedom and independence, and preserved its spirit, native language, writing, and customs.

Thus, the Preamble not only declares the historicity of the State of Lithuania but also marks the guidelines of the Lithuanian constitutional development: the Constitution must embody the innate right of the human being and the nation to live and create freely in the land of their fathers and forefathers – in the independent State of Lithuania, foster

¹⁶ The Constitutional Court’s ruling of 6 June 2006, *ibid.*, 2006, No 65-2400.

national concord in the land of Lithuania, and strive for an open, just, and harmonious civil society and a state under the rule of law. Thus, the Preamble defines the political, social, and legal expectations of the Lithuanian nation at the time when this Constitution was proclaimed.

The Preamble may be considered as the key to understand the system of constitutional regulation, as it announces the most important principles of life in the State of Lithuania, and the greatest constitutional values and aims. While interpreting the meanings and principles of constitutional norms, the Constitutional Court has more than once assessed the role of the Preamble to the Constitution in the constitutional system. Pursuant to the principle of integrity of the Constitution, which is formulated in Article 6 thereof, the Constitutional Court emphasised that the Preamble to the Constitution expresses law and its provisions are composed of *the legal fabric*. Such a description also implies an unambiguous conclusion that *the normativeness* of the Preamble may be a strong argument for reasoning the unconstitutionality of laws and other legal acts, i.e. their unlawfulness.

“Final Provisions” of the Constitution (Articles 150–154). Formally, the “Final provisions” are not a separate section of the text of the Constitution; however, they organically relate with all constitutional fabric and are an inseparable part thereof. The provisions of these articles seemingly consolidated the completion of the political process of drafting the Constitution and held the main legal consequences arising upon the adoption of the Constitution.

Namely in these provisions, political phenomena and legal facts are specified that had a decisive influence on the constitutional development in Lithuania and are consolidated in the text of the Constitution.

The primary wording of Article 150 of the Constitution established that the constituent parts of the Constitution are:

the Constitutional Law on the State of Lithuania of 11 February 1991;

the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions of 8 June 1992.

Later, on 13 July 2004, the Seimas adopted the Law on Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act on Membership of the Republic of Lithuania in the European Union and Supplementing Article 150 of the Constitution of the Republic of Lithuania.¹⁷ By means of this law, Article 150 of the Constitution was supplemented by the provision that the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania of 25 October 1992 and the Constitutional Act on Membership of the Republic of Lithuania in the European Union were a constituent part of the Constitution.

¹⁷ Ibid., 2004, No 111-4123.

In this manner, the political and legal role of these acts was not only constitutionally revealed and assessed, but also it was established that these documents were not one-off or temporary in nature.

Although relevant legal norms were formulated in the Law on the Constitution of the Republic of Lithuania and its Entry into Force, also the “Final Provisions” prescribed that the Constitution of the Republic of Lithuania was to come into force on the day following the official publication of the results of the referendum provided that more than half of the citizens of the Republic of Lithuania with the electoral right give their consent to this Constitution in the referendum.

The “Final Provisions” also included one very important provision on which it was agreed yet during the consideration of the draft Constitution and which created preconditions for finding political compromises when submitting the Constitution to the referendum. It is the provision that after the adoption of this Constitution by referendum, the Seimas, by 25 October 1993, may alter, by a 3/5 majority vote of all the members of the Seimas, the provisions of this Constitution contained in Articles 47, 55, 56, Item 2 of the second paragraph of Article 58, in Articles 65, 68, 69, Items 11 and 12 of Article 84, the first paragraph of Article 87, in Articles 96, 103, 118, and in the fourth paragraph of Article 119 and establishing the constitutional status of the Seimas, the members of the Seimas, the President of the Republic, the Government, the Constitutional Court, the Prosecution Service, and municipalities.

Thus, the possibility was left for the Seimas, within one year, to alter certain norms of the Constitution by a majority vote of the members of the Seimas. In addition, even though, after the election of the Seimas, it was sought to take these opportunities, it was, however, impossible to achieve the constitutional majority so that the Constitution would be amended.

The constituent part of the Constitution. As mentioned before, this part is composed of the acts of historical and political meaning that reveal the realities of constitutional development, important on the way to the adoption of the Constitution and later.

1. *The Constitutional Law on the State of Lithuania of 11 February 1991.*¹⁸ This law was adopted by the Supreme Council of Lithuania after the nation-wide general survey (plebiscite) held on 9 February 1991, during which the Lithuanian citizens agreed on the statement that “the State of Lithuania is an independent democratic Republic”.

The Supreme Council, *taking account* of the fact that, during the general poll (plebiscite) held on 9 February 1991, more than 3/4 of the population of Lithuania with the active electoral right voted that “the State of Lithuania would be an independent democratic republic”, *emphasising* that, by this expression of sovereign powers and will, the nation of Lithuania once again confirmed its unchanging stand on the independent

¹⁸ Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1991, No 6-166.

State of Lithuania, *interpreting* the results of the plebiscite as the common determination to strengthen and defend the independence of Lithuania and to create a democratic republic, and *executing* the will of the nation of Lithuania, adopted and proclaimed the constitutional law, whereby it was held that:

1) the statement “The State of Lithuania shall be an independent democratic republic” was a constitutional norm of the Republic of Lithuania and a fundamental principle of the state;

2) the constitutional norm and the fundamental principle of the state as formulated in the first article of this Law may be altered only by a general poll (plebiscite) of the nation of Lithuania provided that not less than 3/4 of the citizens of Lithuania with the active electoral right vote in favour thereof.

2. *The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions of 8 June 1992.*¹⁹ While adopting this act, the Supreme Council invoked the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and acted upon the will of the entire nation, as expressed on 9 February 1991. One more reason and incentive for adopting this constitutional act was the visible attempts to preserve, in any form, the former Union of Soviet Socialist Republics with all its conquered territories, and the intentions to draw Lithuania into the defensive, economic, financial, and other “spaces” of the post-Soviet Eastern bloc.

In the constitutional act, the Supreme Council defined the internal and external policies: to develop mutually advantageous relationships with each state that was formerly a component of the USSR, but never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR. It was also announced that any activities seeking to draw the State of Lithuania into the specified unions or commonwealths of states was to be regarded as hostile to the independence of Lithuania, and liability for them was to be established by law.

The Supreme Council stated that there may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania.

In addition, soon upon the adoption of this constitutional act, on 14 June 1992, a referendum was held on unconditional and urgent withdrawal of the former USSR army from the territory of Lithuania in 1992 and on compensation for damage to Lithuania. 1 931 278 voters, or 70.05 per cent of all electorate, took part in the referendum. 1 751 026 citizens, or 68.95 per cent of all the electorate, and 90.67 per cent of voters voted for the withdrawal of the USSR army from the territory of the Republic of Lithuania.

Taking account of the results of the voting, the Supreme Council held that, in the referendum, by the overall majority of votes, the citizens of the Republic of Lithuania supported the requirement that the withdrawal of the army of the former USSR from the

¹⁹ Ibid., 1992, No 18-513.

territory of the Republic of Lithuania would be started immediately and finished in 1992 and that the damage inflicted upon the Lithuanian people and the State of Lithuania would be compensated.²⁰

3. *The Constitutional Act on Membership of the Republic of Lithuania in the European Union* of 13 July 2004.²¹ The adoption of this act marked and completed the political and legal process that was taking place in preparation for accession of Lithuania to the European Union (EU) and in the course of accession. Yet on 16 April 2003 in Athens, the representatives of the Republic of Lithuania signed an Accession Treaty to the European Union and, on 10–11 May 2003 in Lithuania, the referendum on membership of the Republic of Lithuania in the EU was held. More than 63 per cent of citizens with the electorate right participated in the referendum; more than 91 per cent of voters supported the membership. After the referendum, on 16 September 2003, the Seimas ratified the Treaty of Accession of Lithuania to the EU.

While adopting the constitutional act, the Seimas expressed its conviction that the EU respected human rights and fundamental freedoms and that Lithuanian membership in the European Union would contribute to the more efficient protection of human rights and freedoms; the Seimas also noted that the EU respected the national identity and constitutional traditions of its Member States.

The constitutional act emphasises that the Republic of Lithuania as a Member State of the EU shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the EU and to the extent it would, together with the other Member States of the EU, jointly meet its membership commitments in those areas, as well as enjoy membership rights.

It was held that the norms of European Union law were a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the EU, the norms of EU law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.

4. *The Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania* of 25 October 1992.²² This law that was adopted in the referendum together with the Constitution was attributed to the constituent part of the Constitution, as the norms of this law regulated the essential actions of the implementation of the Constitution and the law itself determined the direct functioning of the Constitution. Under this law, upon the entry into force of the Constitution, the Provisional Basic Law of the Republic of Lithuania became null and void, and laws, as well as other legal acts, were to be effective inasmuch as

²⁰ The Resolution of the Supreme Council of 30 June 1992 on the decision of the citizens of the Republic of Lithuania made during the 14 June 1992 referendum; *ibid.*, 1992, No 21-615.

²¹ Official Gazette *Valstybės žinios*, 2004, No 111-4123.

²² *Lietuvos Respublikos Aukščiausiosios Tarybos ir Vyriausybės žinios* [Official Gazette of the Supreme Council and the Government of the Republic of Lithuania], 1992, No 33-1015.

they were not in conflict with the Constitution and until being either declared null and void or brought in line with the provisions of the Constitution.

It was established that the powers of the Supreme Council and its deputies were to cease from the moment when the elected Seimas convened for its first sitting. It was provided that the members of the Seimas were to convene for the sitting on the third working day after the official announcement by the Central Electoral Commission, following both election rounds, that not less than 3/5 of all the members of the Seimas had been elected.

Under the Law on the Procedure for the Entry into Force of the Constitution, during the period until the President of the Republic was elected, Article 89 of the Constitution had to be followed, which established the situation in the absence of the President of the Republic – in the event he dies, the state of health does not allow him to hold office, or he is removed from office according to the procedure for impeachment proceedings. In addition, after the elections, during the first sitting on 25 November 1992, the Seimas adopted a resolution specifying the circumstances arising from the said provision of the Constitution.²³

The law defines the legal procedures for the formation of the Constitutional Court and specifies that the President and justices of the Constitutional Court must be appointed not later than one month after the election of the President of the Republic.

THE CONSTITUTIONAL DESCRIPTION OF THE STATE OF LITHUANIA

The State of Lithuania is described in Section 1 of the Constitution “The State of Lithuania”. It is the continuation of the Lithuanian constitutional tradition arising from the 1922 Constitution of the State of Lithuania and 1938 Constitution of Lithuania, the main part of the text of which is initiated namely by political and legal definitions of a state.

Article 1 of the Constitution proclaims: “The State of Lithuania shall be an independent democratic republic.” This means that the principle of the republic, as a form of government, is the basis of the functioning of the state as an organisation and, at the same time, a protected constitutional value that was complied with in the political history of Lithuania and in the development of statehood. The notion “independence of the state” means nothing more than the sovereignty of the state, i.e. the independence of the state power in conducting internal affairs and implementing foreign policy, as well as developing the legal system. The sovereignty was not granted and could not be granted by anyone to the State of Lithuania as it originated on its own after the nation had created the state, legitimised, by means of the highest-ranking legal acts, the scope of power, and established its limits. The sovereignty of the state is comprehensive, exceptional, and indivisible.

The sovereignty of the state is linked to the sovereignty of the nation. Article 2 of the Constitution proclaims: “The State of Lithuania shall be created by the Nation. Sovereignty

²³ Ibid., 1992, No 35-1064.

shall belong to the Nation.” Its Article 3 emphasises that no one may restrict or limit the sovereignty of the nation or arrogate to himself/herself the sovereign powers belonging to the entire nation. This means that the sovereignty of the nation may be hindered, for a certain period of time, only by the use of brutal power; however, the sovereignty will never disappear and will exist as an undeniable source of the political will of the nation and the legal power.

Two notions are used in the Constitution: “the Lithuanian Nation” and “the Nation of Lithuania”. They may not be opposed as the Lithuanian nation is the basis and the necessary precondition for the existence of the civil nation – the national community.

The State of Lithuania developed on the basis of ethnic nation – Lithuanian nation and this is reflected in the Preamble to the Constitution; it is consolidated that the Lithuanian nation (i.e. titular nation) created the national State of Lithuania many centuries ago. Namely a national state is a political form of the common life of a certain ethnical nation. A national state ensures the possibility of fostering the identity, culture, mentality, language, traditions, and customs of the Lithuanian nation, which helps to accumulate the experience of statehood and to pass it, as well as to gain maturity, and which guarantees the necessary historical survival. The fully fledged life of the Lithuanian nation would be particularly burdened or even impossible without a national state.²⁴

Under the Constitution, the citizens (as a whole) of the State of Lithuania compose the civil nation – the national community – the nation of Lithuania. The nation of Lithuania creates the state and exercises sovereignty, forms the representation of the nation – the Parliament – in the elections, and adopts decisions in referendums. The nation of Lithuania is an integral state community, which is united by the legal citizenship relationships. All citizens of the Republic of Lithuania belong to the Lithuanian civil nation, regardless of whether the said citizens belong to the titular nation (they are Lithuanians) or to national minorities.

Article 4 of the Constitution establishes that the nation executes its supreme sovereign power either directly or through its democratically elected representatives. This principle was concretised by establishing that the most significant issues concerning the life of the state and the nation are to be decided by referendum, if not less than 300 000 citizens with the electoral right so request. A referendum may also be called by the Seimas (Article 9).

The Constitution consolidates: “In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary. The scope of power shall be limited by the Constitution. State institutions shall serve the people” (Article 5). The essence of the constitutional principle of separation of powers has been more comprehensively developed in most acts of the Constitutional Court, in which it has been assessed whether the norms of ordinary law regulating relevant constitutional relations, were not in conflict with the basis for the functioning of state power of all branches that are consolidated in the Constitution.

²⁴ The Constitutional Court’s ruling of 13 November 2006, Official Gazette *Valstybės žinios*, 2006, No 123-4650.

In the constitutional jurisprudence, it is emphasised that the separation of powers implies that the legislative, executive, and judicial powers must be separated and must be sufficiently independent; however, there must also be a balance among them. The direct establishment of powers in the Constitution means that a certain state institution may not take over any powers from another state institution, nor may it transfer or waive the said powers. Such powers may not be changed or limited by law.²⁵ In implementing the tasks and functions of the state, the interaction of state institutions is to be defined as inter-functional partnership, which is characterised by reciprocal control and balance.²⁶

The interaction of state powers may not be treated as their conflict or competition; thus, also the checks and balances that the judicial power (institutions thereof) and other state powers (institutions thereof) have towards each other may not be treated as the mechanisms of the opposition of powers. The model of interaction among state powers (institutions thereof) is also described by the reciprocal control and balance; such reciprocal control and balance do not allow a certain branch of state power to dominate in respect of another branch of state power; the said model of interaction is also described by the cooperation among the branches of state power, of course, where such cooperation does not overstep the limits established in the Constitution, i.e. without interfering in the implementation of the powers of another branch of state power.²⁷

Chapter 1 of the Constitution also specifies other characteristics of the State of Lithuania; *the institute of citizenship* is one of them. Article 12 of the Constitution enshrines that citizenship of the Republic of Lithuania is acquired by birth or on other grounds established by law. With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.

This means that while regulating citizenship relationships, the legislature must pay heed to the constitutional requirement that a citizen of the Republic of Lithuania may also be a citizen of another state only in individual cases established by law; such cases provided for by law may be only very rare (individual), exceptional.²⁸ Under the Constitution, the expansive interpretation of the provisions of the law consolidating the possibility to be a citizen of the Republic of Lithuania and a citizen of another state at the same time, where, according to the said interpretation, dual citizenship would be not individual, extraordinarily rare exceptions, but rather a widespread phenomenon, is impermissible.²⁹

Lithuanian is the state language (Article 14). This constitutional principle appraises the historical role of the titular (Lithuanian) nation in creating the state whose official title historically points to its Lithuanian nature. The territory of the State of Lithuania is the

²⁵ The Constitutional Court's ruling of 24 December 2002, *ibid.*, 2002, No 19-828.

²⁶ The Constitutional Court's ruling of 10 January 1998, *ibid.*, 1998, No 51-1894.

²⁷ The Constitutional Court's ruling of 9 May 2006, *ibid.*, 2006, No 51-1894.

²⁸ The Constitutional Court's ruling of 13 November 2006, *ibid.*, 2006, No 123-4650.

²⁹ The Constitutional Court's ruling of 30 December 2003, *ibid.*, 2003, No 124-5643.

only place in the world where the guarantees of the Lithuanian language, as the Lithuanian cultural identity, are ensured and the conditions for it to endure are created.

The Lithuanian language is one of the main constitutional values as it protects the identity of the nation, integrates the political nation, and ensures the expression of sovereignty of the nation, as well as the integrity and indivisibility of the state. The state language is an important guarantee of the equality of rights of citizens when they implement their rights and legitimate interests. The constitutional principle of the state language also implies that the legislature must establish by law how the use of this language is ensured in public life, and it must provide for the means of the protection of the state language.

The constitutional status of the state language means that Lithuanian is compulsory only in the public life of Lithuania and, in other spheres of life, persons may use any language acceptable to them without restrictions.³⁰

The Constitution ensures that citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs (Article 37). The identity of the State of Lithuania is expressed not only by the state language but also by *the official heraldic symbols*: the flag of the state of yellow, green, and red colours; the coat of arms of the state is a white Vytis on a red field (Article 15). The anthem of the state is “Tautiška giesmė”, which was created by Vincas Kudirka at the end of the 19th century (Article 16). The capital of the State of Lithuania is the city of Vilnius, the long-standing historical capital of Lithuania (Article 17).

The form of government of the State of Lithuania. On the basis of the competence of state institutions, as established by the Constitution, the model of government of the State of Lithuania should be categorised as a parliamentary republican form of government. At the same time, it should be noted that the form of government of the state also has certain characteristics of the so-called mixed (semi-presidential) form of government. This is reflected in the powers of the Seimas, the Head of State – the President, and the Government, as well as in the legal arrangement of their interaction. There are assumptions to hold that, in the Constitution, the account is taken of the historical development of the parliamentary and presidential democracy and summaries arising from it.³¹

The organisation of the State of Lithuania. Article 10 of the Constitution states that the territory of the State of Lithuania is integral and is not divided into any state-like formations. While constitutionally protecting this *integrity and indivisibility*, it is consolidated that the boundaries of the state may be altered only by an international treaty of the Republic of Lithuania after it is ratified by 4/5 of all the members of the Seimas. Thus, the conclusion should be drawn that Lithuania is a unitary state. Under the Constitution, the organisation of the state may not be based upon any federal, confederal, or any other

³⁰ The Constitutional Court's ruling of 21 October 1999, *ibid.*, 1999, No 90-2662.

³¹ The Constitutional Court's ruling of 10 January 1998, *ibid.*, 1998, No 5-99.

relationships that is not provided for in it that would be incompliant with the relationships provided in the Constitution.

The Unitarianism of Lithuania ensures that, in its territory, there is only one effective Constitution, as a legal act of supreme power ensuring one constitutional order. In Lithuania, no other alternative acts may be in force that would compete with the Constitution or change the regulation of constitutional relationships defined in it.

Under the Constitution, in the whole territory of Lithuania, there exists a common national legal system ensuring the political, societal relationships, the human rights and freedoms, and the needs of government that arise from the Constitution. The harmony of the legal system is also protected by the fact that all legal acts must be lawful – they must not be in conflict with the constitutional principles and specific constitutional norms. The institutional system of the power and government and the self-government functions in Lithuania, which, in turn, is based on constitutional imperatives.

The constitutional principle of the integrity and indivisibility of the territory of Lithuania also implies that, in Lithuania, no political autonomous territorial units may be organised or established, in which different legal order would exist and by which the sovereignty of the Republic of Lithuania would be violated. This fundamental legal provision did not emerge by coincidence. In the late 1980s and later, the communist parties and state structures of the USSR, the Soviet empire, with the assistance of the forces that were hostile to the independence of Lithuania and that operated in Lithuania, sought to form, in certain parts of the territory, the politically and legally independent, *autonomous* territorial units. The implementation of these aggressive intents failed; however, such intentions were a real threat to the indivisibility and sovereignty of the State of Lithuania.

Article 11 of the Constitution consolidates that the territorial administrative units of the State of Lithuania and their boundaries are established by law. Article 119 prescribes that the right to self-government is guaranteed for these administrative units.

The State of Lithuania is a secular state. Such a definition of the state is not directly formulated in the Constitution, but it results from most constitutional provisions: everyone has the right to have his own convictions and freely express them (Article 25); freedom of thought, conscience, and religion are not restricted (Paragraph 1 of Article 26); everyone has the right to freely choose any religion or belief (Paragraph 2 of Article 26); no one may compel another person or be compelled to choose or profess any religion or belief (Paragraph 3 of Article 26); and others.

The doctrine of a secular state has been developed in the constitutional jurisprudence.³² According to it, the state is neutral with regard to convictions, it does not have the right to establish any compulsory views, and the freedom of religion is an absolute freedom of everyone. This neutrality is reflected by the fact that the Constitution proclaims

³² The Constitutional Court's ruling of 13 June 2000, *ibid.*, 2000, No 49-1424.

state and municipal establishments of teaching and education to be secular; however, at the request of parents, they provide religious instruction (Paragraph 1 of Article 40).

The cooperation between the state and the Church means that churches and religious organisations do not interfere with the activity of the state, its institutions, and that of its officials, while the state does not interfere with the internal affairs of churches and religious organisations; all this is expressed in the specific provisions of the Constitution: the state recognises the churches and religious organisations that are traditional in Lithuania, whereas other churches and religious organisations are recognised provided that they have support in society and their teaching and practices are not in conflict with the law and public morals; churches and religious organisations recognised by the state are free to proclaim their teaching, perform their ceremonies, and have houses of prayer, charity establishments, and schools for the training of priests; churches and religious organisations conduct their affairs freely according to their canons and statutes.

The social orientation of the State of Lithuania. In the Constitution, the Republic of Lithuania is not directly described as *a social state*, and only certain characteristics of such a state are incomprehensively revealed in the constitutional jurisprudence. Nevertheless, the analysis of the principles and provisions of the Constitution shows that the social orientation of the state is obvious.³³ In the Constitution, in this respect, the experience of most countries in which new constitutions were adopted after the Second World War is taken into account.

The social orientation of the state is confirmed by the specific constitutional norms: the state regulates economic activity in such a manner that it serves the general welfare of the nation (Paragraph 3 of Article 46); family, motherhood, fatherhood, and childhood are under the protection and care of the state (Paragraph 2 of Article 38); the state takes care of families raising and bringing up children at home, and renders them support (Paragraph 1 of Article 39); the law makes a provision for working mothers to be granted paid leave before and after childbirth, as well as favourable working conditions and other concessions (Paragraph 2 of Article 39); education at state and municipal schools of general education, vocational schools, and schools of further education is free of charge (Paragraph 2 of Article 41); citizens who are good at their studies are guaranteed education at state schools of higher education free of charge (Paragraph 3 of Article 41); the state supports culture and science (Paragraph 2 of Article 42); every working person has the right to rest and leisure, as well as to annual paid leave (Paragraph 1 of Article 49); the state guarantees its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law (Article 52); the state takes care of the health of people and establishes

³³ For more information, see Žilys, J., “Konstitucijos socialinės prasmės” [“Social meanings of the Constitution”], *Konstitucinė jurisprudencija* [Constitutional Jurisprudence], 2006, No 4, pp. 310–324.

the procedure for providing medical aid at state medical establishments by means of laws (Paragraph 1 of Article 53), etc.

In the Constitution, the social orientation of the state and social justice are not opposed to the principle of a state under the rule of law – they form an indivisible whole, which is characteristic of a democratic state: all political, social, economic, and cultural rights and freedoms are ensured by equal constitutional grounds.

The geopolitical orientation of the State of Lithuania. In implementing its foreign policy, the Republic of Lithuania follows the universally recognised principles and norms of international law, seeks to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and contributes to the creation of the international order based on law and justice (Paragraph 1 of Article 135). The observance of international obligations and respect for the universally recognised principles of international law (including the principle of *pacta sunt servanda*) are a legal tradition and a constitutional principle of the restored independent State of Lithuania.³⁴

Paragraph 2 of Article 135 of the Constitution formulates one of the fundamentals of Lithuanian geopolitical orientation: the Republic of Lithuania participates in international organisations provided that this is not in conflict with the interests and independence of the state. The Republic of Lithuania participates in the activity of most international organisations; most important of them are the European Union and the North Atlantic Treaty Organisation (NATO). Participation in these political organisations means that the Euro-Atlantic orientation of Lithuania is strong.

In the context of Lithuanian geopolitical orientation, also the provision of Article 137 of the Constitution should be assessed; it provides that there may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.³⁵ By means of this provision, it was, first of all, sought to emphasise the unlawfulness and inadmissibility of the presence of the armed forces of the Soviet Union, and, later on, of the Russian Federation, on the territory of the Republic of Lithuania. With regard to the need to ensure the comprehensive safety and existence of the State of Lithuania and its society, this prohibition was not absolute.

When interpreting this constitutional provision, the Constitutional Court emphasised that any such military bases that are directed and controlled by foreign states are prohibited on the territory of the Republic of Lithuania by Article 137 of the Constitution. Such a prohibition does not mean that there may not be any such military bases that, subsequent to the international treaties of the Republic of Lithuania, are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies.³⁶ Thus,

³⁴ The Constitutional Court's ruling of 14 March 2006, Official Gazette *Valstybės žinios*, 2006, No 30-1050.

³⁵ For more information, see Žalimas, D., “Konstitucinio užsienio valstybių karinių bazių draudimo turinys” [“The contents of constitutional prohibition of military bases of foreign states”], *Konstitucinė jurisprudencija* [Constitutional Jurisprudence], 2008, No 1, pp. 343–346.

³⁶ The Constitutional Court's ruling of 15 March 2011, Official Gazette *Valstybės žinios*, 2011, No 32-1503.

the military bases of other countries of NATO intended for the common needs of defence of Lithuania and NATO states may be establish and function in Lithuania if they meet one condition – are directed and controlled jointly with the Republic of Lithuania.

THE CONSTITUTIONAL CONCEPT OF HUMAN RIGHTS, FREEDOMS, AND DUTIES

The human rights, freedoms, and duties are formulated in Chapter II “The Human Being and the State” (Articles 18–37), Chapter III “Society and the State” (Articles 38–45), and Chapter IV “The National Economy and Labour” (Articles 46–54) of the Constitution. Certain constitutional rights and freedoms are also revealed in other constitutional norms or rise from the constitutional principles.

While drafting and adopting the Constitution, it was focussed on the international legal acts which define and consolidate not only the concept of human relationship with society and the state, but also the specific rights and freedoms. In formulating most constitutional norms, it was directly or indirectly referred to the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and International Covenant on Economic, Social, and Cultural Rights (1966), which were adopted by the United Nations General Assembly, as well as to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which was adopted by the Council of Europe; it was also focussed on the European Court of Human Rights.

Following the international legal acts, the Constitution reveals the catalogue of civil (personal), political, social, economic, and cultural rights and the specific rights and freedoms of this catalogue. This is namely the structure of human rights and freedoms upon which the text of the Constitution is based and the norms formulated therein, which define the constitutional status of a person in society and the state. While assessing the rights and freedoms proclaimed in the Constitution and their political, social, and legal guarantees, it should be noted that they make an integral system that implies a harmonious and sustainable constitutional regulation, as well as the regulation grounded on ordinary law.³⁷

When the constitutional doctrine of human rights and freedoms is assessed, it should be taken account of at least two essential aspects that define the constitutional fundamentals determining human status: the innate nature of rights and freedoms and the equality of rights of all persons.

Article 18 of the Constitution provides that *human rights and freedoms are innate*. In this Article, specific rights and freedoms are not defined; however, they are defined in most other provisions of the Constitution and constitutional principles. The innate nature of human rights means that they are inseparable from an individual and are not linked with

³⁷ For more information, see Birmontienė, T., “Žmogaus teisės ir laisvės” [“Human Rights and Freedoms”] in *Lietuvos konstitucinė teisė* [Lithuanian Constitutional Law], Vilnius: Mykolas Romeris University, 2012, pp. 347–397.

either a territory or a nation; the person enjoys them *ipso facto*. An individual possesses his/her innate rights regardless of whether they are consolidated in legal acts of the state or not.³⁸ This principle is one of the bases of the constitutional order of the Republic of Lithuania, as a democratic state under the rule of law, and one of the most important tasks of a democratic state under the rule of law is to defend and protect human rights and freedoms.

The consolidation of this constitutional principle implies the duty of the legislature and other law-making subjects, when adopting legal acts that regulate the relationships between an individual and the state, to follow the priority of human rights and freedoms, to establish sufficient measures of protecting and defending human rights and freedoms, to never violate these rights and freedoms, and not to allow others to violate them.³⁹

The equality of persons (the equality of the rights of persons). In the Constitution, it is emphasised that all persons are equal before the law, courts, and other state institutions and officials. Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views (Article 29). The principle of the equality of persons may be described also as *non-discrimination*.

The principle of the equality of the rights of persons relates to other constitutional principles and defines other constitutional norms.

The equality of persons must be followed in passing laws and in their implementation, as well as in the administration of justice. The innate right of a human being to be treated equally with others means formal equality of all persons, it imposes the obligation to legally assess homogenous facts in the same manner and prohibits any assessment of the facts that are the same in essence in a different manner.⁴⁰

In the constitutional jurisprudence, it has been held on more than one occasion that the equality of the rights of persons does not deny the possibility to establish, by means of laws, a differentiated legal regulation with regard to categories of certain persons which are in different situations. Such a differentiated legal regulation, which is applied to certain groups of persons distinguished by the same signs and with the aim of achieving positive and socially meaningful goals, is not regarded as discrimination or privileges.⁴¹

The catalogue of constitutional rights and freedoms of the Republic of Lithuania comprises:

1) *Civil (personal) rights and freedoms.* They are often described as individual, their defence is ensured in court proceedings and in other state institutions. They include: the right to life (Article 19); the right to human liberty and the inviolability of private life (Articles 20–22); the presumption of innocence (Article 31); freedom of expression

³⁸ The Constitutional Court's ruling of 9 December 1998, Official Gazette *Valstybės žinios*, 1998, No 109-3004.

³⁹ The Constitutional Court's ruling of 29 December 2004, *ibid.*, 2005, No 1-7.

⁴⁰ The Constitutional Court's ruling of 10 November 2005, *ibid.*, 2005, No 134-4819.

⁴¹ The Constitutional Court's ruling of 30 June 2008, *ibid.*, 2008, No 75-2965.

(Article 25); freedom of religion (Articles 26 and 27); the right to freely move and choose the place of residence (Article 32), etc.

2) *Political rights and freedoms*: the right to participate in the governance of their state (Article 33); the electoral right and the right to stand for election (Article 34); the referendum right (Article 9); the right to freely form societies, political parties, and associations (Article 35); the freedom of speech (Article 25), etc.

3) *Social rights*. They include economic and cultural rights. When consolidating these rights and freedoms in the Constitution, account was taken of their exceptional nature; however, in all cases, social rights may not be assessed only as declarations of programme character, as the limitation of implementation must be based on the principles of proportionality, balance between rights, and justice. The right to healthcare is attributed to social rights (Article 53). This right may also be defined as the right of patients. The right to a healthy environment is consolidated in Article 54 of the Constitution, having established that the state is to take care of the protection of the natural environment.

Economic rights are directly defined in Chapter IV “The National Economy and Labour” of the Constitution or arise from the provisions of this chapter. One of these provisions establishes that the economy of Lithuania is based on the right of private ownership and economic initiative (Article 46). Under Article 48, everyone may freely choose a job or business, and has the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security. The category of economic rights covers the right of every working person to rest and leisure, as well as to annual paid leave (Article 49), and the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner (Article 52).

Cultural rights comprise the right to education (Article 41), the right to choose a school and the religious and moral education of their children (Article 26), the right to make use of the achievements of scientific progress (Article 42), and freedom of scientific research and creation (Article 42).

The indivisibility of constitutional rights. The indivisibility of rights and freedoms stems from the principle of integrity of the Constitution. The catalogue of rights and freedoms is also integral as it comprises all constitutional norms, provisions, and principles that define the status of a person. It is obvious that rights and freedoms affect each other and the real content of the Constitution may be understood by collating various norms and ascertaining that their interaction is organic.

The indivisibility of rights and freedoms is emphasised in the constitutional jurisprudence: in the Constitution, rights and freedoms of some persons *co-exist* with rights and freedoms of some others.⁴² It is not allowed to establish any such legal regulation by which a person, in implementing a certain constitutional right, would lose an opportunity

⁴² The Constitutional Court’s ruling of 23 October 2002, *ibid.*, 2002, No 104-4675.

to implement another constitutional right.⁴³ While interpreting the constitutional norm for the protection of the rights of ownership, the Constitutional Court noted that this norm is inseparable from the provision of the Constitution concerning the innate nature of human rights and freedoms, from the principle of the equality of persons, and from most other constitutional principles and provisions.⁴⁴

The constitutional assumptions of the limitation of human rights and freedoms. Such assumptions are provided for in certain provisions of the Constitution and may be applied for the rights and freedoms that are not attributed to the absolute ones. For instance, having consolidated in Paragraph 1 of Article 23 that property is inviolable, it is specified that it may be taken only for the needs of society according to the procedure established by law and must be justly compensated for. Article 24 establishes that the home of a human being is inviolable, but, at the same time, it is noted that without the consent of the resident, it is not permitted to enter his home otherwise than by a court decision or according to the procedure established by law when this is necessary to guarantee public order, apprehend a criminal, or save the life, health, or property of a human being. Article 25 holds that the freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

In interpreting the constitutional norms that make assumptions to limit the implementation of the rights and freedoms, the main conditions to be complied with by the legislature when it adopts the legal norms that limit rights and freedoms are specified in the formulated constitutional doctrine:⁴⁵ this may be done by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values consolidated in the Constitution, as well as constitutionally important objectives; the limitations do not deny the nature and essence of rights and freedoms, the constitutional principle of proportionality is followed; this principle is one of the elements of the constitutional principle of a state under the rule of law, which also means that the measures provided for by law must be in line with legitimate objectives which are important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrict the rights and freedoms of a person more than necessary in order to reach the said objectives.

⁴³ The Constitutional Court's ruling of 30 June 2000, *ibid.*, 2000, No 54-1588.

⁴⁴ The Constitutional Court's ruling of 4 July 2003, *ibid.*, 2003, No 68-3094.

⁴⁵ The Constitutional Court's ruling of 11 December 2009, *ibid.*, 2009, No 148-6632.

THE CONSTITUTIONAL GROUNDS OF THE INSTITUTIONAL STRUCTURE OF STATE POWER

The constitutional institutional structure of state power is based on the concept of a state under the rule of law and the principle of the separation of powers deriving from it. As mentioned above, the main features of this structure are revealed in the provisions of Chapter I “The State of Lithuania” of the Constitution. State institutions carry out the functions envisaged for each of them in the Constitution and further specified in other laws that do not conflict with the Constitution.

Emphasising that state institutions are a structural element of *public power*, at the same time, it should be noted that the concept of public power also includes local (municipal) institutions.

The Seimas of the Republic of Lithuania. The Seimas consists of representatives of the nation – 141 members of the Seimas who are elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot (Paragraph 1 of Article 55 of the Constitution). Taking account of this constitutional provision, it is held that *exclusively the Seimas is the representation of the nation*.⁴⁶

The constitutional nature of the Seimas, as the representation of the nation, determines its exceptional place in the system of institutions of state power, as well as its functions and powers. The Seimas is the centre of representative democracy and of the political system: it consolidates all levels of the political system and ensures the functioning of the state mechanism. The sovereignty of the nation – the only source of the constitutional powers of the Parliament – is implemented through the Seimas. The fundamental obligation of the Seimas is to express the will of the nation in laws and other legal acts, i.e. to turn the will and expectations of the nation into the will of the state.

The Seimas, as the legislative institution, when exercising the powers of authority, is independent inasmuch as its powers are not limited by the Constitution, and must always ensure the uninterrupted implementation of its powers that are provided for in the Constitution.⁴⁷

The powers of the Seimas are defined in Article 67 of the Constitution, but their list is not final. Laws may envisage different competence of the Seimas; however, they may not violate the status of the Seimas and the constitutional principle of the separation of powers. The Seimas, as well as other state institutions, may not waive or transfer to other institutions such powers or functions that are provided for in the Constitution.

The following functions and powers of the Seimas stem from the Constitution: to pass laws (the legislative function); to exercise parliamentary control over the executive power and other state institutions (except courts) (the control function); to found state

⁴⁶ The Constitutional Court's ruling of 30 December 2003, *ibid.*, 2003, No 124-5643.

⁴⁷ The Constitutional Court's ruling of 24 February 1994, *ibid.*, 1994, No 16-271.

institutions, to appoint and release their heads and other state officials (the founding function); to approve the state budget and supervise its execution (the budgetary function).⁴⁸

The parameters of the legal activities of the Seimas are defined by the Constitution, while its structure and procedure of activities are established by the Statute of the Seimas. This implies that the Statute of the Seimas is a *special legal act* that has the force of a law despite the fact that, according to its form, it is not a law. The Statute of the Seimas is adopted, amended, and supplemented not by means of a law, but by the Statute itself; in addition, not all rules for passing laws are applicable to these procedures, as the adopted Statute is promulgated not by the President of the Republic, but by the Speaker of the Seimas. This means that the Head of State does not have the possibility of vetoing the Statute or its amendments. This ensures the independence of the Seimas in matters of determining its own structure and working procedures. The constitutional jurisprudence states that the discretion of the Seimas is thus established in this sphere; however, this means that the said discretion may not violate the principles and norms of the Constitution.⁴⁹ The lawfulness of the norms of the Statute, i.e. their compliance with the Constitution, may be verified at the Constitutional Court.

The constitutional origins of the status of a member of the Seimas as a representative of the nation. The most significant feature of this status is the free mandate principle, which is defined in the Constitution as follows: “While in office, the Members of the Seimas shall follow the Constitution of the Republic of Lithuania, the interests of the State, as well as their own consciences, and may not be restricted by any mandates.”

The principle of a free mandate of a member of the Seimas means that a member of the Seimas has the right to vote at his/her discretion, to implement the rights and duties vested in him/her without restricting this freedom by the mandates of the electorate, political requirements of parties or organisations that have nominated him/her, and that the right to recall a member of the Seimas is not recognised.⁵⁰ A free mandate is a necessary condition for fulfilling the constitutional obligation of a member of the Seimas to represent not a certain group of the electorate, but the entire nation. A free mandate ensures the independence and equality of rights of all members of the Seimas.⁵¹

A free mandate does not mean that a member of the Seimas is absolutely free to act in a manner precluding the Seimas from implementing the requirements arising from the Constitution or allowing the Seimas to adopt decisions incompatible with the Constitution. A free mandate may not be used in the interests other than those of the nation and the State of Lithuania.

⁴⁸ The Constitutional Court’s ruling of 1 July 2004, *ibid.*, 2004, No 105-3894.

⁴⁹ The Constitutional Court’s ruling of 25 January 2001, *ibid.*, 2001, No 10-295.

⁵⁰ The Constitutional Court’s ruling of 9 November 1999, *ibid.*, 1999, No 96-2769.

⁵¹ The Constitutional Court’s ruling of 21 January 2001, *ibid.*, 2001, No 10-295.

The main rights and duties of members of the Parliament are defined in the Constitution and particularised in the Statute of the Seimas, which regulates in more detail the guarantees for their activities. The substantive guarantees include the prohibition on holding a member of the Seimas criminally liable, detaining him/her, or otherwise restricting his/her liberty without the consent of the Seimas, as well as the prohibition on persecuting a member of the Seimas for his/her speeches and votes at the Seimas. When consolidating the provisions defining the *immunity* and *indemnity* of a member of the Seimas, it is not allowed to create any such guarantees that would give members of the Seimas undue privileges.

Immunity may be lifted where there are reasonable grounds to believe that a member of the Seimas has committed a crime. In this case, the Prosecutor General applies to the Seimas, which must decide whether to form a commission for giving the consent to hold the said member of the Seimas criminally liable, detain him/her, restrict his/her liberty otherwise, or to start preparatory actions for impeachment proceedings. Taking into consideration the conclusion of the commission, the Seimas adopts a resolution by which the request of the Prosecutor General is granted or not granted.

The Constitution also lays down a special procedure for the loss of the mandate of a member of the Seimas: the Seimas may, by a 3/5 majority vote of all members of the Seimas, revoke the mandate of a member of the Seimas who has grossly violated the Constitution, breached the oath, or committed a crime (Article 74). The rules of this procedure are established in the Statute of the Seimas. When considering the issue of revoking the mandate of the member of the Seimas, the Seimas must receive a conclusion from the Constitutional Court formulated in a relevant constitutional justice case on the basis of the procedural rules laid down in the Law on the Constitutional Court.

The structure of the Seimas. The regulation of the structure of the Seimas and the procedure of its activities belongs to the discretion of the Seimas; however, the constitutional principle of responsible governance must be complied with. This principle gives rise to the duty of the Seimas to establish such its structure and procedure of its activities that would enable it to implement constructively, effectively, and without interruption the supreme will of the nation and the powers established in the Constitution, and that would enable every member of Seimas to exercise the powers of a representative of the nation.⁵²

The structural units of the Seimas are political groups of members of the Seimas, committees of the Seimas, commissions of the Seimas, the Board of the Seimas, the Conference of Chairs, and ad hoc groups of members of the Seimas.

Political groups of the Seimas. Though these political units are mostly formed on the basis of the party membership of members of the Seimas, their most essential mission is to ensure the working capacity of the Seimas, as well as its effective functioning. Political groups are formed by members of the Seimas themselves in accordance with the procedure

⁵² The Constitutional Court's ruling of 26 November 1993, *ibid.*, 1993, No 66-1260.

for their formation laid down in the Statute of the Seimas, but not by the political parties, political organisations, or their coalitions of which the representatives of the nation are members. As a rule, political groups are in close relation with political parties; however, this does not mean that a political group is a political party at the Seimas. This conclusion is derived from the principle of a free mandate, which is consolidated in the Constitution.

The Statute of the Seimas establishes such a procedure of forming political groups where a political group founded by members of the Seimas is registered *on application*, following the submission of a relevant document to the Speaker of the Seimas.

The political groups the total number of whose members is more than half of the members of the Seimas, if such groups sign a declaration on joint activities or an agreement on a coalition Government, are considered the majority of the Seimas. The political groups (or their coalitions) of members of the Seimas that disagree with the Programme of the Government may declare to be the *opposition* political groups. These groups and coalitions are guaranteed all the rights of political groups. The chair of the political group of the opposition party or the chair of the opposition coalition with more than half of the members of the Seimas who belong to the parliamentary minority is called the leader of the opposition of the Seimas. He/she has some additional rights.

The members of the Seimas who have not been registered in political groups are considered members of a *group of the non-attached members of the Seimas*. The opposition political groups, other political groups that do not belong to the parliamentary majority, and the group of the non-attached members of the Seimas are considered the *parliamentary minority*.

The committees of the Seimas. When establishing committees and the number of their members, consideration is given to the functions performed by the committees, the professional training of the members of the Seimas, the necessity to ensure the rights of the parliamentary minority, etc. The committees of the Seimas are responsible and accountable to the Seimas.

The main powers of the committees are as follows: to consider draft laws, prepare conclusions on draft laws, and examine matters referred to them; on their own initiative or on behalf of the Seimas, to draw up draft laws and other draft legal acts; to consider the programmes of the Government and other state institutions according to individual areas and provide their conclusions; to consider candidates to the positions of the heads of state institutions who are appointed by the Seimas or whose appointment requires the assent of the Seimas; to consider proposals to establish or abolish ministries and other state institutions, hear information and reports submitted by the ministries and other state institutions on the enforcement of laws and other acts of the Seimas; on their own initiative or on behalf of the Seimas, to carry out parliamentary investigations; to participate in the process of harmonising EU legislation when the official position of the Republic of Lithuania on this legislation is being prepared.

The commissions of the Seimas. The Seimas may form standing and ad hoc commissions. *Standing commissions* are formed in order to examine special problems and deal with long-term and broad issues. *Ad hoc commissions* are formed in order to achieve a specific purpose or carry out individual assignments of the Seimas. Having completed the specific assignments of the Seimas, ad hoc commissions normally end their activities. The Seimas may form investigation, control, auditing, preparatory, drafting, and other ad hoc commissions. Ad hoc as well as standing commissions are established having regard to the fact that the political groups must be represented proportionally. It is allowed to provide for some exceptions, but, as a rule, commissions may not be formed from representatives of only one political group or committee.

The constitutional status of the Speaker of the Seimas. Article 66 of the Constitution consolidates the main obligation of the Speaker of the Seimas, which is presiding over sittings of the Seimas. The other powers of this official are established in the provisions of the Constitution and in the Statute of the Seimas.

The Speaker of the Seimas is elected from among the members of the Seimas at the first post-election sitting of the Seimas. Candidates may be proposed by at least 1/10 of the members of the Seimas. The Speaker is deemed elected if more than half of the voting members of the Seimas vote for him, with the exception of repeat voting, as provided for by the Statute of the Seimas, in which case the candidate who receives a relative majority of votes is deemed elected.

The Speaker of the Seimas *temporarily holds the office of the President of the Republic* in the following cases: in the event that the President of the Republic dies, resigns, or is removed from office through impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him/her to hold office. In such cases, the Speaker of the Seimas holds the office of the President of the Republic until a newly-elected President of the Republic takes an oath.

The Speaker of the Seimas *temporarily substitutes for the President of the Republic* in the following cases: when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold his/her office.

Some powers of the Speaker of the Seimas are entrenched in the Constitution, but the majority of these powers are consolidated in the Statute of the Seimas. Mention should be made of the following prerogatives of the Speaker of the Seimas: to represent the Seimas of the Republic of Lithuania; to certify with his/her signature the authenticity of the text of a law adopted by the Seimas and refer it to the President of the Republic; to sign the Statute and amendments thereto; to sign the laws that have not been signed by the President of the Republic and have not been returned to the Seimas for reconsideration; to sign resolutions of the Seimas and other acts passed by the Seimas; to propose to the Seimas candidates for the positions of Deputy Speakers of the Seimas; in cases prescribed by the Constitution, to propose to the Seimas candidates for the positions of judges of the Constitutional Court;

to propose to the Seimas candidates for appointment to and release from the duties of the Seimas ombudsmen and the head of the Seimas Ombudsmen's Office; to propose to the Seimas candidates for appointment to and release from the duties of heads and deputy heads of state institutions in cases provided for by the Constitution and laws; to submit to the Board of the Seimas draft work programmes of a Seimas session and draft agendas of week- or day-long sittings.

The Board of the Seimas consists of the Speaker of the Seimas, his/her deputies, and the leader of the opposition. The main obligations of the Board include solving the organisational issues of the activity of the Seimas: to approve the schedule of sittings of a session of the Seimas, to call unscheduled sittings of the Seimas, to consider draft work programmes of a Seimas session and submit conclusions either to the Conference of Chairs or to the Seimas, also, when necessary, to form working groups for drafting laws, to assist in organising the joint work of commissions, etc.

The Conference of Chairs of the Seimas. Its members are representatives from the political groups and all members of the Board of the Seimas. The main task of the Conference of Chairs is to consider and approve the work programme of a session of the Seimas and the agendas of sittings, as well as to coordinate the organisation of the work of the committees of the Seimas and of the political groups.

The President of the Republic of Lithuania. Article 77 of the Constitution provides that the President of the Republic is the Head of State. He/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. These laconic provisions define the legal status of the President of the Republic and all his/her other powers and functions, as consolidated by the Constitution and other laws that do not conflict with the Constitution. The status of the President of the Republic is established not only in the constitutional norms, but also in the Law on the President of the Republic of Lithuania.⁵³

The provision of Article 5 of the Constitution whereby, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the Judiciary confirms the fact that the President of the Republic is undoubtedly part of the executive power. Thus, the constitutional order of the State of Lithuania is based on the model of dual executive power.⁵⁴ The President of the Republic exercises some of his/her powers independently, while his/her other powers are implemented together with the Government.

The legal status of the President of the Republic as the Head of State is an exceptional one and it differs from the legal status of other state officials primarily because of the fact that the President of the Republic is elected directly by universal suffrage. Thus, the mandate received in such a manner means that the President of the Republic symbolises the State of Lithuania as well as the values of the nation and personifies the Republic of Lithuania

⁵³ Official Gazette *Valstybės žinios*, 1993, No 5-89.

⁵⁴ The Constitutional Court's ruling of 13 December 2004, *ibid.*, 2004, No 181-6708.

in international relations. The constitutional powers of and established guarantees for the President of the Republic also imply his/her special responsibility to the state community – the civil nation.⁵⁵

In this respect, political and legal significance of the oath of the President of the Republic should be emphasised. The elected President of the Republic takes office after he/she, in Vilnius, in the presence of the representatives of the nation – the members of the Seimas, takes an oath to the nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all. The act of oath is signed by the President of the Republic and by the President of the Constitutional Court, or, in the absence of the latter, by a justice of the Constitutional Court. The fact that the text of the oath is also signed by a representative from the Constitutional Court symbolises the unconditional obligation of the President of the Republic to observe the Constitution, as well as the rights and duties arising from it. A person elected the President of the Republic must suspend his/her activities in political parties and political organisations until the beginning of a new campaign for the election of the President of the Republic (Paragraph 2 of Article 83).

The person of the President of the Republic, as the Head of State, is granted exceptional protection by legal instruments – immunity. Article 86 of the Constitution provides that the person of the President of the Republic is inviolable: while in office, the President of the Republic may be neither detained nor held criminally or administratively liable. The President of the Republic may be removed from office only for a gross violation of the Constitution or a breach of the oath, or when he/she is found to have committed a crime. The issue of the removal of the President of the Republic from office is decided by the Seimas according to the procedure for impeachment proceedings. Before adopting this verdict, the Seimas must receive the conclusion of the Constitutional Court that the concrete actions of the President of the Republic are in conflict with the Constitution.

The President of the Republic and the Seimas. The interaction between these two Lithuanian state institutions is founded not only on each other's independence, but also on cooperation in implementing the obligations of state powers. The President of the Republic calls regular elections to the Seimas, which are held in the year of the expiry of the powers of the members of the Seimas on the second Sunday of October. Thus, at the end of the term of office of the Seimas, the President of the Republic always states the concrete legal fact by his/her decree, i.e. designates the specific date of the election to the Seimas. As regards a regular election to the Seimas, Article 143 of the Constitution provides for one exception: if a regular election must be held in time of war actions, either the Seimas or the President of the Republic would be allowed to extend the term of powers of the Seimas.

An early election to the Seimas may be called not only by the Seimas, but also by the President of the Republic in the cases specified in the Constitution (Paragraph 2 of

⁵⁵ The Constitutional Court's ruling of 25 May 2004, *ibid.*, 2004, No 85-3094.

Article 58). When the President of the Republic calls an early election to the Seimas, the newly elected Seimas may, by a 3/5 majority vote of all the members of the Seimas and within 30 days of the day of the first sitting, call an early election of the President of the Republic.

The President of the Republic *convenes* the first sitting of the newly elected Seimas, which must be held within 15 days of the election of the Seimas. If the President of the Republic fails to *convene* such a sitting, the members of the Seimas assemble by themselves on the day following the expiry of the 15-day period.

The President of the Republic may convene an extraordinary session of the Seimas in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, or when a threat arises to the constitutional system or social peace in the state (Paragraph 2 of Article 142 and Paragraph 2 of Article 144).

The President of the Republic has the right of legislative initiative at the Seimas (Paragraph 1 of Article 68 of the Constitution). He/she implements this right by submitting to the Seimas draft laws that seek to implement his/her political programme or to respond to a social need so that a relevant legal regulation would be established.

When the President of the Republic carries out the function of the promulgation of laws, namely the signing of laws and their publication, he/she may exercise the right of delaying veto, which means that he/she may, upon reasonable grounds, refer an adopted law back to the Seimas for reconsideration.

The President of the Republic and the Government. The relationships between the President of the Republic and the Government are demonstrated, first of all, by the fact that he/she is directly involved in the formation of the composition of the Government after an election of the Seimas, as well as later, when, for various reasons, the composition of the Government is changed.

The powers of the President of the Republic in this area are the following: upon the assent of the Seimas, to appoint and release the Prime Minister, charge him/her with forming the Government, and approve its composition; to accept the resignation of the Government and, when necessary, charge it with continuing to exercise its duties, or charge one of the ministers with exercising the duties of the Prime Minister until a new Government is formed; to accept the resignations of ministers and charge (or not to charge) them with exercising their duties until a new respective minister is appointed; on the proposal of the Prime Minister, to appoint and release ministers.

In the course of forming the Government, the actions of the President of the Republic must guarantee interaction among state institutions in order to create an effective Government, i.e. the one that has the confidence of the Seimas. In principle, the President of the Republic may not freely choose the candidates for the positions of the Prime Minister or ministers, for in all cases their appointment depends on the confidence or distrust of the Seimas in them. In addition, the President of the Republic, as part of the executive power,

has certain possibilities of exerting political influence on forming the personal composition of the Government. Following the approval of the composition of the Government by the President of the Republic, the Government acquires the powers to act only after its programme is assented to by the Seimas.⁵⁶

After the election of the President of the Republic, the Government must return its powers to the newly elected President of the Republic. This does not mean that the Government must resign, since after the Head of State changes, the political confidence of the Seimas in the Government continues. The procedure for the return of powers is not merely an expression of interinstitutional courtesy: it provides the President of the Republic with an opportunity to verify whether the Seimas continues to have confidence in the Government. After the President of the Republic proposes that the Seimas consider the candidate for the position of the Prime Minister of the Government that has returned its powers and, provided that the Seimas gives its assent to the said candidate, the President of the Republic appoints the Prime Minister and approves the composition of the Government submitted by the Prime Minister and, if more than half of the ministers have not been replaced, this means that the Government once again receives the powers to act. A new phase of the term of powers of the Government begins; therefore, changes in the composition of the Government are counted from the beginning of the receipt of these powers.⁵⁷

If the Seimas did not approve the candidate for the position of the Prime Minister, the Government would have to resign. This would constitute a constitutional ground for starting the procedure for forming a new Government.⁵⁸

Article 96 of the Constitution provides that ministers, in directing the areas of governance entrusted to them, are responsible not only to the Seimas, but also to the President of the Republic. Although this *responsibility* has not been particularised in legal acts, it implies that the ministers, if necessary, provide information to the President of the Republic and inform him/her about the most important governance issues, whereas the Minister of Foreign Affairs coordinates the implementation of the foreign policy of the State of Lithuania.

A constitutional aspect of the interaction between the President of the Republic and the Government can be found in the fact that, under the Constitution, the President of the Republic has the right to apply to the Constitutional Court concerning the conformity of the acts of the Government with the Constitution and laws (Paragraph 3 of Article 106). Such an application suspends the validity of these acts.

The President of the Republic, implementing his/her powers, issues acts-decrees. The decrees, specified in Article 84 of the Constitution, by which the diplomatic representatives of the Republic of Lithuania to foreign states and international organisations

⁵⁶ The Constitutional Court's ruling of 10 January 1998, Official Gazette *Valstybės žinios*, 1998, No 5-99.

⁵⁷ The Constitutional Court's ruling of 17 December 1998, *ibid.*, 1998, No 112-3114.

⁵⁸ The Constitutional Court's ruling of 10 January 1998, *ibid.*, 1998, No 5-99.

are appointed and recalled, the highest diplomatic ranks and special titles are conferred, the highest military ranks are conferred, a state of emergency is declared, and citizenship of the Republic of Lithuania is granted must be signed (countersigned) by the Prime Minister or the respective minister. The Constitution prescribes that responsibility for such a decree lies with the Prime Minister or the minister who signs it.

The President of the Republic and the Judiciary. This interaction is defined by the provisions of the Constitution whereby, when administering justice, judges and courts are independent. Interference by any institutions of state power and governance, members of the Seimas or other officials, political parties, political or public organisations, or citizens with the activities of a judge or court is prohibited and leads to liability provided for by law.

Basically, the competence of the Head of State in relation to courts only includes his/her powers to form judicial institutions, i.e. to appoint judges and the heads of courts. Under the Constitution, the President of the Republic appoints the judges and presidents of local and regional courts of general jurisdiction, as well as, in accordance with the Law on the Establishment of Administrative Courts, the judges and heads of the Supreme Administrative Court of Lithuania and regional administrative courts.

The formation of judicial institutions also involves the Seimas in cases where judges and heads of higher-level courts of general jurisdiction are appointed. The justices of the Supreme Court and its president chosen from among them are appointed and released by the Seimas upon submission by the President of the Republic; the judges of the Court of Appeal of Lithuania and its president chosen from among them are appointed by the President of the Republic upon the assent of the Seimas.

Article 112 of the Constitution provides that a special institution of judges *advises* the President of the Republic on the appointment, promotion, and transfer of judges, or their release from duties. The Judicial Council is such an institution. The *advice* given by this institution gives rise to legal effects; if there is no such advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges, or their release from duties. The Judicial Council not only helps the President of the Republic to form courts, but also serves as a counterbalance to the President of the Republic, who is a subject of executive power, in the sphere of forming the corps of judges.⁵⁹

The President of the Republic also takes part in the formation of the Constitutional Court – he/she proposes candidates for the posts of three justices of this court and, on the appointment of all the justices of the Constitutional Court, proposes the candidate from among them for the post of the President of the Constitutional Court to be appointed by the Seimas. In this case, the Constitution does not impose any rules restricting the powers of the President of the Republic; however, he/she may not ignore the provisions of the Constitution whereby the justices of this court must be citizens of the Republic of Lithuania

⁵⁹ The Constitutional Court's ruling of 21 December 1999, *ibid.*, 1999, No 109-3192.

with an impeccable reputation, higher education in law, and not less than a 10-year length of service in the field of law or in a branch of science and education as a lawyer.

The Government of the Republic of Lithuania. In the Lithuanian system of the executive power, the Government – a collegial institution of general competence – is composed of the Prime Minister and ministers. Article 93 of the Constitution sets out the basic, general powers of the Government and the Law on the Government particularises the implementation of these powers and what legal and organisational means are used in the activity of the Government in solving challenges facing public administration.

The status of the Government in the political system is characterised by the fact that the Government is jointly and severally responsible to the Seimas for the general activities of the Government. This provision of the Constitution is a fundamental principle, which determines the role and place of the Government in the structure of state power. The said fundamental principle implies that the Government may act only if it has the confidence of the Seimas, i.e. only when the Seimas, after its election, gives its assent to the candidate for the position of the Prime Minister proposed by the President of the Republic, who approves the composition of the Government, after which the Seimas gives its assent to the programme of the Government.

The basis of a programme of the Government is the programmes of the political parties that have won the election; however, the provisions of these programmes acquire a legal meaning only through a programme of the Government and oblige both the Government and the majority of the Seimas supporting it to act respectively. A programme of the Government is a legal document wherein the main landmarks of state activities for a certain time period are set out. By expressing its confidence in a programme of the Government, the Seimas takes the obligation to supervise as to how the Government will be implementing it. Thus, a programme of the Government is the basis of the political and legal responsibility of the Government to the Seimas, because, as mentioned above, the Government is jointly and severally responsible to the Seimas. The failure to implement the programme could give cause for a vote of no confidence in the Government at the Seimas.⁶⁰

The constitutional grounds for the resignation of the Government. Paragraph 2 of Article 101 of the Constitution provides that the Government must resign when more than half of the ministers are replaced, unless the Government once again receives its powers from the Seimas. Paragraph 3 of Article 101 states that the Government must resign in the following cases:

- (1) when the Seimas, twice in succession, does not give its assent to the programme of the newly formed Government;
- (2) when the Seimas, by a majority vote of all the members of the Seimas and by secret ballot, expresses no confidence in the Government or in the Prime Minister;
- (3) when the Prime Minister resigns or dies;

⁶⁰ The Constitutional Court's ruling of 10 January 1998, *ibid.*, 1998, No 5-99.

(4) after the election to the Seimas, when a new Government is formed.

A minister must resign when more than half of all the members of the Seimas, by secret ballot, express no confidence in him/her.

It is clear that one of the main reasons for the resignation of the Government is either the loss of or the failure to gain the confidence of the Seimas. The Constitution, however, provides for various forms of expressing no confidence: first, the Seimas may express no confidence directly; second, it may express no confidence by giving, twice in succession, no assent to the programme of a newly formed Government; third, the Government must once again, i.e. anew, receive its powers from the Seimas. The resignation of the Government means that its activity ends and the procedure for forming a new Government begins.

The return of the powers of the Government. The need for this procedure arises after an election of the Seimas or of the President of the Republic takes place. The powers of the Government must be returned, because namely that Parliament that approved the programme of the Government or namely that President of the Republic who approved the composition of the Government is missing.

In the first case, after a new Seimas is elected, the President of the Republic accepts the powers returned by the Government and charges it with exercising its duties until a new Government is formed. The return of powers is the first action of the Government before it resigns in a mandatory manner, as imperatively stated in the Constitution.

In the second case, i.e. after the election of the President of the Republic, the Government also returns its powers to a newly elected President of the Republic; however, the Constitution does not provide that the Government must resign in such a situation. This is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government, which is based on the Programme of the Government approved by the Seimas, remains intact. The instruction given by the Head of State to the Government to continue to exercise its duties should be given to the same Government, while in the case of the resignation of the Government, the President of the Republic may also charge another member of the Government with exercising the duties of the Prime Minister.

Thus, there are no grounds for regarding the concepts “resignation of the Government” and “return of the powers of the Government” as identical, since they relate to different constitutional situations giving rise to different legal consequences.

The Constitutional Court of the Republic of Lithuania. The Constitution prescribes that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution or laws. The Constitution governs the procedure of forming the Constitutional Court, regulates who has the right to apply to it, and establishes the status of its justices, the legal consequences of legal acts adopted by the Constitutional Court, and other matters.

The constitutional regulation implies a general conclusion that the Constitutional Court has a special place in the constitutional system of the state, because it ensures the

supremacy of the Constitution by deciding in accordance with the established procedure whether laws are legal, i.e. whether they comply with the Constitution. The Law on the Constitutional Court provides that the Constitutional Court is a judicial institution, a free and independent court, which implements its judicial power according to the procedure established by the Constitution and laws.

Thus, the Constitutional Court is none other than a constitutional justice institution exercising constitutional judicial review. While deciding, within its competence, on the compliance of lower-ranking legal acts with higher-ranking legal acts and exercising its other constitutional powers, the Constitutional Court – an autonomous and independent court – administers constitutional justice and guarantees the supremacy of the Constitution in the legal system.

The powers of the Constitutional Court to declare legal acts adopted by the other institutions implementing state power – the Seimas, the President of the Republic, the Government – to be in conflict with higher-ranking legal acts, as well as the powers to officially interpret the Constitution – to provide the concept of the provisions of the Constitution – clearly show that the Constitutional Court is an institution implementing state power.⁶¹

Article 105 of the Constitution states that the Constitutional Court considers and adopts decisions on whether the following legal acts are in conflict with the Constitution: (1) the acts of the President of the Republic; (2) the acts of the Government.

A characteristic feature of Lithuanian law is that the Constitution provides for not only *ordinary*, but also *constitutional*, laws (Paragraph 3 of Article 69).⁶² In view of the fact that constitutional laws rank higher than laws, it is concluded that laws must not contradict not only the Constitution, but also constitutional laws, whereas constitutional laws themselves must not contradict the Constitution.⁶³

According to the official constitutional doctrine formed in the constitutional jurisprudence, the following must be assessed in the course of investigating the constitutionality of legal acts: (1) whether a constitutional law is in conflict with the Constitution; (2) whether any law (including any law adopted by referendum) or the Statute of the Seimas is in conflict with the Constitution or constitutional laws; (3) whether other acts of the Seimas are in conflict with the Constitution, constitutional laws, or laws; (4) whether the acts of the President of the Republic are in conflict with the Constitution, constitutional laws, or laws; (5) whether the acts of the Government are in conflict with the Constitution, constitutional laws, or laws.⁶⁴

⁶¹ The Constitutional Court's ruling of 6 June 2006, Official Gazette *Valstybės žinios*, 2006, No 65-2400.

⁶² For more on this, see Sinkevičius, V., "Konstitucinių įstatymų samprata: teoriniai aspektai" ["The Concept of Constitutional Laws: Theoretical Aspects"], *Jurisprudencija [Jurisprudence]*, 2008, No 2(104), pp. 28–38.

⁶³ The Constitutional Court's ruling of 2 April 2001, Official Gazette *Valstybės žinios*, 2001, No 29-938.

⁶⁴ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

The Constitutional Court, in accordance with the rules of the constitutional judicial process, which are established in the Law on the Constitutional Court, adopts decisions on whether all above-mentioned legal acts are in compliance with the Constitution. Having held that these acts (parts thereof) are in conflict with the Constitution, they may not be applied from the day of the official publication of the relevant ruling of the Constitutional Court. Such rulings of the Constitutional Court are binding on all state institutions, courts, all enterprises, establishments, and organisations, as well as officials and citizens. In other words, if declared unconstitutional, all above-mentioned acts (parts thereof) are removed from the Lithuanian legal system, as they are incompatible with the principles and norms of the constitutional regulation.

Paragraph 3 of Article 105 of the Constitution stipulates that the Constitutional Court not only verifies the legality of legal acts, but also presents the following conclusions: (1) whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas; (2) whether the state of health of the President of the Republic allows him/her to continue to hold office; (3) whether the international treaties of the Republic of Lithuania are in conflict with the Constitution; (4) whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

According to their legal force and legal effects, conclusions presented by the Constitutional Court are different from rulings passed by the Constitutional Court for the simple reason that the final decision on the matters dealt with in the conclusions is always adopted by the Seimas. In this regard, assessing the legal significance of conclusions given by the Constitutional Court, it should be emphasised that the Seimas, when adopting the *final decisions* on the above-mentioned matters, must not deny the legal facts established in the conclusions.

Exclusive attention should be given to the legal significance of the conclusions of the Constitutional Court by which it is stated that the members of the Seimas and the state officials (the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court of Lithuania, and the President and judges of the Court of Appeal of Lithuania) against whom an impeachment case has been instituted at the Seimas have grossly violated the Constitution, breached the oath, or committed a crime.

It is emphasised in the constitutional jurisprudence that, under the Constitution, only the Constitutional Court has the powers to decide whether a person by his/her actions has grossly violated the Constitution and breached the oath. Although the final decision to revoke the mandate of a member of the Seimas or to remove a person from office through impeachment proceedings is adopted by a political institution – the Seimas, it is the Constitutional Court (which is formed and operates not on a political, but professional basis) that gives the assessment of the legal facts that have taken place. The conclusion of the Constitutional Court is binding on the Seimas in the sense that, under the Constitution, the

Seimas has no powers to decide whether the conclusion of the Constitutional Court is valid and legal.

The official constitutional doctrine and the Constitutional Court. The Constitution does not *expressis verbis* contain the function of the Constitutional Court to interpret the Constitution, but the said function is inevitably linked with the nature of the Constitutional Court and its obligation to ensure the supremacy of the Constitution. The need for the official interpretation of the Constitution always arises when constitutional justice cases are considered and when it is necessary to clarify and understand the true meanings of the principles and provisions of the Constitution.

The constitutional jurisprudence is based on the principle of continuity, which means that the Constitutional Court, while deciding analogous constitutional disputes, is guided by the legal positions formulated in previous cases. When investigating the compliance of legal acts with the Constitution, it develops the concept of the constitutional provisions presented in its own previous decisions and reveals new aspects of the legal regulation laid down in the Constitution. The official constitutional doctrine, the sole creator of which is the Constitutional Court, is thus formed.

The official constitutional doctrine of any issue of the constitutional regulation is not formed all at once, but consistently on a case-by-case basis. This is not a one-off act, but a gradual, consistent, and continuous process, which is never fully completed. All law-making subjects and all law-applying subjects, including courts, must be guided by the official constitutional doctrine when they apply the Constitution and must not interpret the provisions of the Constitution differently from how the Constitutional Court interpreted the said provisions in its acts.

By interpreting the constitutional provisions and principles, the Constitutional Court creates the concept of a *living Constitution*. The essence of such a concept is that the Constitution is not only its text but also the case-law formulated in constitutional justice cases. Thus, this creates the preconditions, without changing the text of the Constitution, to respond to changes, as well as to ensure the continuity and comprehensiveness of the constitutional regulation.

In political and legal circulation, as well as in science, the concept of the *jurisprudential constitution* is increasingly used. The jurisprudential constitution is seen as the connection between the constitution – the highest-ranking legal act – and the constitutional jurisprudence, in which this act is interpreted and developed. Thus, the category of the *jurisprudential constitution* reflects the idea of the operating and evolving *living constitution*. The jurisprudential constitution means that the constitution as potential is turned into a real legal order and that the constitutional rights and freedoms and a balance among state institutions are actually ensured in the constantly changing reality.⁶⁵

⁶⁵ Jarašiūnas, E., “Jurisprudencinė konstitucija” [“The Jurisprudential Constitution”], *Jurisprudencija [Jurisprudence]*, 2006, No 12(90), p. 32.

The judiciary. The fundamentals of the judiciary are established in the Constitution: (1) justice is administered only by courts; (2) when administering justice, judges and courts are independent; (3) judges may not apply any laws that are in conflict with the Constitution; (4) in all courts, the consideration of cases is public; (5) court proceedings are conducted in Lithuanian.

There are three systems of courts in Lithuania at present:

- (1) the Constitutional Court carries out constitutional judicial control;
- (2) the courts of general jurisdiction are the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts;
- (3) for the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established. Currently, there are the following administrative courts: the Supreme Administrative Court of Lithuania and regional administrative courts.

The institutional framework of courts of general jurisdiction consists of courts comprising three instances. The lower link includes local courts, which are courts of first instance for cases assigned by law to their jurisdiction, as well as for cases related to the execution of decisions and judgments. In cases provided for by law, judges of local courts also perform other functions when they act as investigating judges.

Regional courts are first instance courts in some civil and criminal cases, and also operate as the appeal instance regarding the acts adopted by local courts; in addition, regional courts exercise other powers provided for by law.

The Court of Appeal of Lithuania functions as the appeal instance in cases involving acts adopted by regional courts and also considers requests for the recognition of the decisions of foreign courts, international courts, and arbitration awards and their enforcement in the Republic of Lithuania.

The Supreme Court of Lithuania is the only court of cassation instance, considering whether the effective decisions, judgments, orders, and rulings of the courts of general jurisdiction (with the exception of rulings in cases concerning administrative violations) are well founded. This court considers requests for the judicial reopening of completed cases concerning administrative violations. The Supreme Court of Lithuania also forms uniform case-law to be followed by courts of general jurisdiction in the interpretation and application of laws and other legal acts.

The system of administrative courts consists of five regional courts and the Supreme Administrative Court of Lithuania. The territories of administrative judicial regions coincide with the territories of judicial regions covered by courts of general jurisdiction. The competence of administrative courts is defined in the Law on Administrative Proceedings. A regional administrative court acts as the court of first instance, which considers all cases assigned to its competence by law. Cases considered at regional administrative courts may be investigated following an appeal before the Supreme Administrative Court of Lithuania,

which considers questions of both law and fact, and forms uniform case-law to be followed by administrative courts when they interpret and apply laws. Since there is no cassation in administrative litigation in Lithuania, the right to file an appeal with the Supreme Administrative Court of Lithuania is not limited.

Disputes concerning jurisdiction, namely interaction between the competence of courts of general jurisdiction and that of administrative courts, are decided by the Jurisdiction Panel. It is composed of the Chairperson of the Civil Division of Supreme Court of Lithuania, the Deputy President of the Supreme Administrative Court of Lithuania, and one judge from each of these courts appointed by the President of the respective court.

The Prosecution Service has its own place in the legal system of the Republic Lithuania. The basis of the status of the Prosecution Service is enshrined in the Constitution (Chapter IX “Courts”). The fact that the legal situation of this institution is regulated in this particular chapter of the Constitution implies that a great number of functions carried out by the Prosecution Service are related to judicial activities and that, in the implementation of justice, the Prosecution Service participates by ensuring the achievement of objectives and targets in the judicial process.

Under Article 118 of the Constitution, prosecutors organise and direct pretrial investigations, and uphold charges on behalf of the state in criminal cases. In cases prescribed by the Republic of Lithuania’s Law on the Prosecution Service, prosecutors ensure public needs: they protect the rights and legitimate interests of persons, society, and the state.

The Prosecution Service of the Republic of Lithuania is a centralised state institution with specific authoritative powers. Prosecutors as state officials have the authoritative powers to organise and direct pretrial investigations and to uphold charges on behalf of the state in criminal cases; however, they do not administer justice.⁶⁶ The Constitution emphasises that, in order to ensure the effectiveness of functions carried out by the Prosecution Service, prosecutors are independent.

The institutional framework of the Prosecution Service of the Republic of Lithuania consists of the Office of the Prosecutor General and territorial prosecutor’s offices. The Prosecutor General is appointed and released by the President of the Republic upon the assent of the Seimas. The independent activity of the Prosecution Service as an institution and of prosecutors as officials is thus guaranteed. This means that neither political power nor any officials may exert undue influence on the Prosecution Service, or interfere with its functions, which are performed independently.

⁶⁶ The Constitutional Court’s ruling of 13 May 2004, Official Gazette *Valstybės žinios*, 2004, No 81-2903.



Algirdas Brazauskas, Prime Minister of the Republic of Lithuania,
and Antanas Valionis, Minister of Foreign Affairs of the Republic of Lithuania,
sign the Treaty of Accession to the European Union and the Final Act.
Athens, 16 April 2003

Photo by Džoja Gunda Barysaitė.
The photo is held by the archive of the Office of the President of the Republic of Lithuania.

THE CONSTITUTIONAL GROUNDS FOR MEMBERSHIP OF THE REPUBLIC OF LITHUANIA IN THE EUROPEAN UNION

Prof. Dr. Egidijus Jarašiūnas*

BY WAY OF AN INTRODUCTION

When it comes to membership of a state in the European Union (hereinafter referred to as the EU), we normally focus, first and foremost, on EU primary law. However, the participation of the Republic of Lithuania in the EU can also be examined from a constitutional point of view. Both of these points of view are significant in their own right for the understanding of the legal model of European integration. The first case primarily concerns the integral body of EU law¹ and its impact on the legal systems of the Member States, while the second case represents an attempt to identify those requirements for this membership that have been set out in a specific constitutional system. These points of view complement each other, help to understand the essence of the interaction between EU law and national legal systems, and to assess the realities of the European legal development.

National authorities, beginning to deal with issues concerning European integration, check the directions and limits of action against their compliance with the Constitution of the state. For specific states, “[...] European integration and the related supranationality of EU law are possible only because the constitutions of the Member States so permit”.² Therefore, it would be appropriate to begin our familiarisation with legal issues of European integration with the examination of the constitutional grounds for membership in the EU.

It is also obvious that the impact of EU law is felt in all areas of the life of the national community. The national constitutional system is no exception. The dynamism of the EU and its law is considered to be one of the most outstanding features of this integrative unification of Europe. The Member States have to take their constitutional pulse over and over again and, where necessary, to take corrective actions (it is not so important whether this is done by means of the modification of the text of the basic act or by means of the creative development of constitutional jurisprudence).

* Court of Justice of the European Union.

¹ This term will also be used to refer to Community law.

² Kūris, E., “Europos Sąjungos teisė Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos” [“Law of the European Union in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: In Search of the Algorithm of Coexistence”] in *Teisė besikeičiančioje Europoje: Liber amicorum Pranas Kūris* [Law in the Changing Europe: Liber Amicorum Pranas Kūris], Vilnius: The Publishing Centre of Mykolas Romeris University, 2008, p. 674.

Changes in the legal reality make it necessary to take a fresh look at conventional doctrines, including constitutionalist ones. Testing the constitutional perception of European integration can be suitable for verifying the capacity of these doctrines to respond to the changing legal reality. If the constitutional aspects of European integration are interpreted as a type of foreign matter, as something imposed, we see the delimitation of the national and EU legal systems (or their neutral co-existence) and the wish not to go beyond the limits of already somewhat obsolete concepts, as if the EU and its law were somewhere on the sidelines. Or a different approach is possible: provisions concerning European integration can be perceived as an integral part of the constitutional system, as one of the characteristic elements of the modern-day European constitutional model. Authors who take this approach associate the examination of constitutional aspects primarily with the search for ways of ensuring the harmony in the functioning of the national and EU legal systems.

The Republic of Lithuania has been a member of the EU since 1 May 2004. Given that the Constitution of the Republic of Lithuania is understood as supreme national law, consolidating the foundations not only for internal but also external relations, it is this act that we look at in search of the grounds for both the accession of Lithuania to and its participation in the EU. European integration is linked, first of all, to the provisions of the Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union (hereinafter referred to as the Constitutional Act), which is a constituent part of the Constitution. However, other chapters of the Constitution also contain provisions that concern aspects of significance for membership of the Republic of Lithuania in the EU. The Constitution is an integral and harmonious act, which implies the interpretation of the constitutional grounds for membership in the EU in the context of the overall constitutional regulation.

The constitutional regulation is officially interpreted in the rulings and decisions of the Constitutional Court of the Republic of Lithuania, which is assigned the mission of constitutional review. The official doctrine developed in the constitutional jurisprudence reveals the content and meaning of constitutional provisions and their interrelationships. The acts of the Constitutional Court disclose, albeit at times fragmentarily, a number of aspects of the integration of the Republic of Lithuania into Europe. It is possible to speak of the official concept of the constitutional grounds for membership of the Republic of Lithuania in the EU, given the fact that this concept has acquired clear contours in the constitutional jurisprudence.

At the same time, the influence of the scientific doctrine on the perception of the constitutional matters of integration must be beyond question,³ all the more so because certain issues concerning EU membership have so far been examined only in the works produced by the members of the legal science community. The scientific interpretation of the Constitution, commentaries on and the analysis of the jurisprudence of the Constitutional Court, as well as the examination of various issues concerning the interaction between the EU legal system and the Constitution, have had a great impact both on institutional perception and legal practice.

³ Mention should be made of at least several books: Jarukaitis, I., *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai*: monografija [*The European Union and the Republic of Lithuania: The Constitutional Basis of Membership*] (monograph), Vilnius: Justitia, 2011; *Stojimas į Europos Sąjungą ir Konstitucija*: seminaro medžiaga [*The Accession to the European Union and the Constitution*] (seminar material), Vilnius: Eugrimas, 2000; *Europos Sąjungos teisė ir Lietuva* [*European Union Law and Lithuania*], scientific editor Vadapalas, V., Vilnius: Justitia, 2002; *Konstitucinių teismų vaidmuo Europos Sąjungos narystės kontekste*: konferencijos medžiaga [*The Role of Constitutional Courts in the Context of Membership in the European Union*] (conference material), Vilnius: The Constitutional Court of the Republic of Lithuania, 2004; *Konstitucija, nacionalinė teisė ir Europos teisė*: konferencijos medžiaga [*The Constitution, National Law, and European Law*] (conference material), Vilnius: The Constitutional Court of the Republic of Lithuania, 2004; *Teisė besikeičiančioje Europoje: Liber amicorum Pranas Kūris* [*Law in the Changing Europe: Liber Amicorum Pranas Kūris*], footnote 2; *Konstitucionalizmas ir teisės politika Europos Sąjungoje*: mokslo studija [*Constitutionalism and Policy of Law in the European Union*] (scientific study), Vilnius: Mykolas Romeris University, 2013. The constitutional aspects of EU membership have been examined in a number of scholarly articles, such as: Abramavičius, A., “Narystė Europos Sąjungoje ir Lietuvos Konstitucinio Teismo įgaliojimai” [“Membership in the European Union and the Powers of the Constitutional Court of Lithuania”], *Konstitucinė jurisprudencija* [*Constitutional Jurisprudence*], 2006, No 2; Jarukaitis, I., “ES teisės inkorporavimo ir taikymo Lietuvos Respublikoje konstituciniai pagrindai” [“The Constitutional Grounds of the Incorporation and Application of European Union Law in the Republic of Lithuania”], *Justitia*, 2006, No 4; Jarukaitis, I., “Adoption of the Third Constitutional Act and Its Impact on the National Constitutional System”, *Teisė* [*Law*], 2006, Vol. 60; Kybartienė, E., “Konstituciniai teismai Europos Sąjungos teisinėje erdvėje” [“Constitutional Courts in the European Union Legal Area”], *Jurisprudencija* [*Jurisprudence*], 2007, No 7(97); Kūris, E., “Lietuvos Respublikos Konstitucija ir Europos teisės iššūkiai” [“The Constitution of the Republic of Lithuania and the Challenges of Community Law”], *Justitia*, 2004, No 6(54); Kūris, E., “Ekstranacionaliniai veiksniai Lietuvos Respublikos Konstituciniam Teismui aiškinant Konstituciją” [“Extrnational Factors in the Course of the Interpretation of the Constitution Provided by the Constitutional Court”], *Teisė* [*Law*], 2004, No 50; Katuoka, S., “Sutarties dėl Konstitucijos Europai ypatybės” [“Particularities of the Treaty Establishing a Constitution for Europe”], *Jurisprudencija* [*Jurisprudence*], 2005, Vol. 72(64); Lapinskas, K., “Lietuvos konstitucinė sistema ir stojimas į ES” [“Lithuania’s Constitutional System and Accession to the EU”] in *Stojimas į Europos Sąjungą ir Konstitucija* [*Accession to the European Union and the Constitution*]; Rukštelė, V., “Konstituciniai narystės Europos Sąjungoje pagrindai” [“The Constitutional Grounds of Membership in the European Union”], *Justitia*, 2004, Nos 4(52) and 5(53); Stačiokas, S., “Pasiruošimas stojimui į ES: Konstitucinio Teismo praktikos tarptautinis ir lyginamasis aspektai” [“The Preparations for Accession to the EU: International and Comparative Aspects of the Case-Law of the Constitutional Court of the Republic of Lithuania”] in *Stojimas į Europos Sąjungą ir Konstitucija* [*Accession to the European Union and the Constitution*]; Vadapalas, V., “Constitutional Homogeneity in the Accession Process” in *The European Constitution in the Making*, Baden-Baden: Nomos, 2003; Vadapalas, V., “Lietuvos Respublikos konstitucinė teisė, tarptautinė teisė ir Europos Sąjungos teisė” [“Constitutional Law of the Republic of Lithuania, International Law, and European Union Law”] in *Lietuvos konstitucinė teisė*: vadovėlis [*Constitutional Law of Lithuania*] (textbook), Vilnius: The Publishing Centre of Mykolas Romeris University, 2012; Žalimas, D., “Tarptautinės ir Europos Sąjungos teisės vaidmuo plėtojant oficialią konstitucinę doktriną” [“The Role of International and European Union Law in the Development of the Official Constitutional Doctrine”] in *Šiuolaikinės konstitucinės justicijos tendencijos: nacionalinės ir tarptautinės teisės santykis* [*Modern Tendencies of Constitutional Justice: The Relation Between National and International Law*], Vilnius: The Constitutional Court of the Republic of Lithuania, 2014.

The present examination of the constitutional grounds for membership of the Republic of Lithuania in the EU focuses primarily on constitutional imperatives, constitutional provisions, and their interpretation. Reference to EU law and the jurisprudence of the Court of Justice of the European Union⁴ (hereinafter also referred to as the CJEU) will be limited to a minimum, to the extent that is necessary to raise the issues concerning the interaction between EU law and the constitutional regulation, without examining them in detail, because the main object of inquiry here is the constitutional approach to membership of the Republic of Lithuania in the EU.

ISSUES CONCERNING THE UNDERSTANDING OF THE ESSENCE OF THE EU AND ITS LAW

The examination of the constitutional grounds for membership in the EU requires a preceding discussion of the constitutional approach to the essence of the EU and its law.

Matters relating to the conception of the unification of European states merit a look in the first place. This question was much discussed in Lithuania at the time of the preparation for membership in the EU. These discussions have not ceased until today. They fall into the general history of the debate that took place over the legal nature and essence of the European integration model and had its beginnings linked to the establishment of the European Coal and Steel Community. With the start of every new stage in the development of European integration, these debates re-emerge. They cannot fail to have an impact on both the reasoning of judicial decisions and their assessment.

There is general agreement that the EU should not be identified as a conventional international organisation and that it has distinctive features of supranational authority. For this reason, various labels have been used to describe it, ranging from “international organisation”, “association of sovereign states”, “federative association”, “Community”, “political and economic union of states”, and “supranational organisation” to “incomplete federation” or even “postmodern state”.⁵ The works of Lithuanian authors provide similar characterisations (“highly integrated political and economic entity”,⁶ “*sui generis*

⁴ According to the first subparagraph of Article 19(1) of the Treaty on European Union, the CJEU includes the Court of Justice, the General Court, and specialised courts. On 1 September 2016, following the reform of the judicial framework, the Civil Service Tribunal ceased to operate. Currently, the CJEU comprises the Court of Justice and the General Court. Hereinafter, only the first court is referred to as the Court of Justice, while the term “CJEU” is used to refer to the whole body of the courts of the EU.

⁵ Rosas, A. and Armati, L., *EU Constitutional Law: An Introduction*, Oxford and Portland, Oregon: Hart Publishing, 2010, p. 7.

⁶ Vadapalas, V., “Lietuvos Respublikos konstitucinė teisė, tarptautinė teisė ir Europos Sąjungos teisė” [“Constitutional Law of the Republic of Lithuania, International Law, and European Union Law”], footnote 3, p. 270.

organisation”,⁷ “unconventional organisation of states”,⁸ etc.), which likewise suggest that the category of a conventional international organisation is clearly insufficient to encompass the essence of the EU.

The text of the Constitution refers to the EU without assigning it to any general category, although the constitutional provisions contain such terms as “international organisations” (e.g. Item 3 of Article 84, Item 6 of Article 94, and Article 135), “foreign states” (Item 3 of Article 84, Item 6 of Article 94, and Article 138), “unions or commonwealths of states” (the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions), etc. Of course, if membership in the EU were based solely on the provisions of Chapter XIII of the Constitution, the easiest way would be to formally group the EU with international organisations; however, considering the specific features of the EU fixed in the Constitutional Act, there are sufficient assumptions to treat it as a specific entity, which does not fit into the frame of the category of a conventional international organisation.

The Constitutional Court – the official interpreter of the Constitution – has not so far faced the need to answer in which category this union should be included. The constitutional jurisprudence of the Member States gives different characterisations of the EU (the association of sovereign national states (*Staatenverbund*); the European union of integration (*Integrationsverband*);⁹ or a legal entity *sui generis*, which is difficult to classify under the categories of classical political science;¹⁰ it is even qualified by stating that “The European Union is not a State and therefore all analogies with a State system of government are unfounded”¹¹). One or another legal designation of the EU apparently represents the recognition of a certain model of cross-system relationships, or a certain allocation of specific coordinates denoting the particular perception of the EU and its law and the relationships with a state and its law. Obviously, constitutional review institutions can consciously avoid using any such designations, giving themselves a free hand to continue with the case-by-case identification of elements leading to the gradual emergence of the constitutional concept. In principle, whatever approach they take towards the EU, constitutional courts certainly agree on the following: the Member States are independent states.

EU law, just as the EU itself, does not yield to an easy definition. It is regarded as a subtype of international law by some and as a *sui generis* legal system by others.

⁷ Jarukaitis, I., *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai* [The European Union and the Republic of Lithuania: The Constitutional Basis of Membership], footnote 3, p. 19 (Part I of the monograph is entitled “Specifiniai Europos Sąjungos, kaip *sui generis* organizacijos, bruožai, valstybės narystė Europos Sąjungoje ir viešosios valdžios galių įgyvendinimas” [“The Specific Features of the European Union as a *Sui Generis* Organisation, Membership in the European Union and the Exercise of Public Authority”]).

⁸ Stačiokas, footnote 3, p. 36.

⁹ The German Federal Constitutional Court’s judgment of 30 June 2009 on the Treaty of Lisbon (Lithuanian translation), *Konstitucinė jurisprudencija* [Constitutional Jurisprudence], 2009, No 3(15), pp. 153, 155.

¹⁰ 2009/11/03, PL, ŪS 29/09, Treaty of Lisbon II, <http://www.concourt.cz/view/pl-29-09> [accessed 19 March 2015].

¹¹ Wyrok z dnia 31 maja 2004 r. Sygn. akt K 15/04, sentencja została ogłoszona dnia 8 czerwca 2004 r. w Dz. U. Nr 130, poz. 1400.

The jurisprudence of the Court of Justice outlines the doctrine of the specificity of EU law.¹² Ever since the case of *Van Gend en Loos*¹³ or *Costa v E.N.E.L.*¹⁴ until Opinion 2/13 of 18 December 2014,¹⁵ the history of this doctrine provides an example of how judicial interpretation must ensure the effectiveness of the legal system. According to these judgments, EU law is unique and specific in various respects. This law essentially differs from international law from both institutional aspects (the unlimited duration of the Community; the conferral of competence; legal subjectivity) and normative aspects (autonomous law, integrated into national legal systems; directly applicable law; law that may be invoked by individuals in national courts; law that is given primacy over national legal norms in the event of collision; law that lays down the obligation of the Member States to compensate for damage caused to an individual as a result of an infringement of EU law). In addition, EU law may not be equated with national law. “These essential characteristics of EU law have given rise to a structured network of principles, rules and mutually interdependent legal relations linking the EU and its Member States, and its Member States with each other, which are now engaged, as is recalled in the second paragraph of Article 1 TEU, in a ‘process of creating an ever closer union among the peoples of Europe’.”¹⁶ The scientific doctrine accentuates that key importance in relationships between EU law and national legal systems should be given to the following principles: the direct effect and primacy of EU law, sincere cooperation, subsidiarity, and the liability of the Member States for breaches of EU law.

More than one element characterising EU law is expressly referred to in the provisions of the Constitution: competences shared with or conferred on the EU by state institutions, the understanding of EU legal norms as a constituent part of the legal system of the Republic of Lithuania, the direct applicability of EU legal norms and their supremacy¹⁷ over the laws and other legal acts of the Republic of Lithuania, and the participation of EU institutions in EU decision making. These specific features attest to such a model of the interrelationship between Lithuanian national law and EU law that is somewhat different from the model applied to the relationship with international law.

¹² “Community law” is used in references before the entry into force of the Treaty of Lisbon on 1 December 2009.

¹³ *Van Gend en Loos*, 26/62, ECLI:EU:C:1963:1.

¹⁴ *Costa v E.N.E.L.*, 6/64, ECLI:EU:C:1964:66.

¹⁵ Opinion 2/13 of 18 December 2014 pursuant to Article 218(11) of the TFEU, 2/13, ECLI:EU:C:2014:2454.

¹⁶ *Ibid.*, paragraph 167.

¹⁷ The jurisprudence of the CJEU employs the neutral term of the primacy (*primauté*) of EU law, which, when translated into Lithuanian, due to the frequent use of the category of supremacy in the scientific doctrine, has become “supremacy”, which implies the hierarchical perception of the interrelationships of norms. The Constitutional Act uses “supremacy”; therefore, the Constitutional Court, seeking to avoid the said hierarchical perception of the interrelationships of norms, held in its ruling of 21 December 2006 (and, subsequently, reiterated in its other rulings) that, in the event of the collision of legal norms, the concept of the *supremacy* of the norms of EU law, as used in the Constitutional Act, means *the priority of the application of EU legal acts*. The categories of supremacy, primacy, and priority will be used in this article while taking account of the context and considering these terms to be synonymous.

THE CONSTITUTIONAL PROVISIONS
RELATING TO MEMBERSHIP IN THE EU.
THE COMPATIBILITY OF THE CONSTITUTIONAL IMPERATIVE
OF MEMBERSHIP IN THE EU WITH THE FUNDAMENTAL
PRINCIPLES OF THE STATE OF LITHUANIA ENSHRINED IN
ARTICLE 1 OF THE CONSTITUTION

In order to understand the constitutional framework of membership of the Republic of Lithuania in the EU, we should recall the question raised during the preparation by Lithuania for its membership in the EU, namely “whether the accession of Lithuania to the European Union will require a revision of the Constitution and, if so, to what extent and of what nature”.¹⁸ The representatives of legal and political areas discussed whether the then wording of the Constitution provided answers to all questions concerning membership in the EU, whether the interpretation of the Constitution would succeed in compensating for the lack of explicit provisions, or whether constitutional amendments would be necessary. Lithuania, like other acceding States, had to answer in what way the transfer of part of the competences of state institutions to the EU and the direct application and primacy of EU law would be compatible with the Constitution of the state, as well as what relationships were to be maintained between the Parliament and the Government in the process of enacting EU legislation. The constitutional practice of other countries could serve as an example of how to tackle these issues; however, concrete answers to the question of how to align membership in the EU with the national Constitution needed to be found individually. Eventually, the following path of constitutional amendment was chosen: the Constitution was supplemented by the Constitutional Act. This act marked a new stage in the development of the Lithuanian legal system.¹⁹

The Constitutional Act, which is a constituent part of the Constitution under Article 150 of the Constitution, came into force on 14 August 2004. As held in the Constitutional Court’s rulings of 13 December 2004 and 14 March 2006, by adopting this act, membership of the Republic of Lithuania in the EU was constitutionally reaffirmed.²⁰ In addition, for reasons of European integration, certain provisions of Articles 47 and 119 of the Constitution were

¹⁸ Lapinskas, footnote 3, p. 63.

¹⁹ The end of the Lithuanian pre-accession phase should be connected with the treaty concerning the accession of Lithuania to the EU, signed on 16 April 2003 in Athens, and with the referendum of 10–11 May 2003, in which the nation supported EU membership (91.07 per cent of the citizens participating in the referendum voted in favour of EU membership). On 16 September 2003, the Seimas ratified the Treaty of Athens, according to which Lithuania became a Member of the EU on 1 May 2004.

²⁰ Official Gazette *Valstybės žinios*, 2004, No 181-6708 (corrigendum, *ibid.*, 2004, No 186) and 2006, No 30-1050.

amended before the adoption of the Constitutional Act, and Article 125 of the Constitution was modified in 2006.²¹

In the preamble to the Constitutional Act, it is stipulated that this act was adopted in accordance with the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the EU; it is declared that, by adopting this act, it was sought to ensure the fully fledged participation of the Republic of Lithuania in European integration, as well as the security of the Republic of Lithuania and welfare of its citizens. The preamble expresses the confidence that the EU respects human rights and fundamental freedoms, along with the national identity and constitutional traditions of its Member States.

As held by the Constitutional Court, the Constitutional Act on Membership of the Republic of Lithuania in the European Union lays down, *inter alia*, the constitutional grounds for membership of the Republic of Lithuania in the EU; without consolidating them in the Constitution, the Republic of Lithuania would have been unable to be a full member of the EU.²² These grounds are consolidated in the provisions stating that the Republic of Lithuania, as a Member State of the EU, shares with or confers on the EU the competences of its state institutions in the areas provided for in the founding Treaties of the EU and to the extent it would, together with the other Member States of the EU, jointly meet its membership commitments in those areas, as well as enjoy membership rights; these grounds are also consolidated in the provisions stipulating that the norms of EU law are a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the EU, the norms of EU law are applied directly and, in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania; the Government informs the Seimas (the Parliament of the Republic of Lithuania) about the proposals to adopt the acts of EU law; the Government considers the proposals to adopt the acts of EU law following the procedure established by legal acts; etc.

The aspects significant for European integration are consolidated not only in the Constitutional Act, but also in various other provisions of the Constitution. Among them, mention should be made of the following: the right of the nation to live in the independent State of Lithuania and the striving for an open, just, and harmonious civil society and a state under the rule of law (the Preamble); the State of Lithuania is an independent democratic republic (Article 1); the State of Lithuania is created by the nation; sovereignty belongs to the nation (Article 2); no one may restrict or limit the sovereignty of the nation or arrogate to himself the sovereign powers belonging to the entire nation (Article 3); the nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4); other provisions of Chapter I; the relevant provisions

²¹ By the Constitutional Court's ruling of 24 January 2014 (Register of Legal Acts, 2014, No 2014-00478), it was declared that the Law Amending Article 125 of the Constitution (wording of 25 April 2006) in terms of the procedure of its adoption was in conflict with Paragraph 1 of Article 147 of the Constitution.

²² Ibid.

of Chapters II, III, and IV, which regulate the rights of individuals, the relations between society and the state, the national economy and labour; or the provisions of Chapter XIII “Foreign Policy and National Defence” (in particular, Articles 135, 136, and 138). Further salient aspects of European integration are contained in a number of other articles of the Constitution (e.g. the provisions of articles designed to regulate finances and the state budget, “Final Provisions”, etc.).

Both the accession of the Republic of Lithuania to the EU and its full membership are primarily based on the constitutional principle of geopolitical integration into the EU. This principle implies the duty of state authorities and other subjects to comply with and actively implement the integration requirements. Under the Constitution, the participation of Lithuania in the EU is a constitutional imperative.

The direction of European and transatlantic integration, taken by the Republic of Lithuania, is an essential element of the geopolitical principle entrenched in the Constitution. “However, the geopolitical orientation of Lithuania as a principle is clearly and unambiguously consolidated in the Constitution from two aspects – negative and positive ones”.²³ The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions and the positive aspect is set out in the Constitutional Act on Membership of the Republic of Lithuania in the European Union (from 21 July 1996 to 23 March 2003, it was directly embodied in the then wording of Article 47 of the Constitution). As noted above, these constitutional acts are a constituent part of the Constitution.

The Constitutional Act on Membership of the Republic of Lithuania in the European Union, which constitutionally reaffirmed membership of the Republic of Lithuania in the EU, underlines, in its preamble, the striving “to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens”. In its ruling of 24 January 2014, the Constitutional Court held that “the fully fledged participation in the European Union by the Republic of Lithuania, as a member of the European Union, is a constitutional imperative grounded in the expression of the sovereign will of the nation; the fully fledged participation of the Republic of Lithuania in the European Union is a constitutional value”.²⁴ The significance of these provisions is confirmed by the conclusion reached by the Constitutional Court with regard to the enhanced protection of their stability (i.e. “the provisions of Articles 1 and 2 of

²³ Kūris, E., “Lietuvos Respublikos Konstitucijos principai” [“The Principles of the Constitution of the Republic of Lithuania”] in *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law]*, 2nd edition, Vilnius: Mykolas Romeris University, 2002, p. 271.

²⁴ The Register of Legal Acts, 2014, No 2014-00478.

the Constitutional Act on Membership of the Republic of Lithuania in the European Union²⁵ may be amended or annulled only by referendum”).²⁶

When interpreting the constitutional provisions that lay down the grounds for membership of the Republic of Lithuania in the EU, it is necessary to bear in mind that their interpretation should be in line with other constitutional provisions and with the entire system of constitutional values. This stems from the Constitution, as a harmonious and integral act and conception, based on which, the interpretation of no constitutional provision may result in the distortion or denial of the content of any other provision; otherwise the essence of the overall constitutional legal regulation would be distorted and the balance of constitutional values would be violated. Therefore, the constitutional grounds for membership of the Republic of Lithuania in the EU should be interpreted in the light of the entire constitutional system.

In the first place, an answer should be given as to how the constitutional imperative of the fully fledged membership of the Republic of Lithuania is compatible with the fundamental principle, proclaimed in Article 1 of the Constitution, that “The State of Lithuania shall be an independent democratic republic” and how membership in the EU can be reconciled with the sovereignty of the state. The constitutional jurisprudence highlights that these values “are inseparably interrelated and form the foundation of the State of Lithuania as the constitutionally consolidated common good of all society; therefore, they must not be negated under any circumstances”.²⁷

During the pre-accession period in the course of discussions focused on the then anticipated membership of the Republic of Lithuania in the EU, it was argued at times that the Member States transfer part of their sovereignty to the EU or, in other words, that they lose it. “The transfer of sovereignty to a new subject or the limitation of sovereignty, taken literally, would mean that only the autonomy (self-governance) of the Member States is recognised.”²⁸ Lithuania had to restore its statehood twice during the 20th century. It is understandable that “any reference to the curtailment or delegation of sovereignty [was] a very sensitive matter in Lithuania”.²⁹ In the same way as other central and eastern European states that linked their future with the EU, Lithuania sought to legally substantiate the compatibility of the independence (sovereignty) of the state and the sovereignty of the nation with the challenges of membership in the EU. The adopted approach was to “seek

²⁵ Initially, in its rulings (14 March 2006, 21 December 2006, 4 December 2008, etc.), the Constitutional Court referred to the numbered provisions set out in this constitutional act as paragraphs; in the later constitutional jurisprudence (the ruling of 24 January 2014), these provisions were started to be referred to as articles.

²⁶ The Register of Legal Acts, 2014, No 2014-00478.

²⁷ The Constitutional Court’s decision of 19 December 2012, Official Gazette *Valstybės žinios*, 2012, No 152-7779; the Constitutional Court’s ruling of 24 January 2014, the Register of Legal Acts, 2014, No 2014-00478.

²⁸ Stačiokas, footnote 3, p. 36.

²⁹ Vaičiaitis, V. A., *Introduction to Lithuanian Constitutional Law*, Vilnius: Vilnius University Press, 2007, p. 122.

consistency, rather than confrontation, in the application and interpretation of not only doctrinal but also legal categories (terminology).³⁰

First and foremost, Article 1 of the Constitution lays emphasis on the independence of the state. The realities faced during the period of the restoration of independence determined that the category of “independence” was chosen over “the sovereignty of the state” (although no problems arose in relation to “the sovereignty of the nation”). There are no special differences between these two categories; albeit it is maintained that “‘independence’ defines the principled presence (existence) of a state as an entity alongside other equivalent entities”;³¹ whereas the concept of “the sovereignty of a state” is used to emphasise the autonomy of the state in making political and constitutional decisions and in implementing them. Independence (sovereignty) is the core legal quality of a state; if a state loses this quality, it ceases to be a state.

It is customary to interpret that sovereignty, as a quality of a state, means the supremacy, autonomy, and independence of state authorities both in internal matters and in relations with other states. There is no doubt the changeable world has influenced (and continues to influence) the perception of the content of this category. The sixteenth-century Jean Bodin’s concept of the sovereignty of a state, which envisioned the absolute independence of a state and its link with the monarch’s power, had long ago become an anachronism. The categories of the sovereignty of the people and the sovereignty of the nation, raised respectively by Jean-Jacques Rousseau and Emmanuel Joseph Sieyès, consequently modified the initial concept of the source of power. Later, Georg Jellinek associated sovereignty with *Kompetenz-Kompetenz* (i.e. the competence to determine competence).

More recently, it has been underlined that “in fact, the traditional early twentieth-century concepts of sovereignty, originally based on the exclusive competence of the state, have likewise become fairly outdated, because it is long ago that the powerful processes of the internationalisation and globalisation of the political, social, and economic life of the state and society took place, and are still ongoing”.³² These processes have necessitated taking a different look at the essence of national independence and its limits. It is already a common view that national authorities may not disregard the recognised standards of human rights; in the area of international relations, a state that is independent from and equal among other states, in the exercise of its own sovereignty, is subject to respect for international principles, the undertaken international obligations, and the sovereignty of other states. More than one scientific study has shown that the category of sovereignty

³⁰ Stačiokas, footnote 3, p. 37.

³¹ Šileikis, E., *Alternatyvi konstitucinė teisė [Alternative Constitutional Law]*, 2nd edition (revised and supplemented), Vilnius: The Legal Information Centre, 2005, p. 143.

³² Vadapalas, V., “Lietuvos Respublikos stojimo į Europos Sąjungą konstituciniai pagrindai” [The Constitutional Grounds for Accession of the Republic of Lithuania to the European Union], footnote 3, p. 14.

should be adapted to the new reality. It has been argued that “sovereignty becomes a relative concept”³³ in the context of the plurality of legal orders.

Therefore, the issues concerning the relationship between the independence of a state and its participation in European integration should be tackled based on the modern thinking developed in constitutional and international law, constitutional regulation, and its interpretative case-law. Lithuania became involved in the European integration process at a late stage; therefore, it had the opportunity to learn how similar issues had been dealt with by other Member States. Making a distinction between the limitation of sovereignty and the delegation of the powers of state institutions made it possible to reach a solution to Lithuanian problems.

In constitutionally foregrounding the content of independence, importance falls not only on the provisions of the Constitutional Act, but also Articles 135 and 136 of the Constitution. Article 135 stipulates that the Republic of Lithuania follows the universally recognised principles and norms of international law; and Article 136 provides that the Republic of Lithuania participates in international organisations if this is not in conflict with the national interests and independence. The constitutionally consolidated principle of geopolitical orientation made it imperative for Lithuania to seek membership in the EU, which was consequently reaffirmed by the Constitutional Act.

Under the Constitution, Lithuania, as a Member State of the EU, shares with or confers on the EU the competences of its state institutions in the areas provided for in the founding Treaties of the EU and to the extent that it would, together with other Member States of the EU, jointly meet its membership commitments in those areas, as well as enjoy membership rights. However, the sovereignty of the state is not delegated; a conception to the contrary would imply the acknowledgment of diminished sovereignty and, simultaneously, the existence of more or less sovereign states.

From the perspective of international law, the Member States of the EU, as full subjects of international law, are sovereign. Otherwise, they would not be independent states. Therefore, the State of Lithuania was and, as a Member State, has remained an independent state, and its legal status has not changed. In accordance with the constitutionally prescribed procedure, Lithuania has conferred on (or shared with) the EU part of the powers of its state institutions, but not its sovereignty. Lithuania is an independent state and continues to make decisions concerning the matters essential for the life of the state or continues to exercise scrutiny over such decisions. It is underlined in legal studies that the delegation of the powers of state institutions “is not their renunciation (i.e. when part of the competences of state institutions is transferred, this does not denote the full relinquishment of such competences, but constitutes a (pre)condition for these competences to be jointly and collectively executed, which means that the states of the European Union jointly implement

³³ Von Bogdandy, A., “Common Principles for a Plurality of Orders: A Study on Public Authority in the European Legal Area”, *International Journal of Constitutional Law*, 2014, Vol. 12, No 4, p. 1007.

what they have delegated to this Union [...]”.³⁴ Thus, without losing its independence, a state can delegate or confer certain powers of its national institutions to the international (supranational) organisation; the state remains independent as long as it retains the possibility of freely withdrawing the conferred powers. Thus, the Member States of the EU can confer and share the powers of their national institutions while remaining independent both in terms of internal and external relations.

Membership of the Republic of Lithuania in the EU is based on free will; the Republic of Lithuania can likewise leave the EU of its own free will. “Having become part of the broader political community of the EU, it has not lost its own status and identity as a national community. It continues to be a state from the point of view of constitutional and international law, while the nation / national community retains the right to make a ‘final’ decision.”³⁵

The EU can be viewed as one of the modern mechanisms facilitating the successful operation of states in the contemporary world. The independence of the Member States is not denied from the perspective of EU law. In this connection, it is important to recall the provisions of Article 4(2) of the Treaty on European Union (hereinafter referred to as the TEU) regarding the equality of the Member States and respect by the EU for their national identities, inherent in their fundamental political and constitutional structures.³⁶ These provisions are echoed in the third paragraph of the preamble to the Constitutional Act, where it is noted that the European Union respects the national identity and constitutional traditions of its Member States. Respect for the constitutional values of the Member States is a European-level imperative. There should be no doubt that the fundamental constitutional principles (independence, democracy, and the republic) are key constitutional structures. Therefore, they have protection under both national legal provisions and the EU legal framework.

It should be remembered that the Member States were and continue to be “*the masters of the founding treaties*”. The legitimacy of the EU should be primarily associated with the will of the drafting States. It is for the Member States to determine the process of strengthening European integration; decision making on the issues of extending the competences of the EU, modifying its institutional set-up, or refraining from taking decisions on the accession of new members rests solely with the Member States themselves.

³⁴ Šileikis, footnote 31, pp. 148–149.

³⁵ Jarukaitis, I., *Europos Sąjunga ir Lietuvos Respublika: konstituciniai narystės pagrindai* [The European Union and the Republic of Lithuania: The Constitutional Basis of Membership], footnote 3, p. 266.

³⁶ On this, see Jarašiūnas, E., “Pagarba nacionaliniam tapatumui pagal Europos Sąjungos teisę: aiškinimo potencialas ir Europos Sąjungos Teisingumo Teismas” [“Respect for the National Identity in the Law of the European Union: Potential for Interpretation and the Case-Law of the Court of Justice of the European Union”], *Teisė*, 2014, Vol. 93, pp. 7–28; Jarukaitis, I., “Respect for the National Identities of the Member States as a General Principle of European Union Law” in *Lithuanian Legal System under the Influence of European Union Law*, Vilnius: Vilnius University, 2014, pp. 575–620.

Apart from this, under Article 50(1) of the TEU, any Member State may decide to withdraw from the EU in accordance with its own constitutional requirements.

In addition, the compatibility of membership in the EU with the independence (sovereignty) of the state should be interpreted in connection with the provisions of Chapter I of the Constitution concerning the sovereignty of the nation (under which, the subject of sovereign power in the state is the nation; it is not the institutions of authority, but the nation, that is the genuine and sole founder of the state), the implementation of its sovereign powers, and state power. The state is the creation of the nation. The source and basis of any power is the nation. This testifies to the link between the sovereignty of the nation and the sovereignty of the state.

Article 2 of the Constitution proclaims that “The State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation”. These are principled provisions; they express the constitutional concept of the foundations of Lithuanian statehood. Under Article 3 of the Constitution, no one may restrict or limit the sovereignty of the nation or arrogate to himself the sovereign powers belonging to the entire nation. The nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force. The nation directly executes its supreme sovereign power through two major organisational forms: national elections and referendums. The principles and essential conditions of their organisation are stipulated by constitutional norms; the specific procedures for conducting elections and referendums are regulated under relevant laws. The sovereignty of the nation means that the nation independently decides how it should live. It is the right of the nation to create its own state and implement its sovereign powers – which can be best expressed by the nation precisely within the state. As regards the sovereignty of the nation and membership in the EU, it is essential to bear in mind that membership of the Republic of Lithuania in the EU is based on the will of the nation, expressed in the referendum held on this issue on 10–11 May 2003. Consequently, if the state responds to the will, aspirations, and interests of its citizens, if democratic structures function and democratic elections take place in the state, and if it is recognised that the source of state power is the nation, then there is no impediment to implementing the sovereignty of the nation.

The democratic nature of the State of Lithuania is a no less significant quality of the constitutional status of the state. According to Article 1 of the Constitution, the government of the state must be democratic and the state must have a democratic political regime. One of the democratic principles governing decision making is the majority principle. Lithuania is a democratic state – national affairs are managed through the will of its citizens.

In terms of the source of state power, democracy is the state power deriving from the nation. Under Article 2 of the Constitution, the State of Lithuania is created by the nation and sovereignty belongs to the nation. These provisions are linked with Article 4 of the Constitution, prescribing that the nation executes its supreme sovereign power either

directly or through its democratically elected representatives. In this way, the Constitution lays down the forms of implementing democracy. Democracy is further consolidated in other constitutional provisions: Paragraph 1 of Article 33 grants citizens the right to participate in the governance of their state both directly and through their democratically elected representatives; Article 9 provides that the most significant issues concerning the life of the state and the nation are decided by referendum, etc.

The jurisprudence of the Constitutional Court has placed emphasis on the following: the provision that “the State of Lithuania is democratic means that it is necessary in the state to ensure the supremacy of the Constitution, the protection of human rights and freedoms, the equality of all persons before the law and the court, the right to judicial protection, free and periodic elections, the separation and balance of powers, the responsibility of the authorities towards citizens, the democratic process of decision making, political pluralism, opportunities for the development of civil society, etc. [...] the provision that the State of Lithuania is democratic [means] the constitutional obligation not to deviate from the requirements of democracy, applicable to all state institutions, including the legislature.”³⁷

Democracy is one of the values of the EU. The Preamble to the TEU mentions attachment to the principle of democracy; among other values on which the EU is founded, Article 2 also refers to democracy; Article 10 underlines that the functioning of the Union is based on representative democracy. These provisions correspond with the concept of democracy established in the Constitution; thus, in principle, the attitudes to democracy coincide.

Article 1 of the Constitution consolidates the republic as the form of government of Lithuania. The republican form of government goes hand in hand with sovereignty that belongs to the people; in a republic, all supreme state authorities, either directly or indirectly, receive their powers to act from citizens and are accountable to citizens. This form of government is linked to a democratic political regime. If this were not the case, a republic would be a mere designation, and not a legal political reality. The Constitution includes multiple provisions outlining this form of government. The republican form of government is fully in line with the requirements of EU primary law.

This leads to the conclusion that there is compatibility between the constitutional provisions on membership of the Republic of Lithuania in the EU and the fundamental constitutional values enshrined in Article 1 of the Constitution – the independence of the state, democracy, and the republic.

³⁷ The Constitutional Court’s ruling of 19 September 2002, Official Gazette *Valstybės žinios*, 2002, No 93-4000.

THE SIGNIFICANCE OF COMPATIBILITY BETWEEN CONSTITUTIONAL AND EU VALUES

Compatibility between the national and EU systems of values forms the basis of successful membership in the EU. Therefore, it is particularly meaningful to examine the relationship of constitutional values with the values entrenched in EU primary law. Such examination can, first of all, provide clarification on at least a couple of points: whether membership in the EU is acceptable in terms of values and whether the guarantee of EU values also contributes to ensuring constitutional values.

On more than one occasion, it has been held in the constitutional jurisprudence that, having adopted the Constitution – the supreme legal act – by referendum, the Lithuanian nation laid down the regulatory basis for its own common life as the state community – the civil nation and consolidated the state as the common good of the entire society. As supreme law and a social contract, the Constitution is based on universal and unquestionable values – sovereignty belonging to the nation, democracy, the recognition of and respect for human rights and freedoms, respect for law and the rule of law, the limitation of the scope of power, the duty of state institutions to serve the people and their responsibility towards society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law.³⁸

The Constitutional Court has noted that one of the most important obligations of a democratic state based on law and justice is to respect, defend, and protect the constitutional values, as well as human rights and freedoms, upon which the Constitution itself adopted by the nation is based and whose actual consolidation, defence, and protection is the *raison d'être* of the state itself;³⁹ otherwise, it would not be possible to regard the state as the common good of all society.⁴⁰ In addition, it has been held that Lithuanian constitutional identity, founded upon such fundamental constitutional values as the independence of the state, democracy, and the innate nature of human rights and freedoms, should be understood in a broader context as an integral part of the democratic constitutional identity of western states. As an expression of the geopolitical integration of the state, membership of the Republic of Lithuania in the EU is based on the recognised and protected universal democratic constitutional values, shared with other European and North American states.⁴¹

The legal structure of the EU “[...] is based on the fundamental premise that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 of the TEU. That premise implies and justifies the existence of mutual trust between the Member States

³⁸ See the Constitutional Court’s rulings of 25 May 2004, 19 August 2006, and 24 September 2009, its decision of 19 December 2012, and its ruling of 24 January 2014.

³⁹ Purpose, mission, reason, or aim.

⁴⁰ The Constitutional Court’s ruling of 19 August 2006, Official Gazette *Valstybės žinios*, 2006, No 90-3529.

⁴¹ See the Constitutional Court’s ruling of 7 July 2011, *ibid.*, 2011, No 84-4106.

that those values will be recognised and, therefore, that the law of the EU that implements them will be respected.”⁴²

EU primary law directly declares the values on which the EU is founded. The determination of such values is the result of a long evolutionary process. It can be recalled that, at its outset, European integration was perceived as being nearly exclusively economic. However, the legal acts and treaties of the EU have gradually highlighted the system of values common to the Member States. “Thus, the EU has asserted itself as a community of values.”⁴³

The Preamble to the TEU states that the EU draws inspiration from the cultural, religious, and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality, and the rule of law, attachment to the principles of liberty, democracy, and respect for human rights and fundamental freedoms and of the rule of law, respect for the history, culture, and traditions of the peoples, etc.

Article 2 of the TEU specifies that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.

The TEU underlines the unity of common values between the EU and its Member States by making references to fundamental rights resulting from the constitutional traditions common to the Member States (Article 6(3)), respect for the equality of the Member States as well as their national identities, inherent in their fundamental political and constitutional structures (Article 4(2)), the principle of sincere cooperation (Article 4(3)), the Union’s external action guided by the principles that have inspired its own creation and enlargement (including democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity), etc.

The Union’s primary law attaches particular importance to values on which the EU is founded. This is also confirmed by the provision (of Article 49 of the TEU) stating that any European state that respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. Respect for values on which the EU is founded is considered to be an essential precondition for membership in the EU. Moreover, Article 7 of the TEU provides that, for a serious and persistent breach by a Member State of the values referred to in Article 2, the Council may decide to suspend certain rights deriving from the application of the Treaties to the Member State in question,

⁴² The Court of Justice of the European Union, Opinion 2/13 pursuant to Article 218(11) TFEU, ECLI:EU:C:2014:2454, paragraph 168.

⁴³ Dony, M., *Droit de l’Union européenne*. 5^e édition revue et augmentée, Bruxelles: Éditions de l’Université de Bruxelles, 2014, p. 40.

including the voting rights of the representative of the government of that Member State in the Council.

The values of the EU are linked with the aims of the EU. According to Article 3(1) of the TEU, the Union's aim is to promote peace, its values, and the well-being of its peoples. The EU aims at achieving: the creation of an area of freedom, security and justice without internal frontiers and the establishment of an internal market; the sustainable development of Europe based on balanced economic growth and price stability; a highly competitive social market economy, aiming at full employment and social progress; a high level of protection of the environment; scientific and technological advance; combating social exclusion and discrimination; social justice and protection; equality between women and men; solidarity between generations; the protection of the rights of the child; economic, social, and territorial cohesion; solidarity among the Member States; respect for cultural and linguistic diversity; and the preservation and enhancement of European cultural heritage.

The constitutional provisions, along with the jurisprudence of the Constitutional Court interpreting them, attest to the value-based affinity between the Constitution and EU law. This is all the more so given that one of the aims of membership in the EU is the more effective protection of these values. The preamble to the Constitutional Act expresses the conviction that the EU respects human rights and fundamental freedoms and that Lithuanian membership in the EU will contribute to the more effective securing of human rights and freedoms; the preamble recalls that the EU respects the national identities and constitutional traditions of its Member States; and it ultimately relates the fully fledged participation of the Republic of Lithuania in European integration with the security of the Republic of Lithuania and welfare of its citizens.

SHARING WITH OR CONFERRING ON THE EU THE COMPETENCES OF STATE INSTITUTIONS

It is noted in the constitutional jurisprudence that Article 1 of the Constitutional Act “enshrines the principle that the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights”.⁴⁴

Thus, sharing with or conferring by the Republic of Lithuania on the EU the competences of its state institutions is recognised as a principle. Such acknowledgment implies that these constitutional provisions have specific functions and bear importance while consolidating one of the elements guiding the constitutional system.

⁴⁴ The Constitutional Court's ruling of 24 January 2014, the Register of Legal Acts, 2014, No 2014-00478.

In the first place, this principle should be linked with the fundamental principles of the State of Lithuania (the independence of the state, the sovereignty of the nation, democracy, and the republic as the form of government). This means that the above-mentioned conferral of the competences of state institutions must not deny the independence of the state, the sovereignty of the nation, democracy, or the republic as the form of government. This principle must be in line with other constitutional provisions.

At the same time, it should be borne in mind that the wording “[...] Lithuania [...] shall share with or confer on the European Union the competences of its state institutions”, as set out in Article 1 of the Constitutional Act, confirms that the conception of the limitation of the sovereignty of the state is rejected. In accordance with this act, both the shared fulfilment of membership obligations and the exercise of membership rights are related to the conferral of certain competences of state institutions on the EU.

The content of the principle of sharing with or conferring on the EU the competences of state institutions of the Republic of Lithuania can be revealed through the particular core elements of this principle.

First of all, the aim of conferring on and sharing with the EU the competences of state institutions is the full membership of the Republic of Lithuania in the EU and the ability of Lithuania, together with other Member States, to jointly meet the obligations and exercise the rights that result from membership in the EU. Partial participation in the Union and partial integration into European states would be at variance with the constitutional imperative of participation by the Republic of Lithuania in the EU.

Secondly, this principle indicates that conferring on and sharing with the EU the competences of state institutions is linked with membership in the EU, i.e. certain competences of state institutions are conferred on the EU only for the period of membership (its beginning coincides with the moment when competences are conferred on the EU, while the termination of membership would automatically signify that the conferral of competences on the EU ceases).

Thirdly, the provisions of Article 1 of the Constitutional Act stipulate that the competences of state institutions are conferred on and shared with the EU, i.e. these provisions provide for the transfer of competences for the period of membership, but not for their renouncement or their permanent transfer or delegation.

Lastly, the above-mentioned principle denotes the conferral on the EU of specifically “the competences of state institutions”. Thus, it refers not to the delegation of state power in general, but solely to state institutions and their certain competences. The constitutional jurisprudence notes that the concept “state institutions” is general and encompasses various state institutions through which the state performs its functions. State institutions comprise a system, which is consolidated by legal acts of varying legal force. Some state institutions are *expressis verbis* specified in the Constitution; other state institutions must be established

by means of laws.⁴⁵ Under the Constitution, certain state institutions are treated as executing state power. Paragraph 1 of Article 5 of the Constitution provides that, in Lithuania, state power is executed by the Seimas, the President of the Republic and the Government, and the judiciary. The relationships among the Seimas (legislative power), the President of the Republic and the Government (executive power), and courts (judicial power) are based on the constitutional principle of the separation of powers.

The Constitutional Act makes no mention of any specific institutions whose competences may be conferred on the EU. Neither does it contain reference to any particular competences (legislative, executive, or judicial) to be conferred on the institutions of the EU. On the other hand, the provisions of this constitutional act indicate the areas of these competences and the extent to which they are conferred.

According to Article 1 of the Constitutional Act, competences are conferred only “in the areas provided for in the founding Treaties of the European Union”. The constitutional provisions refer to EU primary law. Therefore, consideration should be given to such norms of this law as: the provisions determining, based on the principle of conferral, the limits of the competences conferred on the EU; the principles of subsidiarity and proportionality, which are important for implementing the conferred competences; the provisions regarding the areas in which the EU has exclusive competence (in which it is only the EU that may adopt legally binding acts, while the Member States are empowered to do so only upon authorisation by the EU or where this is needed for implementing the acts of the EU); the provisions regarding the areas in which the EU and its Member States share competences (either the EU or the Member States may adopt legally binding acts; however, the Member States exercise their competences to the extent that the Union has not exercised its competence); the provisions regarding the coordination of the actions of the Member States under the terms that are provided for in the Treaty on the Functioning of the European Union (hereinafter referred to as the TFEU) and whose establishment falls under the competence of the EU; and the provisions regarding the powers of the institutions of the EU and their fulfilment.

The Constitutional Act indicates that the competences of state institutions may be conferred on the EU “to the extent [the Republic of Lithuania] would, together with the other Member States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights”. In order to determine the extent to which these competences are conferred on the EU, it is once again necessary to refer to the provisions of EU primary law. From the constitutional point of view, the connection of the conferred competences with the proper fulfilment of the obligations of membership and exercise of the rights arising from membership is crucial for determining the extent to which these competences are conferred on the EU.

⁴⁵ The Constitutional Court’s ruling of 13 December 2004, Official Gazette *Valstybės žinios*, 2004, No 181-6708 (corrigendum, *ibid.*, 2004, No 186).

At the same time, it is worth noting that conferring or sharing the competences of state institutions should not deny the constitutional competences or constitutional functions of national institutions themselves (or their essence), distort the principle of the separation of state powers, or negate the functioning of these state institutions in the interests of all society.

So far, the constitutional jurisprudence has interpreted only some aspects of the principle of sharing with or conferring on the EU the competences of state institutions. In its ruling of 24 January 2014, the Constitutional Court assessed the constitutionality of the law amending Article 125 of the Constitution in terms of the procedure of its adoption. The amendment of Article 125 was related to the legal preconditions for introducing the currency of the economic and monetary union of the EU – the euro and to the powers of the Bank of Lithuania; therefore, the statement part of this ruling contains the provisions significant for the development of the concept of the principle at issue.

The Constitutional Court noted in this ruling that one of the areas in which, under Article 1 of the Constitutional Act, the Republic of Lithuania, as a Member State of the EU, shares with and confers on the EU the competences of its state institutions is the economic and monetary union, whose currency is the euro, as specified in Article 3(4) of the TEU. According to Article 119(2) of the TFEU, the activity of the Member States and the Union in the area of economic and monetary policy includes a single currency – the euro, and the definition and conduct of a single monetary policy and exchange-rate policy; according to Article 3(1c) of the same treaty, the Union has exclusive competence in the area of monetary policy for the Member States whose currency is the euro. Therefore, by virtue of Article 1 of the Constitutional Act, the Republic of Lithuania shares with and confers on the EU the competences of its state institutions in the area of economic and monetary policy in order, together with the other Member States of the EU, to jointly meet the obligations of full membership in the EU and enjoy membership rights in this area.

In summarising its assessment, the Constitutional Court noted:

“[...] the constitutional imperative of the fully fledged participation of the Republic of Lithuania in the European Union and its fully fledged membership in the European Union, as a constitutional value, also implies the constitutional obligation of the Republic of Lithuania, as a fully fledged Member State, to participate, *inter alia*, in the integration of the member countries into the economic and monetary union, *inter alia*, by adopting the common currency of this union – the euro and conferring on the European Union the exclusive competence in the area of monetary policy. It should be noted that such a constitutional obligation of the State of Lithuania is concurrently an obligation arising from its membership in the European Union, which the State of Lithuania is obliged to fulfil while observing its geopolitical orientation consolidated in the Constitution and the constitutional principle of *pacta sunt servanda*.

[...] in order to implement the said constitutional obligation of the Republic of Lithuania, which is concurrently its obligation of membership in the European Union, the competence of the Bank of Lithuania in the area of monetary policy, *inter alia*, the issuing of currency, must be conferred on the European Central Bank.”⁴⁶

Although this is only the starting point in the official interpretation of this principle, but its line of development is clear.

THE NORMS OF THE EU AS A CONSTITUENT PART OF THE NATIONAL LEGAL SYSTEM, THEIR DIRECT APPLICATION, AND THEIR PRIMACY

Under Article 2 of the Constitutional Act, the norms of EU law are a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the EU, the norms of EU law are applied directly and, in the event of the collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

These provisions attribute constitutional significance to the following three aspects of EU law as a specific legal system:

- (1) the integration of the norms of EU law into the national legal system;
- (2) the direct application of the norms of EU law in cases where it concerns the treaties of the EU; and
- (3) the recognised primacy of the application of the norms of EU law over national laws and other legal acts in the event of the collision of legal norms.

These provisions directly relate to the concept developed by the CJEU with regard to the specificity of the EU legal system. They confirm that the national constituent authority understands the importance of ensuring the effective operation of the norms of EU law and is keen that these norms are fully operative in Lithuania; otherwise, the norms of EU law will be of little value. Accordingly, if this is provided for, the norms of EU law must be directly effective without additional interference by the Member State and, in the event of conflict with the national provisions, the norms of EU law must take precedence. This point of view is consistent with the principle of sincere cooperation under Article 4 of the TEU.

To start with, consideration should be given to *the concept of the integration of the norms of EU law into the national legal system*. One of the features of EU law, as a specific integrated legal system, is that its norms are effective in the Member States along with the national legal norms. National institutions and courts apply EU law directly. Therefore, naturally, the issues concerning the interaction of the simultaneously effective national legal order and the EU legal order have already for several decades been identified as classical – they cannot be circumvented when considering the current legal reality of European countries.

⁴⁶ The Constitutional Court’s ruling of 24 January 2014, the Register of Legal Acts, 2014, No 2014-00478.

Reference to the norms of EU law as a constituent part of the Lithuanian legal system is made in more than one act of the Constitutional Court (rulings of 14 March 2006, 21 December 2006, 4 December 2008, and 24 January 2014 and the decision of 8 May 2007). In addition, it is recalled that, where it concerns the Founding treaties of the EU, the norms of EU law are applied directly while, in the event of the collision of legal norms, they take precedence over the laws and other legal acts of the Republic of Lithuania.

EU law must be fully and uniformly applicable in all its Member States. Divergent national applications of this law would erode the idea of a single legal area. The principle of sincere cooperation, as set out in the TEU, also implies mutual respect between the EU and its Member States, as well as the duty of the Member States to assist in fulfilling the obligations under the treaties of the EU. In order to ensure the fulfilment of the obligations resulting from EU law, the Member States take all the required general or specific measures and refrain from taking any measures that would be detrimental to the attainment of the objectives of the EU.

What is meant by the integration of the norms of EU law into the national legal system under the Constitution? At first sight, it would seem that the integrated rules must obey the national legal laws and hierarchy. However, the provisions of the Constitutional Act regarding the direct application of the norms of EU law and their supremacy in the event of collision are indicative of specific integration, which is understood in terms of the implementation of norms, i.e. they refer to the integrated operation of norms within the legal systems that remain independent.

The jurisprudence of the Court of Justice, as well as scientific doctrine, has acknowledged the autonomy of the EU legal order. The national legal systems and EU law continue to be autonomous, although their norms operate in a single area of the application of law. “The autonomy of Union law is an existential prerequisite for another of its crucial features, namely its primacy and thus its uniform application in the different Member states.”⁴⁷ The autonomy of EU law derives from its specific sources, the inability of national institutions to correct or repeal EU law, and the mandatory application of its norms. National (thus, also constitutional) courts cannot declare EU norms invalid; this can be decided only by the Court of Justice.

The concept of the autonomy of legal systems prevents treating any of them as more superior to or subordinating other systems. The Constitution encapsulates the interaction of the legal systems connected by the relationships of coordination, rather than subordination. In this respect, it is worth recalling the jurisprudence of the Constitutional Court (the conclusion of 24 January 1995 and the ruling of 5 September 2012), which, in the context of the interaction of the system of the European Convention on Human Rights and the national legal system, mentions the parallel system of the harmonisation of international and domestic law. To some extent, this system can also be applicable in defining the

⁴⁷ Skouris, V., “Towards a European Legal Culture”, *Zeitschrift für Europäisches Privatrecht*, 2012/1, p. 1.

interrelationship of the national and EU legal orders. However, it is important here to stress that the specific linkage of the systems that pursue the achievement of common objectives through coordinated effort in this case clearly transcends the ordinary parallelism of action.

The integration of norms means that priority in the application of EU law is given to the norms of EU law and that this primacy is a necessary condition for the uniform validity of this law across all the Member States. The operation of common legal norms does not deny the importance of ensuring cross-system balance (notably, the violation of this balance proves to be a source of potential collisions). Mutual respect and institutional cooperation (in this case, between constitutional courts and the Court of Justice) are essential for finding common ground, ensuring reciprocal understanding, and preventing legal conflicts. The concept of the openness of the Constitution to EU law implies the need for cooperation between the Constitutional Court and the Court of Justice, notably in making use of the preliminary reference procedure to refer a question of EU law to the Court of Justice for a preliminary ruling on the interpretation of the provisions of EU law. The decision of the Constitutional Court of 8 May 2007⁴⁸ on applying to the Court of Justice for a preliminary ruling on the interpretation of the provisions of EU law concerning common rules for the internal market in electricity, electricity transmission and distribution systems, and the obligations of the Member States in this area, followed by the interpretation provided in the judgment of the Court of Justice of 9 October 2008,⁴⁹ and the subsequent ruling of the Constitutional Court of 4 December 2008⁵⁰ serve as an example of particular sequence of such institutionalised cooperation.

Another aspect in relation to EU law that merits constitutional consolidation is *the direct applicability of the norms of EU law in cases where it concerns the treaties of the EU*.

By virtue of the principle of the direct application of EU law, declared in Article 2 of the Constitutional Act, the EU norms laid down in a directly applicable act may, without any additional measures, give rise to legal effects in Lithuania, i.e. the norms laid down in a directly applicable act do not require the adoption of any additional acts that would endorse their application. Such norms are applicable from the moment of their entry into force and become a constituent part of the legal norms and principles in force in Lithuania.

The constitutional consolidation of the direct application of the norms of EU law in cases where it concerns the treaties of the EU relates to the principle of EU law that, as follows from the jurisprudence of the Court of Justice, means the full and uniform applicability of the norms of EU law in all the Member States from the date of their entry into force and throughout the whole period of their validity; the same principle also entails that the norms of EU law are a direct source of rights and duties for those whom they address, whether the

⁴⁸ The Constitutional Court's decision of 8 May 2007, <http://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta549/content> [accessed 12 January 2016].

⁴⁹ The Court of Justice, judgment of 9 October 2008, *Sabatauskas and Others*, C-239/07, EU:C:2008:551.

⁵⁰ The Constitutional Court's ruling of 4 December 2008, Official Gazette *Valstybės žinios*, 2008, No 140-5569.

Member States or individuals who are the subjects of legal relationships falling within the scope of EU law.⁵¹

The jurisprudence of the Court of Justice recognises that the treaties of the EU, international agreements with third countries, as well as the norms of regulations and decisions are directly effective and applicable in the domestic legal systems of the Member States provided that they explicitly set the rights and duties of legal subjects. By contrast, directives are not directly applicable because of their nature; they need the Member States to enact national legislation and they may not be directly applied in domestic law, unless the state failed to achieve the timely implementation of the directive – in that case, the natural and legal persons concerned can bring action against the Member State (having failed to implement the directive, the state may not demand that the persons meet the obligations that the directive requires of them). However, the content of such norms must be unconditional and sufficiently precise in order that the individuals are able to rely on them before the national courts against the state if the state has failed to comply with its obligation to transpose the directive into national law within the required deadline or has transposed it incorrectly.

What should happen if a court faces doubts regarding the interpretation and validity of an applicable legal act of the EU? Under EU law, only the CJEU is entitled to interpret this law and decide questions concerning the validity of EU acts. The sole way of dealing with this situation is having recourse to the preliminary ruling procedure, under which national courts may (and, in certain cases, are obliged to) apply to the CJEU for a preliminary ruling on the questions of the interpretation and validity of EU law.

The binding force of the jurisprudence of the CJEU is beyond dispute – the decisions of this court must be followed without reservation. This jurisprudence is equally significant for the interpretation of Lithuanian law. The Constitutional Court has held on more than one occasion that “the jurisprudence of the Court of Justice of the European Union, as a source for the interpretation of law, is important for the interpretation and application of Lithuanian law”.⁵²

Ultimately, Article 2 of the Constitutional Act lays down that, *in the event of the collision of legal norms, the norms of EU law have supremacy over the laws and other legal acts of the Republic of Lithuania*.

⁵¹ In addition to the term of *direct applicability*, the concept of *direct effect* is also used, which means that individuals may invoke the norms of EU law before a national court or institution obliged to ensure the implementation or protection of these norms. Direct effect is related to the ability of individuals to defend their rights before a court by directly relying on the norms of EU law. On the doctrines of direct effect and direct applicability of EU law and their interrelationship, see Soloveičikas, D., “Europos Sąjungos teisės tiesioginis veikimas ir jos taikymas – dvi skirtingos tapačios doktrinos dalys?” [“Direct Effect and Application of European Community Law: Two Distinct Parts of the Same Doctrine?”], *Jurisprudencija [Jurisprudence]*, 2007, No 4(94), pp. 35–43.

⁵² See the Constitutional Court’s rulings of 21 December 2006 (Official Gazette *Valstybės žinios*, 2006, No 141-5430), 15 May 2007 (*ibid.*, 2007, No 54-2097), 4 December 2008 (*ibid.*, 2008, No 140-5569), 27 March 2009 (*ibid.*, 2009, No 36-1390), 21 June 2011 (*ibid.*, 2011, No 76-3672), and 22 December 2011 (*ibid.*, 2011, No 160-7591).

Clarifying the essence of this principle in its ruling of 14 March 2006, the Constitutional Court declared that “the Constitution not only consolidates the principle under which, in cases where national legal acts establish a legal regulation competing with that established in an international treaty, this international treaty should be applied, but also – with regard to European Union law – it *expressis verbis* establishes the collision rule, which consolidates the priority of the application of European Union law in cases where the provisions of the European Union arising out of the founding Treaties of the European Union compete with a legal regulation established in Lithuanian national legal acts (whatever their legal force), save the Constitution itself”.⁵³ This provision was subsequently reiterated in the ruling of 21 December 2006, the decision of 8 May 2007, and the ruling of 4 December 2008.

The jurisprudence of the Constitutional Court singles out the following aspects pertaining to the constitutional understanding of the primacy of EU law:

- (1) this principle explicitly sets out the rule of the collision of norms;
- (2) in the event of collision, precedence is given to EU norms rather than the laws or other legal acts of the Republic of Lithuania; and
- (3) this rule does not apply to cases of conflict between EU norms and the Constitution.

The Constitutional Court has also acknowledged the importance of this principle for lawmaking: “In the context of the constitutional justice case at issue, it needs to be noted that, in regulating the relations of compulsory insurance against civil liability in respect of the use of motor vehicles, the legislature must pay regard to the requirements arising from the legal acts of the European Union. The laws of the Republic of Lithuania that regulate the above-mentioned relations may not compete with the legal acts of the European Union.”⁵⁴

The integration of EU norms into the national legal system and the principle of their direct effect are effective so long as these rules have effect along with the principle of the primacy of EU law.⁵⁵ As mentioned before, EU law is operative and must be uniform across all the Member States. Any unilateral attempts by the Member States or other subjects to alter these rules through national acts are inadmissible. Therefore, the primacy, inviolability, and uniform interpretation and application of EU rules are necessary. This necessity derives from the clear aspiration to ensure the proper functioning of the EU and its law.

The Court of Justice, interpreting the principle of the primacy of EU law, has repeatedly emphasised that, where it comes to a conflict between the norms of EU law and national law, it is necessary to apply EU law while setting aside the conflicting national

⁵³ The Constitutional Court’s ruling of 14 March 2006, *ibid.*, 2006, No 30-1050.

⁵⁴ The Constitutional Court’s ruling of 3 February 2010, *ibid.*, 2010, No 16-758.

⁵⁵ On the principles of the primacy and full effectiveness of EU law and the issues concerning their incorporation into national legal systems, see Lenaerts, K. and van Nuffel, P., *European Union Law*, 3rd edition, London: Sweet and Maxwell, 2011, pp. 754–809.

norms, whatever their ranking in the legal hierarchy. The European position is clear, consistent, and provides for no reservations.

The standpoint taken in the jurisprudence of the Constitutional Court is similarly clear-cut: EU norms are given priority in cases where they compete with a legal regulation established under Lithuanian legal acts (irrespective of their binding force), with the exception of the Constitution itself. Thus, with regard to the primacy of EU law, the Constitutional Court makes the sole reservation, which has been highlighted in more than one ruling. This reservation is linked with the concept, consistently recurrent in the constitutional jurisprudence, of the Constitution as supreme national law, to which all other legal acts are subordinate.

From the point of view of the Court of Justice, no reservations can be made with regard to the primacy of EU law. Resulting from an independent source – EU treaties, EU law takes precedence over the law of the Member States in terms of application; otherwise it would be impossible to ensure the full and uniform operation of its provisions directly applicable to national subjects and the Member States themselves across all the Member States.

Legal and political sciences see national constitutions and EU law as dynamic systems. The development of primary law and the jurisprudence interpreting this law may lead to the emergence of conflict situations. The possibilities of such conflicts, however, should not be overestimated. They tend to be hypothetical rather than real, principally because the Lithuanian constitutional system consolidates the presumption of compatibility between the Constitution and EU law. This presumption is linked with the constitutionally enshrined principles of *pacta sunt servanda* and the geopolitical orientation of the State of Lithuania and the unity of Lithuanian constitutional values with the values of the EU. “Obviously, once there is the understanding that the full membership of the Republic of Lithuania in the EU is a constitutional imperative and constitutional value, it is presumed that this imperative and value are compatible and complement other values entrenched in the Constitution (in this respect, it can be recalled that the Constitutional Court has held on more than one occasion that all provisions of the Constitution are interrelated to the degree that the content of some provisions of the Constitution creates the content of its other provisions; the provisions of the Constitution form a harmonious system; no provision of the Constitution can be opposed to its other provisions; the nature of the Constitution as the highest-ranking legal act and the idea of constitutionality imply that the Constitution cannot have and does not have any gaps or internal contradictions). Thus, this must also lead to the presumption of the compatibility of EU law with the Constitution.”⁵⁶

⁵⁶ Žalimas, D., “Tarptautinės ir Europos Sąjungos teisės vaidmuo plėtojant oficialią konstitucinę doktriną” [“The Role of International and European Union Law in Developing the Official Constitutional Doctrine”] in *Šiuolaikinės konstitucinės justicijos tendencijos: nacionalinės ir tarptautinės teisės santykis* [Modern Tendencies of Constitutional Justice: The Relation between National and International Law], Vilnius: The Constitutional Court of the Republic of Lithuania, 2014, pp. 310–311.

This presumption is also indirectly affirmed in the ruling of 24 January 2014,⁵⁷ in which the Constitutional Court explicated the concept of unconstitutional constitutional amendments (under the Constitution, it is impermissible to make any amendments to the Constitution that would deny the obligations of Lithuania stemming from its membership in the EU as long as the constitutional foundations of this membership are not annulled by referendum).

The case-law of national courts applies EU law in a variety of ways, which help to avoid the above-mentioned conflicts. These ways include the interpretation of national legal acts (and the constitution) consistently with EU law (i.e. such interpretation is given priority where possible);⁵⁸ the reference by national courts (including constitutional courts) to the Court of Justice for the clarification of the real substance and validity of the EU legal acts causing constitutional problems; the establishment of the links of constitutional provisions with Article 4 of the TEU, in particular with the principle of respect by the EU for the national identities of the Member States (inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government), as well as respect for their essential state functions (including ensuring the territorial integrity of the Member States, maintaining law and order, and safeguarding national security); the reinterpretation of the official constitutional doctrine by a constitutional court in order to remove its inconsistencies with EU law, etc.

The best solution to avoiding potential conflicts in interpretation is judicial cooperation. If a constitutional court faces the questions of the interpretation or validity of EU law when considering the constitutionality of a national legal act related to EU law, it should have recourse to the mechanism of judicial cooperation envisaged in Article 267 of the TFEU. As noted before, this procedure has been used by the Constitutional Court.

Ultimately, there is the possibility of choosing the path of constitutional amendment. This course of action is taken where constitutional provisions can in no other way be brought into conformity with EU law. The constitutional courts of more than one Member State have dealt with issues concerning the ratification of EU treaties or amendments thereto, or have verified legislation designed to ensure compatibility between EU law (e.g. the implementation of the European arrest warrant) and the national constitutions. Following their decisions, some states had to modify particular constitutional provisions.

THE SEIMAS AND THE ADOPTION OF EU LEGISLATION

Accession to the EU involves sharing by state institutions part of their competences and conferring them on the EU. The central role in lawmaking in national legal systems is

⁵⁷ The Register of Legal Acts, 2014, No 2014-00478.

⁵⁸ The presumption of compatibility between the Constitution and EU law makes it possible to assert that EU law is one of the sources for the interpretation of the Constitution as supreme national law.

assumed by the respective parliaments, performing the legislative function. EU legislative functions are exercised by the Council (where the positions of the Member States are represented by the members of the respective governments) jointly with the European Parliament; the European Commission has the right to initiate legislation (except where the Treaties provide otherwise; EU legislative acts may be adopted only on the basis of a proposal from the European Commission; other acts are adopted on its proposal where provided for in the Treaties). The European Council should not remain unmentioned in this context: exercising no legislative functions, it does influence law-making decisions by giving the necessary impetus for the development of the EU and defining the general political directions and priorities.

The governments of the Member States play an active part in the EU legislative process, while the national parliaments stay somewhat in the background. Therefore, in order to bring the EU closer to the European people and reduce the democratic deficit, it is proposed to strengthen the role of the national parliaments in the development of EU norms.

During the pre-accession phase of Lithuania to the EU, one of its tasks was to envisage a national institutional mechanism that would enable Lithuanian institutions to participate in EU legislation. “One of the constituent elements of this mechanism is the role of the Seimas of the Republic of Lithuania in the affairs of the European Union, as consolidated in the Constitutional Act on Membership of the Republic of Lithuania in the European Union”.⁵⁹ With a view to creating the preconditions for the Seimas to take an active part in the EU legislation process, Articles 3 and 4 of the Constitutional Act set out the principal aspects relating to the cooperation between the Seimas and the Government in dealing with EU issues.

Under Article 3 of the Constitutional Act, the Government informs the Seimas about the proposals to adopt the acts of EU law. As regards the proposals to adopt the acts of EU law regulating the areas that, under the Constitution, are related to the competences of the Seimas, the Government consults the Seimas. The Seimas may recommend to the Government a position of the Republic of Lithuania in respect of these proposals. The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may, according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the proposals to adopt the acts of EU law. The Government assesses the recommendations or opinions submitted by the Seimas or its Committees and informs the Seimas about their execution following the procedure established by legal acts.

⁵⁹ Žilinskas, J., “Lietuvos Respublikos Seimo dalyvavimo svarstant Europos Sąjungos reikalus mechanizmas: kūrimas, modelis ir procedūros” [“The Role of the Seimas of the Republic of Lithuania in European Affairs Scrutiny: Drafting, Model, and Procedures”], *Jurisprudencija [Jurisprudence]*, 2005, Vol. 72(64), p. 30.

According to Article 4 of the Constitutional Act, the Government considers the proposals to adopt the acts of EU law under the procedure prescribed by legal acts. As regards these proposals, the Government may adopt decisions or resolutions, whose adoption is not subject to Article 95 of the Constitution.

The foregoing constitutional provisions⁶⁰ lay down the model of the parliament that is actively involved in the EU legislation process. The above-mentioned duty of the Government to inform the Seimas about all proposals to adopt the acts of EU law, its duty to consult the Seimas if these proposals are related to the competences of the Seimas, the right of the Seimas to submit recommendations to the Government, the new role of the Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs (their right to submit opinions to the Government on behalf of the Seimas), the duty of the Government to assess the recommendations or opinions submitted by the Seimas or its committees and inform the Seimas about their execution, as well as the power of the Government to consider, under the established procedure, the proposals to adopt the acts of EU law and its power to adopt relevant decisions or resolutions not subject to Article 95 of the Constitution, are the elements of the constitutional model of active parliamentary involvement in the EU legislation process.

The Lithuanian model of parliamentary involvement in the EU legislation process is fully in line with the direction of EU development. Before the entry into force of the Treaty of Lisbon⁶¹ in EU law, the involvement of the national parliaments in the EU decision-making had received inadequate consolidation in EU primary law; however, under the said treaty, their involvement was significantly broadened; it was recognised that the national parliaments have “a specific role in EU decision-making”.⁶² As specified in Article 12 of the TEU, the national parliaments contribute actively to the good functioning of the EU: through being informed by EU institutions and having draft EU legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the EU; by ensuring that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality; by taking part, within the area of freedom, security, and justice, in the evaluation mechanisms for the implementation of the EU policies in that area and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities; by being notified of applications for accession to the EU; by taking part in the revision procedures of the EU treaties; as well as by taking part in the inter-parliamentary cooperation between the national Parliaments and with the European Parliament.

⁶⁰ In view of implementing these provisions, the Statute of the Seimas was supplemented with the Chapter “Debate on and Addressing European Union Matters”, and amendments were made to other articles of this statute.

⁶¹ The Treaty of Lisbon, having introduced considerable changes to EU primary law, entered into force on 1 December 2009.

⁶² Lenaerts and van Nuffel, footnote 55, p. 614.

Thus, in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality, the national parliaments ensure that the principle of subsidiarity is respected.⁶³ They also assess the implementation of the EU policies in the area of freedom, security, and justice, take part in the revision procedures of the EU treaties, cooperate with the European Parliament, and may object to the EU decisions with cross-border implications in the area of family law.

CONCLUDING REMARKS

It would be correct to assert “[...] that, with international integration permeating every aspect of public life, constitutionalism cannot alone remain intact. The concept of constitutionalism in Europe is evolving in the direction that eventually turns the constitution, traditionally viewed as ‘supreme national law’, where the country is a national state, into a phenomenon that is oriented not just towards a state but towards supranational entities.”⁶⁴ Once membership in the EU gains constitutional significance, there is no reason to assume that this part of constitutional regulation is of secondary importance, albeit at the constitutional level. The provisions of the Constitution laying down the grounds for membership of the Republic of Lithuania in the EU form an integral part of the constitutional system.

The constitutional provisions provide all the necessary prerequisites for full Lithuanian membership in the EU. The constitutionally consolidated principle of the geopolitical orientation of Lithuania, the constitutional stipulation on sharing with or conferring on the EU the competences of Lithuanian state institutions, the constitutional concept of the norms of EU law as a constituent part of the legal system of the Republic of Lithuania, as well as the direct application and primacy of EU norms, allow the successful resolution of issues resulting from the interaction between the national legal system and EU law. The analysis of the Constitution and its constituent parts leads to the presumption of the compatibility between the Constitution and EU law. This presumption is upheld in the jurisprudence of the Constitutional Court.

It is possible to speak of the beginning of the cooperation between the Constitutional Court and the CJEU. The respectful attitude towards EU law is framed in the constitutional

⁶³ Under the principle of subsidiarity as declared in Article 5(3) of the TEU, in areas that do not fall within its exclusive competence, the EU acts only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level. The institutions of the EU apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in the said protocol.

⁶⁴ Kūris, E., “Ekstranacionaliniai veiksniai Lietuvos Respublikos Konstituciniam Teismui aiškinant Konstituciją” [“Extranational Factors in the Course of Interpretation of the Constitution Provided by the Constitutional Court”], *Teisė [Law]*, 2004, Vol. 50, p. 82.

jurisprudence by the provision of the official doctrine stating that the jurisprudence of the CJEU, as a source for the interpretation of law, is equally important for the interpretation and application of Lithuanian law.

Finally, the questions relating to the interaction between the Constitution and EU law do not go unnoticed in scientific doctrine. In the face of the dynamic development of the EU, these studies are helpful in evaluating the sum and substance of the legal reality and wield influence on institutional decisions and case-law.



Vytautas Landsbergis, Chairman of the Supreme Council
of the Republic of Lithuania, signs the Constitution of the Republic of Lithuania.
6 November 1992

Photo by Gediminas Svitojus.

THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA AS THE JURISPRUDENTIAL CONSTITUTION

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INTRODUCTION

The State of Lithuania, as well as its constitutional identity, is based on fundamental values such as state independence, democracy, and the innate nature of human rights and freedoms. Respect for international law and Lithuania's Western (European) geopolitical orientation are also integral parts of the country's constitutional identity. When Lithuania restored its independence on 11 March 1990 and the Constitution of the Republic of Lithuania¹ (hereinafter also referred to as the Constitution) was adopted in the referendum on 25 October 1992, it again became possible to ensure the real and effective protection and defence of these values. The Constitutional Court of the Republic of Lithuania (hereinafter also referred to as the Constitutional Court, the Court), which started performing its constitutional functions in 1993, also became an important guardian of the above values.

The active work of this Court in interpreting the text of the Constitution has led to the approach, which became entrenched in the national legal thought, whereby the Constitution is not only the provisions of the highest-ranking legal act, called the Constitution, but also the constitutional jurisprudence, in which this legal act is interpreted and developed. The need for interpretation is common to all constitutions of the countries of the world. To properly decide a case, the constitutional justice institution must first clarify the content of the constitutional norms and principles, their meaning and interrelations. The original constitutional text is thus transformed into secondary texts – rulings, conclusions and decisions of the Constitutional Court, which formulate the official doctrinal provisions revealing the essence and content of the provisions of the original text. The meaning of the provisions of the Constitution is revealed gradually, formulating the corresponding official constitutional doctrine in concrete cases. The first interpretation may be followed by the second and third interpretation of the same provision. The second interpretation is already bound by the first, and the first and second interpretations bind the third. The constitutional jurisprudence thus ensures the viability of the Constitution and the dynamics of the constitutional system, while guaranteeing its stability. Such

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¹ The Constitution of the Republic of Lithuania, Official Gazette *Valstybės žinios*, 1992, No 33-1014; 1996, No 64-1501, 122-2863; 2002, No 65-2629; 2003, No 14-540, 32-1315, 32-1316; 2004, No 111-1423, 111-4124; 2006, No 48-1701.

conception of the constitution is called a “living” or jurisprudential constitution. According to this conception, the Constitution as legal reality is seen as an inseparable connection between the act called the Constitution and the official constitutional doctrine, formulated in acts passed by the Constitutional Court, which interprets the regulation laid down in the Constitution.

The evolution of the doctrine of Lithuanian constitutional law perfectly illustrates the gradual formation of the new conception of a constitution in Lithuania, which was inspired by the jurisprudence of the Constitutional Court. In the first decade of the activity of the Constitutional Court, there was a scientific discussion on the legal force of acts passed by this Court, and on its role as the negative legislator.² 2002 and 2003 saw the advent of a new paradigm of constitutional law, which was radically different from the previous one by the new concept of the sources of constitutional law – only the Constitution and the Constitutional Court’s acts forming the official constitutional doctrine were deemed to be these sources.³ During this period, a new approach to the Constitution and the interpretation of its provisions began to take shape.⁴ About a decade ago (in 2006), in their works, Lithuanian constitutionalists already started to talk about the formation of the jurisprudential constitution,⁵ and constitutional law became understood as jurisprudential law.⁶ Scientific studies emphasised that the formation of the jurisprudential constitution was confirmed by the qualitative and quantitative parameters of the jurisprudential part of the constitution. The qualitative parameters of the constitutional jurisprudence are reflected by the concept (formulated in the constitutional jurisprudence) concerning the Constitution itself and its interpretation, the explained mission of the constitutional justice institution,

² A number of publications by Kęstutis Lapinskas, Egidijus Jarašiūnas, and Juozas Žilys are aimed at the analysis of these issues, e.g.: Lapinskas, K., “Konstitucinės priežiūros institucijų sprendimų realizavimo problemos” [“The Problems of the Implementation of the Decisions of Institutions of Constitutional Review”], *Konstitucinės priežiūros institucijų sprendimų teisinės galios prigimties, galios ir realizavimo problemos* [The Problems of the Nature of the Legal Force of Decisions Adopted by Institutions of Constitutional Review, Their Powers, and the Realisation of the Decisions] (material of the conference of the Constitutional Court of the Republic of Lithuania and the Constitutional Tribunal of the Republic of Poland), Vilnius: The Constitutional Court of the Republic of Lithuania, 1997, pp. 43–54; Žilys, J., “Konstitucinio Teismo sprendimai – jų teisinė galia” [“Decisions of the Constitutional Court: Their Legal Nature and Force”], *ibid.*, pp. 8–25; Jarašiūnas, E., “Keletas Konstitucinio Teismo, vieno iš konstitucinės doktrinos kūrėjų, veiklos aspektų” [“Certain Features of the Activity of the Constitutional Court as a Creator of the Constitutional Doctrine”], *Jurisprudencija* [Jurisprudence], 1999, No 12(4), pp. 47–57.

³ e.g. Jarašiūnas, E., “Aukščiausioji ir ordinarinė teisė: požiūrio į konstituciją pokyčiai” [“Highest Law and Ordinary Law: Transformation of the Approach to a Constitution”], *Jurisprudencija* [Jurisprudence], 2002, No 33(25), pp. 30–40; Kūris, E., “Konstitucijos aiškinimas, konstitucinės teisės šaltiniai ir besikeičianti konstitucinės teisės paradigma” [“The Interpretation of the Constitution, the Sources of Constitutional Law, and the Changing Paradigm of Constitutional Law”], *Teisės problemos* [Legal Issues], 2003, No 3(41), pp. 8–32.

⁴ e.g. Kūris, E., “Konstitucijos dvasia” [“The Spirit of the Constitution”], *Jurisprudencija* [Jurisprudence], 2002, No 30(22), pp. 16–31.

⁵ Jarašiūnas, E., “Jurisprudencinė konstitucija” [“The Jurisprudential Constitution”], *ibid.*, 2006, No 12(90), pp. 24–33.

⁶ Kūris, E., *Konstitucinė teisė kaip jurisprudencinė teisė: konstitucinė justicija ir konstitucinės teisės paradigmos transformacija Lietuvoje* [Constitutional Law as Jurisprudential Law: Constitutional Justice and the Transformation of the Paradigm of Constitutional Law in Lithuania] (review of scientific works submitted for the habilitation procedure), Vilnius, 2008.

the metamorphosis of constitutional norms resulting in a network of clear and specified verification rules, the application of the norms and principles officially interpreted on more than one occasion, the fact that any further constitutional interpretation is bound by formulated grounds for interpretation, and the highlighted system of constitutional values. The quantitative parameters of such a constitution are these: the majority of the provisions of the constitution have already been interpreted, the same norms or principles have been interpreted repeatedly, various aspects and elements of the constitutional regulation have been revealed.⁷

In this context, the question inevitably arises regarding a further perspective on, and the situation of, the entrenchment of the concept of the jurisprudential constitution in Lithuania. Thus, the study object of this chapter of the book is the concept of the jurisprudential constitution, the situation of its formation and entrenchment, as well as its perspectives in Lithuania. In order to completely and accurately disclose these processes, this chapter of the book analyses, first of all, the place of the Constitutional Court, as the official formulator of the constitutional doctrine, in the Lithuanian constitutional system, as well as the scope and limits of the powers of this Court; this chapter also deals with issues such as the problems of the concept of the Constitution, the interpretative mission of the Constitutional Court, the methodology of interpreting the Constitution, and, lastly, it provides an outline of the jurisprudential constitution, containing such provisions of the official constitutional doctrine formulated by the Constitutional Court that were most significant for the development of the state and society, which will help the reader to discover the actual degree of the entrenchment of the living, jurisprudential Constitution in Lithuania.

1. The Constitutional Court as the Institution of Constitutional Justice

The Constitution of the Republic of Lithuania, which was adopted in the 25 October 1992 referendum, envisaged an institution of constitutional justice – the Constitutional Court – for the first time in the state’s history.⁸ An institution that, according to Mykolas Romeris, in fact represents the highest attainable degree of legality.⁹ At the time when the Constitution of the Republic of Lithuania was drafted and adopted, the Constitutional Courts had already been functioning in Bulgaria, Poland, Hungary, Romania, the Czech Republic, Slovakia, Slovenia, as well as Bosnia and Herzegovina; consequently, it was an objective process, which showed people’s efforts to seek the guarantees offered by

⁷ Jarašiūnas, footnote 5, p. 32.

⁸ Despite the fact that, in 1918–1940, in the constitutional system of the Republic of Lithuania, there was an officially declared principle regarding the compliance of laws with the Constitution, there was no mechanism of the legal enforcement of this principle.

⁹ Romeris, M., *Konstitucinės ir teisimo teisės pasieniuose [On the Margins of Constitutional and Judicial Law]*, Vilnius: Pozicija, 1994, p. 3.

democratic constitutionalism.¹⁰ Thus, Lithuania, as most other countries of the Central and Eastern Europe, chose the European (centralised) model of constitutional justice, according to which constitutional review is carried out by a special institution – the Constitutional Court. Some of the factors that determined such a choice were these: the fact that Lithuania belongs to the area of continental law, the ideas spread by Mykolas Romeris about the necessity to control the constitutionality of laws, the discussions about the significance of the Constitutional Court that took place in the period of the restoration of the State, the legal thought of Western countries, and the evident triumph of this model in European countries at the end of the 20th century.

According to the Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania, which was adopted together with the Constitution in the referendum, nine justices of the Constitutional Court and, from among them, the President of the Constitutional Court, had to be appointed not later than one month after the election of the President of the Republic. Implementing the Constitution and the aforementioned law, on 3 February 1993, the Seimas of the Republic of Lithuania adopted the Law on the Constitutional Court of the Republic of Lithuania, and, in February and March of 1993, appointed all justices, as well as the President, of the Constitutional Court. On 2 August 1993, the Constitutional Court announced that from that day it would begin to officially register petitions requesting to investigate whether legal acts comply with the Constitution. The first constitutional justice case was examined at a hearing of the Constitutional Court on 15 September of the same year and the ruling delivered in the case was published on 17 September. Therefore, it is possible to call it the day when the creation of the jurisprudential Constitution started.

The provisions of the constitutions of the countries of the Central and Eastern Europe that were adopted at the end of the 20th century establish the manner of forming a Constitutional Court, the jurisdiction assigned to this Court, requirements to be met by candidates for the position of a justice of the Constitutional Court, the term of office of justices, the independence guarantees of the Court and justices, and the legal force of decisions of the Court. The status of the Constitutional Court is usually defined in a separate section of the Constitution (see the Constitutions of Bulgaria, Hungary, Romania, Slovakia, Slovenia, etc.) or these provisions constitute a subsection of the constitutional section establishing the position of the judiciary (as in the Czech and Polish Constitutions).¹¹ The Constitution of the Republic of Lithuania is no exception: it defines the position of

¹⁰ Žilys, E., “Lietuvos Respublikos Konstitucinis Teismas konstitucinėje sistemoje” [“The Constitutional Court of the Republic of Lithuania in the Constitutional System”] in Birmontienė, T. (and others), *Lietuvos konstitucinė teisė: raida, institucijos, teisių apsauga, savivalda* [Lithuanian Constitutional Law: Its Evolution, Institutions, Rights Protection, Self-government], Vilnius: The Publishing Centre of Mykolas Romeris University, 2007, p. 263.

¹¹ Jarašiūnas, E., “Lietuvos Respublikos Konstitucinis Teismas ir žmogaus teisių apsauga” [“The Constitutional Court of the Republic of Lithuania and the Protection of Human Rights”] in Jarašiūnas, E. and others, *Žmogaus teisių apsaugos institucijos* [The Institutions for the Protection of Human Rights], Vilnius: The Publishing Centre of Mykolas Romeris University, 2009, p. 215.

the Constitutional Court in a separate Chapter VIII of the Constitution, titled “The Constitutional Court”, which consists of Articles 102–108. The said constitutional chapter provides, *inter alia*, that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws. The Constitution also governs the procedure of forming the Constitutional Court, regulates who has the right to apply to it, establishes the status of its justices and the legal consequences of acts adopted by the Constitutional Court.

The concept of the Constitutional Court as a special judicial institution is disclosed in the constitutional jurisprudence, which, by the way, is unique in that the Constitutional Court confronted a case, in which it passed its ruling of 6 June 2006, where it had to decide on its own concept (it seems, no other constitutional court has had to consider a similar case so far).¹² In the said case, a group of members of the Seimas, the petitioner, suggested that the Constitutional Court should “self-destruct”.¹³ In this case, subsequent to the petition of the group of the members of the Seimas, the Constitutional Court examined the constitutionality of the title “The Constitutional Court as a Judicial Institution” of Article 1 of the Law on the Constitutional Court and Paragraph 3 of the same article, whereby the Constitutional Court is a free and independent court that implements its judicial power according to the procedure established by the Constitution and this law. In essence, the doubts of the petitioner were based on the fact that the provisions concerning the Constitutional Court were consolidated in a separate, previously mentioned, Chapter VIII of the Constitution, titled “The Constitutional Court”, but not in Chapter IX “Courts”. According to the petitioner, this meant that the Constitutional Court was not a court. In the opinion of the petitioner, it followed that the Constitutional Court did not execute state power, either, because, under Paragraph 1 of Article 5 of the Constitution, state power is executed, *inter alia*, by the Judiciary, but not by the Constitutional Court.

In its ruling of 6 June 2006, the Constitutional Court removed the doubts set out in the petition and stated that the Constitutional Court is an institution implementing state power, a free and independent court, which administers constitutional justice and guarantees constitutional legality and the supremacy of the Constitution in the legal system. In this ruling, the Constitutional Court emphasised that, in its constitutional nature, a state power institution that is named as a court in the Constitution itself must be regarded as a court, i.e. as a judicial institution. The mere detail that, in the Constitution, there are two separate chapters “The Constitutional Court” and “Courts” is not and may not serve as a basis for maintaining that the Constitutional Court is not a court – a part of the judiciary – and is somewhere beyond the boundaries of the judicial system. On the contrary, this

¹² The Constitutional Court’s ruling of 6 June 2006, Official Gazette *Valstybės žinios*, 2006, No 65-2400.

¹³ See Kūris, E., “Konstitucija kaip teisė be spragų” [“The Constitution as Law Without Gaps”], *Jurisprudencija* [Jurisprudence], 2006, No 12(90), p. 8.

detail does not deny the fact that the Constitutional Court (which, under the Constitution, carries out constitutional judicial control) is a part of the judicial system, but emphasises the particular status of this Court in the system of judicial power, as well as in the system of all state institutions exercising state power. The Constitutional Court is an institution implementing state power, since, under the Constitution, it has the powers to declare legal acts of other institutions that implement state power – the Seimas, the President of the Republic, the Government – to be in conflict with higher-ranking legal acts and, first of all, with the Constitution, and, thus, to abolish the legal force of such legal acts and remove them from the Lithuanian legal system for good; in addition, the constitutional powers of the Constitutional Court make it the sole official interpreter of the Constitution – the said powers enable it to present the concept of the provisions of the Constitution where such a concept is binding on all law-making and law-applying institutions, including the Seimas, the representation of the nation.

The effective administration of constitutional justice, the guaranteeing of constitutional legality and the supremacy of the Constitution in the legal system, i.e. the real implementation of the mission of the Constitutional Court and the formation of the jurisprudential Constitution, are inseparable, *inter alia*, from the powers (their scope and limits) conferred on the Constitutional Court. The provisions of the Constitution of the Republic of Lithuania that establish the powers of the Constitutional Court are formulated rather laconically. Thus, like other provisions of the Constitution, they require interpretation. The sole official interpreter of the Constitution is the Constitutional Court. Therefore, in order to fully understand the scope of constitutional powers (*inter alia*, their content and limits) of the Constitutional Court, it is necessary to become familiar with the jurisprudence of this Court, as this jurisprudence reveals the content of the powers of the Constitutional Court that stem from the Constitution. The interpretation of the powers of the Constitutional Court presented in the official constitutional doctrine is a clear reflection of the jurisprudential Constitution.

2. The Powers of the Constitutional Court

2.1. Control over the constitutionality of legal acts

The primary and main competence of constitutional courts, which justifies their existence, is control over the constitutionality of legal acts. In this way, constitutional courts carry out their duty to remove unconstitutional provisions from the respective legal systems. The instruments (their scope and limits) of implementing this duty in different countries are not identical.

The Constitutional Court of the Republic of Lithuania carries out the constitutionality verification of legal acts adopted by the highest legislative and executive institutions. For this purpose, the model of *ex post facto* (repressive, *a posteriori*)

constitutional review was chosen. Control over the constitutionality of laws is, in quantity terms, the main competence of the Constitutional Court, since the vast majority of cases at the Court are initiated precisely because of the compliance of legal acts with higher-ranking legal acts and, first of all, with the Constitution.¹⁴

Objects of constitutional review. In order to understand the scope of the powers of the Constitutional Court, we must answer the first question: which legal acts are included in the list of objects subject to constitutional review? The competence of the Constitutional Court to exercise control over the constitutionality of legal acts is defined in Paragraph 1 of Article 102 and Paragraphs 1 and 2 of Article 105 of the Constitution. Paragraph 1 of Article 102 of the Constitution stipulates that the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws. Paragraphs 1 and 2 of Article 105 of the Constitution provide that the Constitutional Court considers and adopts decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court also considers whether the following are in conflict with the Constitution and laws: (1) the acts of the President of the Republic; (2) the acts of the Government of the Republic.

It should be noted that the constitutional provisions defining the competence of the Constitutional Court to control the constitutionality of legal acts are formulated very laconically. Thus, if the provisions of the Constitution were interpreted only formally (literally), the constitutionality of a big number of legislative decisions taken by the Seimas, the President of the Republic, and the Government would remain unchecked. In view of the laconic wording of the Constitution and in order to effectively implement its constitutional mission, the Constitutional Court itself had to formulate a comprehensive official constitutional doctrine specifying laws and other legal acts whose compliance with the Constitution may be investigated by the Constitutional Court. The essence of this doctrine can be expressed by the statement that no decision (legal act) adopted by a legislative subject may have immunity from constitutional review.

In fact, as stated in the constitutional jurisprudence, Article 102 of the Constitution may not be interpreted as providing a comprehensive and exhaustive list of such legal acts the investigation into the compliance of which with higher-ranking legal acts, *inter alia*

¹⁴ Kūris, E., “Konstitucinis Teismas” [“The Constitutional Court”] in Kūris, E. (comp. and scien. ed.), *Lietuvos teisinės institucijos [Lithuanian Legal Institutions]* (textbook of Vilnius University), Vilnius: The Centre of Registers, 2011, p. 81. The statistical information provided on the website of the Constitutional Court indicates that, in 1993–2015, the Constitutional Court was addressed 1 107 times: 1 045 petitions were received requesting an investigation into the constitutionality of legal acts, 16 inquiries were received requesting conclusions, and 46 petitions were received requesting the interpretation of the provisions of the final acts of the Constitutional Court. The vast majority of the petitions were filed by courts. Statistical data on the requests and inquiries received at the Constitutional Court in 1993–2015, www.lrkt.lt/data/public/uploads/2016/03/20160301_statistiniai_duomenys.pdf [accessed 1 June 2016].

(and, first of all), with the Constitution, as well as the adoption of related decisions, is assigned to the jurisdiction of the Constitutional Court under the Constitution. According to the Constitutional Court, a literal (let alone narrowing) interpretation of Paragraph 1 of Article 102 of the Constitution would be completely unreasonable, since it would deny the principle of the supremacy of the Constitution, the constitutional principle of a state under the rule of law, the hierarchy of all legal acts that stems from the Constitution, the provision of the Constitution that any law or other act that contradicts the Constitution is invalid, the provision of the Constitution that the scope of power is limited by the Constitution, and the provision that everyone may defend his/her rights by invoking the Constitution. If a mere literal interpretation of Paragraph 1 of Article 102 of the Constitution were followed, the preconditions would also be created for violating other values (*inter alia*, the constitutional rights of a person) that are consolidated, defended, and protected by the Constitution. If the Constitution were interpreted only by applying the linguistic method and literally, it could not be the supreme law of Lithuania, as it would be virtually identified with its textual form – the letter of the Constitution would be made absolute and the spirit of the Constitution would be ignored.¹⁵

The Constitutional Court has held in its acts on more than one occasion that the Constitution (and law in general) may not be interpreted only literally, by applying exclusively the linguistic (verbal) method of the interpretation of law. If the literal (linguistic, verbal) interpretation of the Constitution were made absolute, the content of the overall constitutional legal regulation would also be devalued and, if not all, then at least some values entrenched in and defended and protected by the Constitution would be ignored, and, possibly, the preconditions would be created for trampling on the aspirations consolidated by the nation in the Constitution adopted by referendum. Neither the literal (linguistic, verbal) method of the interpretation of the Constitution, nor any other method of interpretation may be treated as an absolute rule. When interpreting the Constitution, various methods of the interpretation of law must be applied: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc.; only such comprehensive interpretation of the Constitution may provide the conditions for the realisation of the mission of the Constitution as a social contract and the highest-ranking legal act, and for ensuring that the meaning of the Constitution will not be deviated from, that the spirit of the Constitution will not be denied, and that the values that were consolidated by the nation in the Constitution adopted by it will be upheld in real life.¹⁶

In accordance with such non-literal (not formal, but broad and overall) interpretation of the Constitution, based on, *inter alia*, the supremacy of the Constitution, the constitutional principle of a state under the rule of law, the implementation of

¹⁵ The Constitutional Court's ruling of 28 March 2006, Official Gazette *Valstybės žinios*, 2006, No 32-1292.

¹⁶ See, e.g. the Constitutional Court's ruling of 6 June 2006, *ibid.*, 2006, No 65-2400.

constitutional justice, and the hierarchy of all legal acts that stems from the Constitution, the Constitutional Court has indicated in its jurisprudence (case by case) a number of legal acts that are not mentioned *expressis verbis* in Articles 102 and 105 of the Constitution, but may be subject to constitutional review, as, for instance:

Amendments to the Constitution. Although the Constitution does not contain explicit provisions directly establishing the powers of the Constitutional Court to assess the compliance of constitutional amendments with the Constitution, it is held in the jurisprudence of the Constitutional Court that the Constitutional Court has the powers to investigate the constitutionality of laws adopted by the Seimas on amending the Constitution.¹⁷ In view of the fact that any act (part thereof)¹⁸ adopted by referendum is subject to constitutional review, which is carried out by the Constitutional Court, the conclusion should be drawn that the powers of the Constitutional Court also include the review of the constitutionality of constitutional amendments adopted by referendum. Thus, the Constitutional Court may investigate the constitutionality of amendments to the Constitution adopted either by the Seimas or by referendum.

The idea of the judicial constitutional review of constitutional amendments is based on the fact that the constitutional court must ensure that the legislature (as well as the nation, directly implementing its sovereign powers in referendums) would implement its powers, including those in the area of constitutional amendments, under the procedure established in the constitution. Thus, the judicial review of constitutional amendments is one of the ways to ensure the supremacy of the constitution.

In this context, it should be noted that, in general, in the constitutions of states around the world, the possibility of the review of the constitutionality of constitutional amendments is rarely mentioned *expressis verbis* (such explicit provisions can be found in the Hungarian, Moldovan, Romanian, Turkish, and Ukrainian Constitutions); therefore, naturally, legal provisions concerning the constitutionality of constitutional amendments are revealed in the official constitutional doctrine formulated when constitutional justice institutions decide various constitutional justice cases related to the amendments of the constitutions. If the judicial constitutional review of constitutional amendments is not explicitly consolidated in the constitution or law regulating the activity of the constitutional court, it should be understood as implicitly stemming from the *raison d'être* of constitutional courts as the guardians of the constitution. The judicial constitutional review of constitutional amendments is an immanent function of constitutional justice.

¹⁷ In its ruling of 24 January 2014, the Constitutional Court recognised that the Law Amending Article 125 of the Constitution, in view of the procedure of its adoption, was in conflict with Paragraph 1 of Article 147 of the Constitution. On the doctrine of the constitutionality of amendments to the Constitution, see Subsection 5.3 of Section 5 of this chapter.

¹⁸ The Constitutional Court's ruling of 28 March 2006, Official Gazette *Valstybės žinios*, 2006, No 36-1292; the Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

Acts adopted by referendum. According to Article 9 of the Constitution, the most significant issues concerning the life of the State and the nation are decided by referendum. The Constitutional Court, when interpreting Paragraph 1 of Article 102 of the Constitution in the context of the constitutional legal regulation, has also held on more than one occasion that, under the Constitution, the Constitutional Court has the powers to investigate and decide whether any act (part thereof) adopted by referendum is in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution.

Constitutional laws. Lithuanian legal system is characterised by the fact that the Constitution envisages not only ordinary, but also constitutional laws. The official constitutional doctrine notes that, in view of the procedure of their adoption and amendment, constitutional laws are different from other laws.¹⁹ The special place of constitutional laws in the system of legal acts is determined by the Constitution itself. Constitutional laws may not be amended or repealed by law. Thus, it is ensured that social relations regulated by means of constitutional laws would not be regulated differently by adopting laws and that the greater stability of social relations regulated by means of constitutional laws would be guaranteed. It should be noted that constitutional laws must not be in conflict with the Constitution, and laws must not be in conflict with the Constitution and constitutional laws. Under the Constitution, the Constitutional Court decides whether a constitutional law is in conflict with the Constitution or whether a law is in conflict with a constitutional law.

Laws and the Statute of the Seimas. The constitutional review carried out by the Constitutional Court also covers the compliance of any law (part thereof), as well as that of the Statute of the Seimas (or part thereof), which has the force of a law, with the Constitution and constitutional laws.²⁰

Legal acts ranking lower than laws. Under the Constitution, the Constitutional Court has the exclusive competence to investigate and decide whether any substatutory legal act (part thereof) passed by the Seimas (for example, a resolution of the Seimas to call, or not to call, a referendum,²¹ or a resolution of the Seimas on the implementation of laws²²) is in conflict with the Constitution, constitutional laws, laws, and the Statute of the Seimas;²³ also whether any act (part thereof) issued by the President of the Republic is in conflict with the Constitution, constitutional laws, or laws; and whether any act (part thereof) passed by the Government is in conflict with the Constitution, constitutional laws, or laws. Under the Constitution, the Constitutional Court has the powers to investigate the compliance of substatutory legal acts with the Constitution and laws, regardless of whether these acts

¹⁹ The Constitutional Court's ruling of 2 April 2001, Official Gazette *Valstybės žinios*, 2001, No 29-938, corrigendum, 06-04-2001, No 30; the Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

²⁰ The Constitutional Court's ruling of 26 November 1993, *ibid.*, 1993, No 66-1260; the Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

²¹ The Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

²² *Inter alia*, the Constitutional Court's ruling of 5 March 2004, Official Gazette *Valstybės žinios*, 2004, No 38-1236, corrigendum, 20-04-2004, No 57.

²³ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

are individual or regulatory in nature, or whether they have one-off (*ad hoc*) application or permanent validity.²⁴

The important thing is that legal acts that have indirect applicability also fall under the control of the Constitutional Court. For instance, in its 24 September 2009 ruling,²⁵ the Constitutional Court recognised that it also has the powers to assess the constitutionality of such substatutory acts passed by the Seimas and the Government that are not normative in nature, i.e. such legal acts that do not contain any legal regulation (legal norms). In the said constitutional justice case, which gave rise to that ruling, the petitioner impugned, among other things, the provisions of the conception for the organisation of national defence policies, which had been approved by a resolution of Seimas and a resolution of the Government. In the said ruling, the Constitutional Court held that the constitutionality of these provisions had to be assessed from the aspect of their content on the basis of which the relevant legislative processes were to take place.²⁶

Marking legal acts “top secret”, “secret”, “confidential”, or assigning to them any other security classification where these legal acts fall under the judicial control of the Constitutional Court does not preclude this Court from exercising its powers to carry out the constitutionality review of the said legal acts.²⁷ By its ruling of 5 April 2000, the Constitutional Court declared unconstitutional a government resolution marked “top secret”. Despite the requirement to publish it in the Official Gazette *Valstybės žinios*, this had not been done. The Constitutional Court examined the case in closed session, but the ruling was pronounced publicly in the courtroom. The ruling was officially published in the Official Gazette *Valstybės žinios*, as the official publication of all final acts of the Constitutional Court is imperatively required by the Constitution.

The Constitutional Court must also examine the constitutionality of laws and other legal acts regulating the legal status of judges (*inter alia*, their social (material) guarantees²⁸). The Constitutional Court also has such powers in cases where an impugned legal regulation is designed to consolidate the powers of the Constitutional Court itself, the proceedings at the Constitutional Court, and the general elements (which are also typical of the status of judges of other courts) and particularities (*inter alia*, powers, guarantees) of the status of justices of the Constitutional Court.²⁹

²⁴ The Constitutional Court’s ruling of 30 December 2003, *ibid.*, 2003, No 124-5643.

²⁵ The Constitutional Court’s ruling of 24 September 2009, *ibid.*, 2009, No 115-4888.

²⁶ As regards the powers of the Constitutional Court to investigate such provisions of substatutory legal acts (*inter alia*, constituent parts thereof) adopted by the Seimas that express the will of the Seimas on a future legal regulation of certain social relations and that constitute the basis for drafting and adopting relevant legal acts, also see the Constitutional Court’s ruling of 28 September 2011, *ibid.*, 2011, No 118-5564.

²⁷ The Constitutional Court’s ruling of 5 April 2000, *ibid.*, 2000, No 30-840.

²⁸ *Inter alia*, the Constitutional Court’s rulings of 12 July 2001 (*ibid.*, 2001, No 62-2276, corrigendum, 2001, No 86), 22 October 2007 (*ibid.*, 2007, No 110-4511), 29 June 2010 (*ibid.*, 2010, No 134-6860), and 14 February 2011 (*ibid.*, 2011, No 20-967).

²⁹ The Constitutional Court’s ruling of 22 October 2007, *ibid.*, 2007, No 110-4511.

In addition, the legal acts examined by the Constitutional Court need not even be in effect. In its broadly reasoned ruling of 28 March 2006, the Constitutional Court presented the concept of its powers to investigate the constitutionality of invalid legal acts. The concept of such powers was developed by differentiating the subjects, referred to in Article 106 of the Constitution, that have the powers to apply to the Constitutional Court and by evaluating the exclusive duty of courts to administer justice.

According to the above article, not less than 1/5 of all the members of the Seimas, the President of the Republic, the Government, as well as courts, have the right to apply to the Constitutional Court. The official constitutional doctrine eventually consolidated the provision that, in cases where not courts, but the other subjects (the President of the Republic, the members of the Seimas, the Seimas *in corpore*, the Government) specified in Article 106 of the Constitution apply to the Constitutional Court and where an impugned legal act (part thereof) is no longer valid, the Constitutional Court has the powers, by taking account of the circumstances of a considered case, to dismiss the instituted legal proceedings; however, the Constitutional Court need not dismiss the instituted legal proceedings in every situation when an impugned legal act is no longer valid. In other words, when the Constitutional Court is addressed by politicians and a legal act impugned by them is no longer valid, the Constitutional Court normally dismisses the initiated legal proceedings; a contrary decision may be triggered only by the significance of an impugned legal act or the consequences that it has caused. Meanwhile, when a court considering a case applies to the Constitutional Court after it has doubts concerning the compliance of a law or another legal act applicable in that case with the Constitution (another higher-ranking legal act), the Constitutional Court has the duty to consider the petition of the court regardless of the fact whether the impugned law or another legal act is valid or not.³⁰

Otherwise, if the Constitutional Court did not examine the compliance of invalid legal acts with higher-ranking legal acts, *inter alia*, the Constitution, the doubts of the court over the constitutionality of the legal act would not be removed; if doubts on the constitutionality of the legal act applicable in a case considered by the court were not removed, there would be the possibility that the constitutional rights and freedoms of persons would be violated; this could create the preconditions for such situations where certain state institutions that pass laws and other legal acts the verification of the constitutionality of which is assigned to the jurisdiction of the Constitutional Court would also be able to operate in a manner where the impugned legal regulation, after its transfer to a new legislation, continues to apply. In other words, the administration of justice would become impossible in general.

In this context, it should also be noted that, in its decision of 13 November 2007, the Constitutional Court held that, even in such situations where courts apply to the

³⁰ Such a conception of the powers of the Constitutional Court was for the first time presented in the Constitutional Court's ruling of 5 April 2000, *ibid.*, 2000, No 30-840.

Constitutional Court after they, in the course of the administration of justice, have doubts about the compliance of a lower-ranking legal act with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, the Constitutional Court need not consider a case where a relevant legal act is not only invalid (since the compliance of invalid legal acts with higher-ranking legal acts may be investigated and is normally investigated), but also not applicable at all (i.e. it does not apply in general, and not solely in the case considered by a particular court that applied to the Constitutional Court with a relevant petition). This circumstance (as well as all other circumstances that are relevant in a concrete case) must always be evaluated when the law on the state budget and local budgets or another act intended for a given budget period is impugned.³¹

The developed official constitutional doctrine has also resulted in the powers of the Constitutional Court to investigate the constitutionality of laws and other acts (parts thereof) that are adopted by the Seimas and are officially published regardless of the date of application of these laws and other legal acts (parts thereof).³²

The Constitutional Court examines acts that need not be issued after the entry into force of the Constitution. The Law on the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania of 25 October 1992, which is a constituent part of the Constitution, stipulates that laws, as well as other legal acts or parts thereof, that were in force on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania are effective inasmuch as they are not in conflict with the Constitution and this law, and remain in force until they are either declared null and void or brought in line with the provisions of the Constitution. The Constitutional Court has noted that the constitutionality of legal acts (or parts thereof) that were not harmonised with the Constitution or declared as no longer valid may be verified by exercising constitutional review. According to the Constitution, the Constitutional Court decides as to the constitutionality of the Republic of Lithuania's laws and other acts adopted by the Supreme Council (Reconstituent Seimas), government acts that were adopted prior to the entry into force of the Constitution, as well as of legal acts of a certain level that were adopted before the restoration of the independent State of Lithuania, remained in force after the restoration of the independent State of Lithuania, and continue to regulate the relations that belong to sphere of the regulation by the Seimas or the Government.³³

The legislative omission. The Constitutional Court also examines legislative omissions – legal gaps prohibited by law and, above all, by the *ius supremum* (the Constitution). The text of the Constitution does not stipulate *expressis verbis* that the

³¹ The Constitutional Court's decision of 13 November 2007, *ibid.*, 2007, No 118-4830.

³² The Constitutional Court's ruling of 19 September 2002, *ibid.*, 2002, No 93-4000. This ruling was passed in the constitutional justice case in which the Constitutional Court considered the constitutionality of a law that had been officially published, but not yet applicable.

³³ The Constitutional Court's ruling of 29 October 2003, *ibid.*, 2003, No 103-4611; the Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

Constitutional Court may determine the presence or absence of a legal gap. Still, the powers of the Constitutional Court to examine the constitutionality of certain types of gaps, i.e. legislative omissions, stem from the Constitution and are revealed in the jurisprudence of the Constitutional Court.

The official constitutional doctrine³⁴ notes that a legislative omission means that a certain legal regulation is not established in a particular legal act (part thereof), although, under the Constitution (or under some other higher-ranking legal act in cases where the Constitutional Court assesses the compliance of a certain lower-ranking legal act (part thereof) with the said other higher-ranking legal act), it must be established precisely in that legal act (or precisely in that part thereof). Most importantly, a legislative omission differs from other legal gaps in that it is always the consequence of an action made by a law-making subject that issued a particular legal act, but not that of its failure to act; moreover, it is not the consequence of an action (especially, a lawful one) or the failure to act by any other subject. For instance, such a legal gap where certain social relations were not even begun to be regulated by certain legal acts, although there exists a need for their legal regulation, is not to be regarded as a legislative omission. In the same way, a legislative omission cannot occur after the Constitutional Court by its ruling recognises in a constitutional justice case that a certain legal act is in conflict with a higher-ranking legal act, *inter alia*, with the Constitution.

The “detection” of a legislative omission *par excellence* in a lower-ranking legal act constitutes, if this is necessary because of the logic of the considered constitutional justice case, sufficient grounds for ruling the aforesaid legal act (part thereof) to be in conflict (to a certain extent, i.e. to the extent that the legal act (part thereof) does not consolidate the legal regulation required by higher-ranking legal acts, *inter alia* (and, first of all), by the Constitution) with the Constitution (another higher-ranking legal act).

Thus, according to the official constitutional doctrine, the subjects listed in Article 106 of the Constitution may also ask the Constitutional Court to examine and assess a legislative omission. However, the important point is that the Constitutional Court accepts a petition that impugns a real or alleged legal gap, *inter alia*, a legislative omission, only under the conditions formulated in the constitutional jurisprudence,³⁵ namely:

(a) if laws or other lower-ranking legal acts (parts thereof) do not establish a certain legal regulation, the Constitutional Court has the constitutional powers to rule such laws or other legal acts (parts thereof) to be in conflict with the Constitution or other higher-ranking legal acts in cases where the failure to lay down the said legal regulation in precisely the laws or other legal acts being examined (precisely in the parts thereof being examined) may lead to a violation of the principles and/or norms of the Constitution or the provisions of other higher-ranking legal acts;

³⁴ The Constitutional Court’s decision of 8 August 2006, *ibid.*, 2006, No 88-3475, corrigendum, 2006, No 137.

³⁵ See *ibid.*

(b) in cases where a law or another legal act (part thereof), impugned by a petitioner, does not establish a certain legal regulation that, under the Constitution (and also under laws in cases where a statutory act (part thereof) is impugned), need not be established in precisely the impugned legal act (in precisely that part thereof), the Constitutional Court holds that a matter for investigation is absent in the case on the request of the petitioner and that this constitutes grounds for dismissing the instituted legal proceedings (if a relevant petition was accepted at the Constitutional Court and the preparation of a constitutional justice case for the hearing of the Constitutional Court began) or for dismissing the case (if the constitutional justice case has already been considered at the hearing of the Constitutional Court);

(c) in addition, it is necessary to take into account how the said legal gap occurred, i.e. whether it is a legislative omission created by means of a law-making action of the subject that passed a certain legal act, or whether this legal gap occurred due to other circumstances, for example, due to the fact that, by its ruling, the Constitutional Court recognised that the legal regulation in a certain lower-ranking legal act (part thereof) was in conflict with the Constitution or another higher-ranking legal act. In the second case, there are no grounds for stating that there is a legislative omission. On the contrary, in such a situation, a relevant law-making subject (provided particular legal relations must be legally regulated) has the obligation, under the Constitution, to change the legal regulation declared illegal so that a newly established legal regulation would not be in conflict with a relevant higher-ranking legal act (and, first of all, the Constitution).

When discussing constitutional control objects, it is important to note that, under the Constitution, the Constitutional Court carries out the verification of the constitutionality of only the legal acts passed by the highest legislative and executive institutions. In other words, it has no power to consider and determine the constitutionality of legal acts adopted by other subjects (except those passed by the Seimas, the President of the Republic, and the Government, as well as legal acts adopted by referendum).³⁶

Still, under the Constitution, such legal situations are impermissible where it would not be possible to verify in a court whether legal acts (parts thereof), *inter alia*, legal acts issued by ministers, other lower-ranking legal acts, as well as legal acts issued by

³⁶ This was the reason why, for example, in its decision of 29 September 1999, the Constitutional Court refused to consider the petition requesting an investigation into the compliance of an act adopted by a prosecutor with higher-ranking legal acts. It is important to note that, under the Constitution, the Constitutional Court has the powers to investigate the constitutionality of legal acts adopted only by the Seimas *in corpore*. Thus, under the Constitution, the Constitutional Court has no authority to investigate legal acts adopted by commissions of the Seimas or its other structural units. See, in this regard, the decision of 16 April 2004 (Official Gazette *Valstybės žinios*, 2004, No 57-2006, corrigendum, 2004, No 107), in which the Constitutional Court refused to consider the filed petition to the extent that it requested an investigation into the compliance of an act (as well as individual items thereof) adopted by a special investigation commission formed by the Seimas with the Constitution, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and those of the Statute of the Seimas, since the said petition was not within the jurisdiction of the Constitutional Court.

institutions of local municipalities, the control of which as regards their compliance with the Constitution does not fall within the jurisdiction of the Constitutional Court, are in conflict with the Constitution and laws. At present, the administrative courts, *inter alia*, the Supreme Administrative Court of Lithuania, have the powers to investigate the compliance of legal acts ranking lower than the laws adopted by the Seimas or the legal acts issued by the President of the Republic or the Government with the Constitution and laws.³⁷ If an administrative court rules such a legal act to be in conflict with the Constitution (another higher-ranking legal act), then, under the Constitution and laws, such a decision of the said court has *erga omnes* impact on the whole practice of the application of relevant legal acts (parts thereof).³⁸

In this context, it should be observed that the European Commission for Democracy through Law (Venice Commission), acting as the Council of Europe's advisory body on constitutional matters, has confirmed the positivity of such a legal model where the investigation into the constitutionality of lower-ranking legal acts is entrusted not to the constitutional court, but to another court (a court of general jurisdiction or a specialised court).³⁹

Limits of constitutional control. As mentioned above, constitutional control carried out by the Constitutional Court is based on the provision that no lower-ranking legal act may contradict a higher-ranking legal act and, first of all, the Constitution. Therefore, since the very beginning of its activities, the Constitutional Court has consistently stated that it does not investigate the issues of the harmonisation or competition of legal acts that have the same legal force.⁴⁰

The Constitutional Court has also consistently stressed that, according to the Constitution and the Law on the Constitutional Court, petitions raising not the issues of the constitutionality of legal acts, but those of the interpretation and application of legal acts, are not within the jurisdiction of the Constitutional Court. As stated in the official constitutional doctrine, questions of law are decided by an institution that has the powers to apply legal acts. The issues of the application of law that have not been solved by the legislature are a matter of judicial practice. Thus, petitions requesting the interpretation as

³⁷ Also see, in this respect, e.g. the Constitutional Court's decision of 20 September 2005, Official Gazette *Valstybės žinios*, 2005, No 113-4132.

³⁸ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

³⁹ Study No CDL-AD(2010)039rev of 27 January 2011 on individual access to constitutional justice, adopted by the Venice Commission at its 85th plenary session (17–18 December 2010), p. 5, paragraph 6.

⁴⁰ *Inter alia*, the Constitutional Court's ruling of 11 May 1999 (Official Gazette *Valstybės žinios*, 1999, No 42-1345, corrigendum, 1999, No 43), as well as its decisions of 29 September 1999, 22 December 1999, 25 April 2002 (*ibid.*, 2002, No 44-1679), 13 November 2006 (*ibid.*, 2006, No 123-4649), and 27 June 2007 (*ibid.*, 2007, No 72-2866). For instance, by its decision of 25 April 2002, the Constitutional Court refused to accept the filed petition requesting an investigation into whether a law was in compliance with a treaty ratified by the Seimas, which had the force of a law. By its decision of 27 June 2007, the Constitutional Court refused to accept the filed petition requesting an investigation into the constitutionality of certain provisions of the Criminal Code, as the petitioner really questioned not the compliance of the provisions of this Code with the Constitution, but, rather, the compatibility of the norms of the Code.

to how the provisions of a law (or another legal act) must be applied do not fall under the jurisdiction of the Constitutional Court.⁴¹

The Constitutional Court has also consistently pointed out that it does not investigate the compliance of a legal act (part thereof) with higher-ranking legal acts if this act (or part thereof) is not applicable, since such an investigation of its compliance with higher-ranking legal acts would be an objective in itself.⁴²

In addition, as noted in the jurisprudence of the Constitutional Court on more than one occasion, the Constitutional Court does not have jurisdiction to assess the content, instruments, and methods of an economic policy.⁴³ The official constitutional doctrine has consistently noted that, as such, the assessment of the content (*inter alia*, priorities), instruments, and methods of an economic policy (also from the aspect of its justification and expediency) may not be a reason to question (also by initiating constitutional justice cases at the Constitutional Court) the compliance of a legal act reflecting the said economic

⁴¹ *Inter alia*, the Constitutional Court's decisions of 11 July 1994 (ibid., 1994, No 55-1093), 29 September 1999, 20 November 2006 (ibid., 2006, No 126-4805), 17 June 2014, 15 January 2015, and 9 May 2016. For example, the Supreme Administrative Court of Lithuania filed with the Constitutional Court a petition requesting "an investigation into the compliance of Article 22 of the Law on the Enforcement of Pretrial Detention, insofar as the said article provides neither for the right of detained persons to long-term visits nor for the procedure for implementing this right, with the Constitution". It was clear from the arguments of the petitioner that, in its opinion, Article 22 of the impugned Law on the Enforcement of Pretrial Detention, insofar as the said article provided neither for the right of detained persons to long-term visits nor for the procedure for implementing this right, was not in line with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, the Supreme Administrative Court encountered a collision between the provisions of the law and those of the Convention in the administrative case considered by it. In this context, the Constitutional Court noted that a collision between the provisions of a law and those of an international treaty is an issue of the application of law; such an issue must be decided by taking account of the aforementioned provisions of the official constitutional doctrine and those of the Law on International Treaties. Thus, although the relevant subject of public administration applied the provisions of the Law on the Enforcement of Pretrial Detention when it refused to grant long-term visits, however, the petitioner, before addressing the Constitutional Court, should have decided which legal regulation – the impugned one or the one laid down in the Convention – was applicable in the aforesaid administrative case, i.e. taking account of the aforementioned provisions of the official constitutional doctrine and those of the Law on International Treaties, the Supreme Administrative Court should have decided the issue of the application of law in the case of a collision between the law and the Convention. This was the reason why the Constitutional Court adopted the decision to refuse to consider the filed petition.

⁴² See, in this regard, the Constitutional Court's decisions of 13 November 2007 (Official Gazette *Valstybės žinios*, 2007, No 118-4830), 27 August 2013 (ibid., 2013, No 92-4584), and 15 December 2015. For example, by its decision of 15 December 2015, the Constitutional Court refused to accept the filed petition. The petitioner impugned a legal norm that established a legal regulation identical to the legal regulation that had already been declared unconstitutional by the Constitutional Court. As noted by the Constitutional Court, Paragraph 1 of Article 107 of the Constitution prescribes that, *inter alia*, a law (or part thereof) of the Republic of Lithuania may not be applied from the day of the official publication of the Constitutional Court's decision that the said law (or part thereof) is in conflict with the Constitution. As long as the Seimas does not recognise the unconstitutional act null and void or does not amend it, the legal force of such an act will stay abolished. This determined the position of the Constitutional Court that the petitioner had impugned the legal norm that consolidated a legal regulation (identical with one declared to be in conflict with the Constitution) that was not applicable. According to the Constitutional Court, the investigation into the constitutionality of the said legal norm would have been an objective in itself.

⁴³ e.g. on tax exemptions and preferences, the priorities of municipal funding and its ways and forms, aid to specific industries, the establishment of the amount of late payment interest, etc.

policy with higher-ranking legal acts, *inter alia*, the Constitution).⁴⁴ When examining specific constitutional justice cases, on the basis of decisions made by the legislature (and the executive), the Constitutional Court presumes that the said decisions are economically justified.⁴⁵

It goes without saying, it should not be forgotten that law, when it regulates social relations (including those related to the national economy), defines the limits of the content of the state policy (the economic policy as well) and establishes permissible legal measures for and limits on carrying out the said policy. Thus, the general rule that the Constitutional Court has no powers to assess the content of an economic policy must be viewed through the prism of law and, above all, the Constitution. In other words, it is not allowed to question before the Constitutional Court a legal regulation reflecting a certain economic policy, unless this legal regulation, at the time of its consolidation in legal acts, was clearly directed against the welfare of the nation, the interests of the State of Lithuania and its society, and clearly denied the values consolidated in and defended and protected by the Constitution.⁴⁶

Limits of constitutional investigation. It should be noted that the obligation to ensure the supremacy of the Constitution and to administer constitutional justice also substantiates the powers of the Constitutional Court to determine the limits of constitutional

⁴⁴ See, e.g. the Constitutional Court's rulings of 31 May 2006, 26 September 2006, 21 December 2006, 11 June 2015, 22 September 2015, as well as its decision of 10 July 2015.

⁴⁵ See, Žalimas, D., "Konstitucinio Teismo galios: plėsti negalima riboti" ["The Authority of the Constitutional Court: Expand It Not Limit It"] in *Konstitucijos įgyvendinimas: patirtis ir problemos [Implementation of Constitution: Experience and Problems]* (material of an international conference; collection of articles), Vilnius: The Publishing Centre of Mykolas Romeris University, 2016, pp. 19–20.

⁴⁶ See, e.g. the Constitutional Court's rulings of 31 May 2006, 26 September 2006, 21 December 2006, 11 June 2015, and 22 September 2015. An example illustrating this case-law formulated by the Constitutional Court may be also found in its decision of 10 July 2015. In that decision, the Constitutional Court refused to consider the petition filed by a court requesting an investigation into the constitutionality of the amount of the positional salary of state politicians, judges, state officials, and state servants, as established by law. In the same decision, the Constitutional Court held that the position of the petitioner regarding the unconstitutionality of the impugned legal regulation was based not on legal reasoning, but on arguments related to the assessment of the state economic policy. The petitioner's position was based, in essence, on the fact that the impugned legal regulation had groundlessly established such a basic amount of the positional salary (remuneration) of state politicians, judges, state officials, and state servants that was established in 2009 upon its reduction due to a particularly difficult economic and financial situation in the state as a result of the economic crisis, but not a higher basic amount, as established in 2008 before the emergence of the difficult economic and financial situation in the state. In the opinion of the petitioner, when carrying out the duty, which arises from the Constitution, to ensure that the reduction of remuneration for work due to a particularly difficult economic and financial situation would be temporary, and assessing whether the particularly difficult economic and financial situation continued to exist, the legislature had relied on inappropriate criteria reflecting the economic situation and/or had not evaluated them properly. The Constitutional Court noted that, under the Constitution, the Seimas and the Government have very broad discretion to form and pursue the economic policy of the state. The assessment of the content, priorities, measures, and methods (including the aspects of reasonableness and appropriateness) of an economic policy of the state may not in itself provide a reason to question (also by initiating constitutional justice cases at the Constitutional Court) whether an economic legal regulation established in line with the said economic policy was in compliance with higher-ranking legal acts, *inter alia*, with the Constitution, with the exception of the situation where such a legal regulation at the time of its consolidation in legal acts was clearly directed against the welfare of the nation, the interests of the State of Lithuania and its society, and clearly denied the values defended and protected by the Constitution. However, in this case, the petitioner had no such doubts.

investigation. Therefore, the constitutional investigation of the petition filed by a subject that has the right to apply to the Constitutional Court may go beyond the limits of the reasons, mentioned in the petition, concerning the compliance of an impugned legal act with higher-ranking legal acts (*inter alia*, the Constitution).

As noted in the official constitutional doctrine, the Constitutional Court also has the powers to examine the constitutionality of such legal acts whose compliance with the Constitution (as well as with laws if the said legal acts are substatutory ones) is not impugned by the petitioner. This is done in two cases.

First, having established that a law the compliance of which with the Constitution is not challenged by a petitioner, but upon which an impugned substatutory act is based, conflicts with the Constitution, the Constitutional Court has the powers to state that such a law is unconstitutional.⁴⁷ These powers also apply *mutatis mutandis* in cases where the Constitutional Court finds that a substatutory legal act is in conflict with the Constitution and the law in cases where the petitioner does not impugn the compliance of the said substatutory legal act with higher-ranking legal acts, but this substatutory legal act serves as the basis for adopting an impugned substatutory legal act.⁴⁸ The said powers of the Constitutional Court are based on the implementation of constitutional justice, which implies the obligation to remove an unconstitutional act (part thereof) from the legal system. Such an obligation of the Constitutional Court stems from the Constitution; thus, the supremacy of the Constitution is ensured in such a way. As noted in the scientific doctrine, if a substatutory act is in compliance with a law, but the law itself is unconstitutional, the requirement that the mentioned substatutory act must be in line with the said anticonstitutional law would distort the very essence of constitutional justice.⁴⁹

⁴⁷ The Constitutional Court's ruling of 29 November 2001, Official Gazette *Valstybės žinios*, 2001, No 102-3636. This ruling was passed in the constitutional justice case in which the petitioner questioned the compliance of a government resolution with only the provision of Article 2 of the Law on the Procedure of the Publication and Entry into Force of Laws and Other Legal Acts of the Republic of Lithuania. Despite this fact, the Constitutional Court held *ex officio* that the provision of Article 3 of the same law whereby the government resolutions in which legal norms are not established, amended, or acknowledged as no longer valid may, in the estimation of the persons who have signed them, remain officially unpublished was not in line with the requirement, found in the constitutional principle of a state under the rule of law, that only published legal acts are effective.

⁴⁸ See, in this respect, the Constitutional Court's ruling of 8 July 2016. By this ruling, the Constitutional Court recognised, *inter alia*, that Item 96 of the Rules of Procedure of the Government was in conflict with the Constitution and the Law on the Government insofar as, under this item (in the absence of the constitutionally justified exceptional cases established in the said law), the agenda of a sitting of the Government could be supplemented with draft legal acts requested to be placed on the agenda of the sitting as additional issues proposed by ministers in cases where these draft legal acts had not been agreed beforehand in accordance with the Rules of Procedure of the Government and were related not to the competence of the institutions that had prepared the draft legal act, but to the competence of other institutions. The compliance of Item 96 of the Rules of Procedure of the Government with higher-ranking legal acts was assessed (*ex officio*) on the initiative the Constitutional Court in view of the fact that the impugned draft government resolution No 1025 of 23 September 2015 had been submitted to the Government for consideration namely in accordance with the provisions consolidated in this paragraph.

⁴⁹ Kūris, footnote 14, p. 87.

Second, the Constitutional Court also has the powers to state that the provisions of a law or another legal act whose compliance with the Constitution is not impugned by the petitioner, but which regulate part of the legal relations covered by an impugned law or another impugned legal act, are in conflict with the Constitution.⁵⁰ In this case, without a systemic investigation into related provisions, it would be impossible to decide a constitutional justice case not formally, but under law.⁵¹

In addition, as noted by the Constitutional Court, under the Constitution, it examines the compliance of impugned legal acts with the Constitution as an integral and harmonious system. This implies that the Constitutional Court has the powers to examine the compliance of legal acts even with those norms of the Constitution that are not specified by the petitioner.⁵²

Subjects entitled to apply to the Constitutional Court. Chapter VIII of the Constitution establishes a sufficiently restricted circle of subjects that may apply to the Constitutional Court. Under the Constitution, the Government, not less than 1/5 of all the members of the Seimas, the Seimas *in corpore*,⁵³ and courts have the right to apply to the Constitutional Court concerning the laws of the Republic of Lithuania and other acts adopted by the Seimas. Not less than 1/5 of all the members of the Seimas, the Seimas *in corpore*, and courts have the right to apply to the Constitutional Court concerning the conformity of the acts of the President of the Republic with the Constitution and laws. Not less than 1/5 of all the members of the Seimas, the Seimas *in corpore*, courts, as well as the President of the Republic, have the right to apply to the Constitutional Court concerning the conformity of the acts of the Government with the Constitution and laws. Thus, even with such a narrow circle of subjects that may initiate the constitutionality review of legal acts, these subjects are further differentiated by granting them the powers to apply to the

⁵⁰ *Inter alia*, the Constitutional Court's rulings of 14 January 2002 (Official Gazette *Valstybės žinios*, 2002, No 5-186), 19 June 2002 (*ibid.*, 2002, No 62-2515), and 24 January 2014 (Register of Legal Acts, 24-01-2014, No 478).

⁵¹ Kūris, footnote 14, p. 87.

⁵² These powers of Constitutional Court were formulated *expressis verbis* for the first time in its ruling of 13 June 2000 (Official Gazette *Valstybės žinios*, 2000, No 49-1424) and later repeated on more than one occasion, for example, in its rulings of 24 December 2002 (*ibid.*, 2003, No 19-828) and 30 May 2003 (*ibid.*, 2003, No 53-2361), as well as in its decision of 20 November 2009 (*ibid.*, 2009, No 139-6120).

⁵³ *Inter alia*, the Constitutional Court's decision of 8 January 2008, *ibid.*, 2008, No 5-173. In this decision, the Constitutional Court noted that "Under Paragraph 1 of Article 106 of the Constitution, the Government, not less than 1/5 of all the members of the Seimas, and the courts, shall have the right to apply to the Constitutional Court concerning the acts specified in Paragraph 1 of Article 105, i.e. on the conformity of the laws and other acts adopted by the Seimas with the Constitution. Paragraph 2 of this article provides that not less than 1/5 of all the Members of the Seimas and the courts shall have the right to apply to the Constitutional Court concerning the conformity of acts of the President of the Republic with the Constitution and the laws, and Paragraph 4 thereof provides that the presentation by the President of the Republic for the Constitutional Court or the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act. While interpreting these provisions in a systemic manner, it needs to be held that the Seimas *in corpore* has the constitutional powers to apply by its resolution to the Constitutional Court and to request it to investigate the compliance of the said legal acts, *inter alia*, acts-decrees of the President of the Republic, with the Constitution and laws."

Constitutional Court and request an investigation into the constitutionality of legal acts covered only by part of the jurisdiction of this Court.

The scientific doctrine states that an opportunity to challenge the constitutionality of legal acts before the Constitutional Court is a democratic institution important for participants of the political process, ensuring, *inter alia*, the rights of the political opposition. Creating the said opportunity for courts that have doubts as to whether an act applicable in the case is in line with the Constitution is aimed at ensuring that the application of potentially unconstitutional acts would not violate the rights and legitimate interests of persons.⁵⁴

As regards courts as subjects that may initiate constitutional review, it should be noted that, under Paragraph 2 of Article 110 of the Constitution, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge must suspend the consideration of the case and must apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

Under the Constitution, the courts, if they have doubts over the compliance of a legal act (part thereof) issued by the President of the Republic or the Government, or that adopted by referendum, with a higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, not only may, but also must apply to the Constitutional Court.⁵⁵

The crucial point is that the Constitutional Court has the powers to consider petitions filed by courts, requesting an investigation into whether not any law (part thereof) or any other legal act (part thereof) is in conflict with the Constitution, but only such a law (part thereof) or another legal act (part thereof) that must be applied in the case considered by that court. Under the Constitution, a court does not have the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that must not be applied in the case considered by that court is in conflict with the Constitution. The provision that, under the Constitution, no court has the *locus standi* to apply to the Constitutional Court with a petition requesting an investigation into whether such a law (part thereof) or another legal act (part thereof) that should (could) not be applied in a case considered by the said court is in conflict with the Constitution also means that a court may not apply to the Constitutional Court with a petition requesting an investigation into the constitutionality of a legal regulation in situations where this is not required for the consideration of a concrete case.⁵⁶

⁵⁴ Kūris, footnote 14, pp. 83–84.

⁵⁵ *Inter alia*, the Constitutional Court's ruling of 28 March 2006.

⁵⁶ The Constitutional Court's decision of 7 July 2016. It should be noted that, over the last few years, the Constitutional Court has refused to consider a number of petitions filed by courts, as the latter did not have the *locus standi* to file them (see, e.g. the Constitutional Court's decisions of 16 November 2010, 17 June 2014, 7 July 2014, 29 August 2014, and 7 July 2016).

In summary, it is possible to distinguish the following main features of the constitutional duty of Lithuanian courts to apply to the Constitutional Court: (1) the powers to apply to the Constitutional Court are granted to all courts; (2) the right to apply to the Constitutional Court is a reasonable doubt over the constitutionality of a legal act applicable in a particular case; (3) courts are not bound by the position of parties to a case on whether to apply to the Constitutional Court, i.e. courts may apply to the Constitutional Court on the initiative of the parties to a case or on their own initiative; (4) parties to a particular case considered by a referring court are not included in the proceedings at the Constitutional Court; (5) an application to the Constitutional Court may not change the process in a particular case, i.e. such an application has a limited purpose, which is getting an answer to the question concerning the constitutionality of the act applicable in a specific case; (6) an application to the Constitutional Court in the event of serious doubt about the constitutionality of the act applicable in a specific case is not a right or discretion, but a duty of the court; (7) when a court considering a concrete case decides to apply to the Constitutional Court, it also has the procedural duty to suspend the consideration of that concrete case.⁵⁷

The individual constitutional complaint. When taking a closer look at the subjects that have the right to apply to the Constitutional Court, it is also worth discussing the prospects of the consolidation of an individual constitutional complaint in Lithuania. According to Article 106 of the Constitution, the Constitutional Court has the powers to consider only those applications that were submitted by at least 1/5 of all the members of the Seimas, the Seimas *in corpore*, the Government, the President of the Republic, and courts. Thus, under Article 106 of the Constitution, other persons do not have the right to directly address the Constitutional Court for determining the legality of the acts of the Seimas, the President of the Republic, or the Government even when the constitutional review of such acts falls under the competence of the Constitutional Court and they could violate the rights or freedoms of such persons.⁵⁸ Consequently, unlike in most European countries (such as Germany, the Czech Republic, Slovakia, Poland, Spain⁵⁹), the Constitution of the Republic of Lithuania does not establish *expressis verbis* the institution of an individual application to the Constitutional Court (the individual constitutional complaint).

In Lithuania, there have also been initiatives to expand the constitutional judicial control mechanism, i.e. to supplement it with the institution of an individual constitutional complaint. By its resolution of 4 July 2007, the Seimas approved the Conception of the

⁵⁷ Žalimas, D., *The Individual Constitutional Complaint as an Effective Instrument for the Development of Human Rights Protection and Constitutionalism*, 2015, www.lrkt.lt/data/public/uploads/2016/07/2015-10-02-individualcomplaint-kiev.pdf.

⁵⁸ See, e.g. the Constitutional Court's decision of 28 June 2016.

⁵⁹ Rosenfeld, M. and Sajó, A. (eds.), *The Oxford Handbook of Comparative Constitutional Law*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar Pub, 2013, p. 811.

Individual Constitutional Complaint,⁶⁰ in which it expressed its intention to amend the Constitution and to consolidate the institution of individual constitutional complaint. However, due to the economic crisis and the lack of political will, this objective has not been accomplished.⁶¹

On the other hand, although the Constitution does not provide for the institution of the individual constitutional complaint, in some cases, individuals, albeit indirectly, may initiate an application to the Constitutional Court. However, in this case the initiation should be understood in a broad sense: it is implemented not by individuals themselves, but by courts, which have been granted the constitutional powers to initiate an investigation into the constitutionality of legal acts at the Constitutional Court.

Thus, the fact that the constitutional right of persons has been violated by a legal act (i.e. by a certain act of the Seimas, the President of the Republic, or the Government) the investigation into the legality of which falls, under the Constitution, under the exclusive competence of the Constitutional Court, where those persons, under the Constitution, have no powers to directly initiate a constitutional justice case at the Constitutional Court for determining the legality of such an act, does not mean that such persons are not allowed in general to defend their violated rights or freedoms, i.e. the said persons are allowed to defend them before a court as well. The Constitution consolidates the right of persons whose constitutional rights or freedoms have been violated to apply to a court. This right implies not only the fact that, in such situations, the rights and freedoms of persons, their legitimate interests and legitimate expectations must and can be defended, but also the fact that courts (judges), while considering cases, have the duty to apply to the Constitutional Court when they face doubts over the compliance of an act (part thereof) adopted by the Seimas, the President of the Republic, or the Government with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution.

It is the courts that file the highest number of petitions with the Constitutional Court.⁶² Such petitions are an important tool for ensuring the supremacy of the Constitution and protecting the constitutional rights and freedoms.⁶³ However, such indirect application of individuals to the Constitutional Court, which is implemented through courts, has one major drawback: it is not the person, but the court, who decides whether to apply to

⁶⁰ Official Gazette *Valstybės žinios*, 2007, No 77-3061.

⁶¹ Žalimas, footnote 57.

⁶² For instance, in 2015, the Constitutional Court received 26 petitions: 24 petitions requested the Constitutional Court to investigate the compliance of legal acts with the Constitution or other higher-ranking legal acts, and 2 petitions asked it to interpret the provisions of its previously adopted final acts. The main part (69 per cent) of the petitions received at the Constitutional Court was, as per usual, filed by courts: they addressed the Constitutional Court 18 times. Four petitions were filed by groups of members of the Seimas. On two occasions, the Seimas addressed the Constitutional Court by submitting its resolution. One petition requesting the interpretation of the provisions of the rulings of the Constitutional Court was filed by the Speaker of the Seimas, and an analogous petition was received from the Minister of the Interior. See, *The Constitutional Court of the Republic of Lithuania: Annual Report 2015*, www.lrkt.lt/data/public/uploads/2016/06/annual-report-2015_.pdf.

⁶³ Žalimas, footnote 57.

the Constitutional Court. Therefore, in each case a court still has subjective discretion in assessing the arguments of an individual on the need to apply to the Constitutional Court. In other words, the request of an individual to apply to the Constitutional Court does not always guarantee that the court considering a concrete case will apply to the Constitutional Court in every case where there is a reasonable doubt as to the compliance of an applicable law with the Constitution (the refusal of a court considering a concrete case to apply to the Constitutional Court may be incompatible with the constitutional guarantee, enshrined in Article 30 of the Constitution, that a person whose constitutional rights or freedoms are violated has the right to apply to a court). Indeed, sometimes it might happen that a judge or a court considering a particular case is reluctant to suspend the case before them due to either objective or subjective reasons.⁶⁴ The decreasing number of petitions requesting an investigation into the compliance of legal acts with the Constitution and other higher-ranking legal acts may reflect the said reluctance of courts.

In this context, attention should be drawn to the position of the Venice Commission, as set out in the study “On Individual Access to Constitutional Justice”. It, among other things, points out that indirect access to the constitutional justice body is a very important, but insufficient tool to ensure respect for individual human rights at the constitutional level; therefore, indirect access should be combined with a possibility for a person to directly access the constitutional justice body.⁶⁵ Thus, the question of the consolidation of the institution of the individual constitutional complaint in Lithuanian constitutional law remains open and highly topical.

Parameters used by the Constitutional Court to assess the compliance of a legal act with the Constitution. The Constitution does not specify *expressis verbis* the parameters used by the Constitutional Court to examine whether a law or another legal act is in conflict with the Constitution. These parameters are derived from the constitutional principles of the supremacy of the Constitution, the separation of powers, a state under the rule of law, the equality of the rights of persons, and other constitutional principles, as well as from various constitutional provisions defining the procedure for adopting, signing, and publishing laws and other legal acts.⁶⁶ The parameters used by the Constitutional Court to carry out control over the constitutionality of legal acts are established *expressis verbis* in the Law on the Constitutional Court. Under Article 64 of the said law, the Constitutional Court verifies the constitutionality of a legal act according to: the content of norms; the extent of regulation; the form; and the procedure of its adoption, signing, publication, and

⁶⁴ Ibid.

⁶⁵ Study No CDL-AD(2010)039rev of 27 January 2011 on individual access to constitutional justice, adopted by the Venice Commission at its 85th plenary session (17–18 December 2010).

⁶⁶ Sinkevičius, V., “Teisinės pasekmės, kurias sukelia Konstitucinio Teismo konstatavimas, jog įstatymas ar kitas teisės aktas prieštarauja Konstitucijai” [“The Legal Consequences Brought About by the Constitutional Court’s Statement That a Law or Other Legal Act Is in Conflict with the Constitution”], *Jurisprudencija [Jurisprudence]*, 2014, No 21(4), p. 940.

entry into effect, which is established in the Constitution. Thus, the Constitutional Court may examine the constitutionality of an impugned legal act from each of these aspects. It also carries out material (the first and, partly, the second aspects) and formal (the second, third, and fourth aspects) constitutional control.⁶⁷

The assessment of the constitutionality of a legal act *according to the content of norms* means, first of all, that the Constitutional Court must determine whether the rights and obligations of subjects of legal relations, as established in the legal norm, are in line with the provision of the Constitution on this matter.⁶⁸ Thus, the Constitutional Court ascertains whether the legal regulation (the rights and obligations of subjects of legal relations or a certain rule of conduct) laid down in a law (another legal act) is in line with the legal regulation established in the Constitution. The Constitutional Court also examines a legal regulation that is explicitly consolidated in the norms of a law or another legal act, and the one that is established in legal norms implicitly and is derived from the explicit provisions in the course of interpreting law.⁶⁹

The assessment of constitutionality of a law or another legal act *according to the extent of regulation* means that the Constitutional Court investigates whether, under the Constitution, the entity that passed the law (or other legal act) had the powers to regulate those public relations that it had regulated by means of the norms of the said law or other legal act. In other words, it is necessary to ascertain whether the law-making subject exceeded the limits of its competence: in cases where the said subject established such rules the establishment of which is not within its competence, the Constitutional Court declares such a law or another legal act unconstitutional.⁷⁰

The assessment of the constitutionality of a legal act *according to the form* means that it is necessary to examine whether the legal regulation is established in a legal act having the form required by the Constitution.⁷¹ For instance, in its ruling of 10 February 2000,⁷² the Constitutional Court held that, by approving Item 12 of the List of the 1939–1990 Occupations Repressive Structures, Services, and Positions for Serving in Which Persons Are not Awarded State Pensions for Victims by means of the impugned resolution, the Government had regulated the relations that, under Article 52 of the Constitution, should have been regulated by law; therefore, the said item was declared unconstitutional according to its form.⁷³

⁶⁷ Kūris, footnote 14, p. 87.

⁶⁸ Birmontienė, T. (and others), *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law: Liber Amicorum Juozas Žilys]* (textbook), Vilnius: Mykolas Romeris University, 2012, p. 737.

⁶⁹ Sinkevičius, footnote 66, p. 941.

⁷⁰ *Ibid.*, p. 943.

⁷¹ *Ibid.*, p. 944.

⁷² The Constitutional Court's ruling of 10 February 2000, Official Gazette *Valstybės žinios*, 2000, No 14-370.

⁷³ As regards the unconstitutionality of a legal act according to its form, also see the Constitutional Court's ruling of 19 January 1994, *ibid.*, 1994, No 7-116.

The assessment of the constitutionality of a legal act *according to the procedure of its adoption, signing, publication, and entry into effect* also means that the Constitutional Court investigates whether the adoption, signing, and publication of the said legal act complied with the requirements set out in the Constitution, and whether the procedure of the entry into effect of the said law or other legal act was in line with that provided for in the Constitution.⁷⁴

For example, as regards compliance with the procedure of adopting legal acts, mention can be made of the Constitutional Court's ruling of 24 January 2014.⁷⁵ This ruling was adopted in the constitutional justice case initiated by the Seimas, which requested an investigation into whether the Law Amending Article 125 of the Constitution, in view of the manner of its adoption, was in conflict with the Constitution. The petitioner had doubts as to whether, in the course of adopting the said law, the legislature had observed the requirement that a motion to alter or supplement the Constitution may be submitted to the Seimas by a group of not less than 1/4 of all the members of the Seimas, as stipulated in Paragraph 1 of Article 147 of the Constitution, since, in the course of the consideration of the said law, the Committee on Legal Affairs of the Seimas had in substance changed the content of the Draft Law Amending Article 125 of the Constitution, which had been submitted by a group of 45 members of the Seimas. The Constitutional Court recognised that the said doubts were reasonable. The Constitutional Court held that, in view of its content, the draft Law Amending Article 125 of the Constitution, which had been voted upon by the Seimas, differed in substance from the initial draft submitted by the group of 45 members of the Seimas, which had initiated the amendment to Article 125 of the Constitution. In the light of the foregoing, the Constitutional Court recognised that the Law Amending Article 125 of the Constitution, in view of the manner of its adoption, was in conflict with Paragraph 1 of Article 147 of the Constitution.

As regards compliance with the procedure for signing and publication of legal acts, special emphasis should be placed, for example, on the ruling of 19 June 2002.⁷⁶ In the said ruling, the Constitutional Court examined the compliance of the Law on Amending and Supplementing Articles 7, 11, 15 of the Law on State Pensions with the procedure of the signing and publication of laws, which is established in the Constitution. The petitioner had doubts over the constitutionality of this act, as it had been signed and officially promulgated not by the President of the Republic or the Speaker of the Seimas, but by the First Deputy Speaker of the Seimas. In this ruling, the Constitutional Court noted that compliance with the procedure of the signing, publication, and entry into force of laws and other legal acts adopted by the Seimas is an important precondition for ensuring the supremacy of the Constitution. Under the Constitution, a law that has not been signed by the official specified

⁷⁴ Sinkevičius, footnote 66, p. 945.

⁷⁵ The Constitutional Court's ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478.

⁷⁶ The Constitutional Court's ruling of 19 June 2002, Official Gazette *Valstybės žinios*, 2002, No 62-2515.

in the Constitution may not be officially published and come into force. Also, a law that has been signed by an official who does not have necessary constitutional powers may not be officially published and come into force, either. In the context of this constitutional justice case, the Constitutional Court found that, under the Constitution, in that situation, neither the First Deputy Speaker of the Seimas nor any other Deputy Speaker of the Seimas had the right to sign and officially promulgate the impugned law. It was only the Speaker of the Seimas that had the constitutional right to sign and promulgate officially the said law after the President of the Republic, within the established period, neither signed and officially promulgated nor referred it back to the Seimas together with relevant reasons for reconsideration; thus, in the course of the signing and official publication of the impugned law, the provision of Paragraph 2 of Article 71 of the Constitution, whereby, if the law adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period, the law comes into force after it is signed and officially promulgated by the Speaker of the Seimas, was disregarded. Based on these findings, the Constitutional Court concluded that, in view of the procedure of its signing and publication, the impugned law was in conflict with Paragraph 2 of Article 71 of the Constitution.

The legal force of acts passed by the Constitutional Court. The jurisprudence of the Constitutional Court has dealt with issues relating to the legal force of acts passed by the Constitutional Court, having regard, first, to Article 107 of the Constitution and other related constitutional provisions.

Under Paragraph 1 of Article 107 of the Constitution, a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. As noted in the official constitutional doctrine,⁷⁷ Paragraph 1 of Article 107 of the Constitution should be interpreted as meaning that every legal act (part thereof) passed by the Seimas, the President of the Republic, or the Government or that adopted by referendum where such a legal act is declared as being in conflict with any higher-ranking legal act, *inter alia* (and, first of all), with the Constitution, is removed from the Lithuanian legal system for good and may never be applied. Thus, in Lithuania, decisions passed by the Constitutional Court are binding *erga omnes* (on everyone).

Under Paragraph 2 of Article 107 of the Constitution, the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal. The finality and non-appealability of decisions passed by the Constitutional Court mean that rulings, conclusions, or decisions of the Constitutional Court by which a constitutional justice case is finished, i.e. final acts of the Constitutional Court, are binding on all state institutions, courts, all enterprises, establishments and

⁷⁷ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

organisations, as well as officials and citizens, including the Constitutional Court itself: final acts of the Constitutional Court bind the Constitutional Court itself, and they restrict the Constitutional Court from the aspect that it may not change or review them if there are no constitutional grounds for doing so.⁷⁸

In addition, the finality and non-appealability of the decisions of the Constitutional Court established in Paragraph 2 of Article 107 of the Constitution are the basis for the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court. The official constitutional doctrine notes that the Constitution gives rise to the prohibition on repeatedly establishing, by means of later adopted laws or other legal acts, any such legal regulation that is incompatible with the concept of the provisions of the Constitution as set out in the acts of the Constitutional Court. The constitutional prohibition on overruling the legal force of a final act of the Constitutional Court means not only the prohibition on adopting a legal act (part thereof) of the same title, legal force, subject of regulation, and extent as the one that the Constitutional Court has declared as being in conflict with the Constitution, but also the prohibition on adopting a legal act (part thereof) of a different title, legal force, subject of regulation and extent, where the content whereof would be completely or partially identical to such a legal act (part thereof) where the legal regulation established in which has been declared by the Constitutional Court, as to its content, as being in conflict with the Constitution.⁷⁹

There are a variety of ways how constitutional control systems in which decisions of constitutional justice institutions have an *erga omnes* effect treat the time of the entry into force of such decisions.

The Constitutional Court has held that, under Paragraph 1 of Article 107 of the Constitution, until the moment of the official publication of the Constitutional Court's decision that a certain legal act (part thereof) is in conflict with the Constitution, it is presumed that the legal act (part thereof) in question is in compliance with the Constitution, and that the legal consequences that have appeared on the basis of the legal act in question are legitimate. A general rule has been established in Paragraph 1 of Article 107 of the Constitution that the power of decisions of the Constitutional Court regarding the compliance of legal acts with the Constitution is prospective.⁸⁰ Consequently, viewed from the aspect of time, the *ex nunc* model of the legal force of rulings of the Constitutional Court is established in Lithuania. Still, in Lithuania's constitutional system, this model does not exist in its pure form. In other words, the rule that the legal force of decisions of the Constitutional Court is prospective is not absolute.⁸¹

⁷⁸ Ibid.

⁷⁹ The Constitutional Court's decision of 19 December 2012, *ibid.*, 2012, No 152-7779.

⁸⁰ *Inter alia*, the Constitutional Court's ruling of 25 October 2011, *ibid.*, 2011, No 129-6116.

⁸¹ *Inter alia*, the Constitutional Court's ruling of 30 May 2003, *ibid.*, 2003, No 53-2361.

When interpreting Paragraph 1 of Article 107 of the Constitution in conjunction with other constitutional provisions, the jurisprudence of the Constitutional Court⁸² has defined certain cases (exceptions to the general rule, enshrined in the Constitution, whereby the effect of rulings of the Constitutional Court is only prospective) when the legal force of rulings of the Constitutional Court may be retroactive. In other words, the legal force of decisions of the Constitutional Court may also be targeted at the consequences of the application of a legal act declared as being in conflict with the Constitution where such consequences had arisen before the Constitutional Court adopted the decision declaring this legal act (part thereof) unconstitutional. In such a case, the ruling of the Constitutional Court operates retroactively (*ex tunc*).

So far, the most significant (comprehensive) official constitutional doctrine of the legal force of decisions of the Constitutional Court viewed from the *ex tunc* aspect was formulated in the Constitutional Court's decision of 19 December 2012. In this decision, the Constitutional Court made the list of certain grounds (exceptions), according to which the decisions of the Constitutional Court by which impugned acts are declared unconstitutional may have retroactive effect. These exceptions are based on the overall constitutional legal regulation, with particular emphasis placed on the principle of supremacy of the Constitution, the constitutional imperative of the rule of law, the constitutional administration of justice, and the protection of the constitutional fundamental values. In the above decision, the Constitutional Court held that the retroactive applicability of the decision of the Constitutional Court that a legal act (part thereof) is in conflict with the Constitution may be constitutionally grounded in such exceptional cases where, without applying an exception to the general rule established in Paragraph 1 of Article 107 of the Constitution that the legal force of decisions passed by the Constitutional Court is prospective, the principle of the supremacy of the Constitution and the related constitutional imperative of the rule of law would be denied and the requirements for the administration of constitutional justice would thus be violated.

The first such exception when the Constitutional Court has the powers to declare anticonstitutional all the consequences of the application of a legal act (part thereof) that is in conflict with the Constitution is the case when it is also found that this legal act (part thereof) essentially negates the fundamental constitutional values – the independence of the State of Lithuania, democracy, the republic, or the innate nature of human rights and freedoms.

The Constitutional Court also pointed out the second exceptional case where a ruling of the Constitutional Court may operate retroactively: having held that an impugned legal act (part thereof) is to be regarded as a violation of the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court, the Constitutional Court has the powers to declare anticonstitutional the consequences of the application of

⁸² The Constitutional Court's ruling of 25 October 2011, and its decisions of 19 December 2012 and 18 September 2015.

such an act (part thereof). The Constitution cannot tolerate the possibility of overruling the legal force of a final act of the Constitutional Court; that is why the legislative act attempting to overrule the legal force of a final act of the Constitutional Court should be presumed as having no legal consequences. Of course, having established a violation of the constitutional prohibition on overruling the legal force of a final act of the Constitutional Court, the Constitutional Court, when deciding whether its ruling declaring a legal act (part thereof) violating this prohibition as being in conflict with the Constitution must be applied retroactively, must assess (in view of the circumstances of a constitutional justice case at issue) the possible consequences of such a retroactive application, *inter alia*, the fact whether such an application is possible at all, whether it would create such a burden upon society and the state that would be disproportionate to the objective aimed at removing completely the consequences of the anticonstitutional act, and whether it would create such consequences related to the said burden that would be especially unfavourable for human rights and freedoms.

The Constitutional Court also drew attention to the fact that Article 110 of the Constitution contains another – the third – exception:⁸³ a court in a case considered by it may not apply a legal act (part thereof) that was declared as being in conflict with the Constitution by the Constitutional Court when it was implementing the powers established in Paragraph 1 of Article 102 of the Constitution.

Reviewing the effect of acts of the Constitutional Court as seen from the aspect of time, it should be noted that, under the Constitution, acts passed by the Constitutional Court may also take effect at a certain moment in the future. As noted in the jurisprudence of the Constitutional Court, having assessed, *inter alia*, what legal situation might arise after a ruling of the Constitutional Court becomes effective, the Constitutional Court has, under the Constitution, the powers to establish the date of the official publication of that ruling. In other words, the Constitutional Court may postpone the official publication of its rulings. Such powers of the Constitutional Court, again taking into account the principle of supremacy of the Constitution and the constitutional imperative of justice, were formulated namely in the jurisprudence of the Constitutional Court.⁸⁴

The postponement of the official publication of a ruling of the Constitutional Court is a precondition stemming from the Constitution (in particular, from the need of

⁸³ “Judges may not apply any laws that are in conflict with the Constitution” (Paragraph 1 of Article 110).

“In cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution” (Paragraph 2 of Article 110).

⁸⁴ These powers of the Constitutional Court were for the first time mentioned explicitly and were applied in practice in the Constitutional Court’s ruling of 24 December 2002 (Official Gazette *Valstybės žinios*, 2003, No 19-828). It is worth noting that it was this ruling in which the Constitutional Court held only once in its history that rulings related to the protection of the constitutional human rights and freedoms must in all cases be published immediately. However, later, in the course of the development of the doctrine of the Constitutional Court, this legal position has not been repeated.

a proper administration of constitutional justice) in order to avoid certain consequences unfavourable to society and the state, as well as to human rights and freedoms, that might arise if the relevant ruling of the Constitutional Court were officially published immediately after it is pronounced publicly at the hearing of the Constitutional Court and if it became effective on the day of its official publication. The Constitutional Court may postpone the official publication of its ruling if this is necessary to give the legislature time to remove the *lacunae legis* that would occur if the relevant ruling of the Constitutional Court were officially published immediately after its public pronouncement at the hearing of the Constitutional Court and if such *lacunae legis* constituted the preconditions for denying in essence certain values defended and protected by the Constitution. Thus, the Constitutional Court also has the constitutional powers to set a later date for the official publication (thus, a later date of the entry into force) of its ruling by which a certain act (or part thereof) is declared as being in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution in cases where the immediate publication of that ruling of the Constitutional Court after its adoption could create a regulatory vacuum or other uncertainties in the legal system, due to which substantial harm could be inflicted on certain values consolidated in and protected and defended by the Constitution.⁸⁵ In addition, the Constitutional Court has the constitutional powers to establish a later date of the official publication (thus, also that of the entry into force) of its ruling that declared a certain legal act (part thereof) as conflicting with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution, in cases where, in order to implement that ruling, it is necessary to correspondingly redistribute the financial resources of the state and to adopt related legislative amendments.⁸⁶

The Constitutional Court has used the constitutional “tool” of postponing the official publication of rulings on more than one occasion. By using it, the Constitutional Court was seeking to protect various values protected and defended by the Constitution, such as the functioning of the mechanism of local self-government and state governance,⁸⁷ the restoration of ownership rights to the existing real property,⁸⁸ the granting of the state

⁸⁵ *Inter alia*, the Constitutional Court’s rulings of 19 January 2005 (Official Gazette *Valstybės žinios*, 2005, No 9-289) and 23 August 2005 (ibid., 2005, No 152-5605), its decision of 8 August 2006 (ibid., 2006, No 88-3475, corrigendum, 2006, No 137), and its rulings of 29 June 2010 (ibid., 2010, No 134-6860), 9 June 2011 (ibid., 2011, No 111-5228), and 6 February 2012 (ibid., 2012, No 109-5528).

⁸⁶ Such grounds for postponing the official publication of a ruling of the Constitutional Court, i.e. the need for redistributing the financial resources of the state, was clearly formulated in the ruling of 1 July 2013 on the constitutionality of the legal acts passed in connection with the economic crisis. However, it should be observed that the Constitutional Court had already taken into consideration the said grounds when adopting the decisions to postpone the official publication of its rulings of 23 August 2005 and 6 February 2012.

⁸⁷ The Constitutional Court’s ruling of 24 December 2002, ibid., 2003, No 19-828.

⁸⁸ The Constitutional Court’s ruling of 23 August 2005.

pensions of judges,⁸⁹ the payment of state pensions,⁹⁰ the constitutional human right to fair pay for work,⁹¹ and municipal funding.⁹²

Summarising the jurisprudence of the Constitutional Court, it should be observed that there is no uniform term for which the official publication of a ruling of the Constitutional Court is postponed. For example, having noted that its ruling of 1 July 2013 was related to the protection of the constitutional human right to fair pay for work, which is a prerequisite for the implementation of a number of other constitutional rights, *inter alia*, one of the most important prerequisites for the implementation of the constitutional right to property, the Constitutional Court acknowledged that the time during which the legislature had to make the necessary legislative amendments was not to be long. The ruling of 1 July 2013 was officially published on 1 October 2013, i.e. after three months. In its ruling of 29 September 2015, the Constitutional Court also noted that, in view of the fact that the adoption of the necessary legislative decisions would be connected with the budgetary planning of the state, also of the fact that, under the Constitution, in certain cases, the legislature must provide for a sufficient *vacatio legis*, i.e. a time period from the official publishing of a law until its entry into force (the beginning of its applicability), within which the persons concerned might be able to prepare themselves for the future changes, this ruling of the Constitutional Court was to be published officially in the Register of Legal Acts on 2 January 2017.

In the context of the reviewed topic, it is also worth noting that the adoption and publication of an act of the Constitutional Court results (can result) in the emergence of not only negative constitutional obligations (the prohibition on overruling the force of a final act of the Constitutional Court), but also positive ones. For instance, in the ruling of 25 October 2011, it was noted that, after the Constitutional Court declares a law (or part thereof) or another act (or part thereof) passed by the Seimas, an act issued by the President of the Republic, or an act (or part thereof) adopted by the Government as being in conflict with the Constitution, the relevant law-making subject – the Seimas, the President of the Republic, or the Government – is under the constitutional obligation to recognise such a legal act (part thereof) no longer valid or, if it is impossible to do without the relevant legal regulation of the social relations in question, to change it so that the newly established legal regulation would not be in conflict with higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution.⁹³ In the ruling of 22 December 2014, it was held that, after the Constitutional Court declares unconstitutional the legal regulation that lays down the disproportionate extent of the reduction of the remuneration of persons who are paid for their work from the funds of the state budget or a municipal budget, the legislature

⁸⁹ The Constitutional Court's ruling of 29 June 2010.

⁹⁰ The Constitutional Court's ruling of 6 February 2012.

⁹¹ The Constitutional Court's ruling of 1 July 2013, *ibid.*, 2013, No 103-5079; the Constitutional Court's ruling of 29 September 2015, the Register of Legal Acts, 02-01-2017, No 1.

⁹² The Constitutional Court's ruling of 11 June 2015, *ibid.*, 01-01-2016, No 1.

⁹³ *Inter alia*, the Constitutional Court's ruling of 25 October 2011, Official Gazette *Valstybės žinios*, 2011, No 129-6116.

must, pursuant to the requirement stemming from Article 23 of the Constitution, establish a mechanism for compensating the said persons for the losses incurred.⁹⁴

2.2. *The powers to present conclusions*

The constitutional powers of the Constitutional Court are not limited exclusively to the verification of the constitutionality of legal acts. Under the Constitution, the Constitutional Court also has the constitutional powers to present conclusions. Conclusions given by the Constitutional Court are a separate type of acts adopted by the Constitutional Court. The Constitutional Court presents conclusions on the issues assigned to its competence in the Constitution; on the basis of a conclusion of the Constitutional Court, the Seimas takes a final decision. Neither the Seimas, by adopting a decision assigned to its competence, nor any other state institution may deny, abolish, or change the content of the conclusion of the Constitutional Court, let alone deny any facts recorded in a constitutional justice case giving rise to that conclusion.

Paragraph 3 of Article 105 of the Constitution prescribes that the Constitutional Court presents conclusions on these issues: (1) whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas; (2) whether the state of health of the President of the Republic allows him/her to continue to hold office; (3) whether the international treaties of the Republic of Lithuania are in conflict with the Constitution; (4) whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.⁹⁵

The conclusion concerning a violation of election laws. Inquiries concerning the possible violation of election laws in a specific constituency in the course of preparing and holding the election of the President of the Republic or the election of the members of the Seimas may be filed with the Constitutional Court by the Seimas or the President of the Republic not later than within 3 days of the official publication of the final election results in the constituency concerned or the official publication of the decision of the Central Electoral Commission (*Vyriausioji rinkimų komisija*, hereinafter also referred to as the VRK) on the availability or filling of a vacant seat of a member of the Seimas. The Constitutional Court examines and assesses only the decisions made by the VRK or the refusal thereof to examine complaints concerning the violation of election laws in cases

⁹⁴ The Constitutional Court's ruling of 22 December 2014, the Register of Legal Acts, 22-12-2014, No 20411.

⁹⁵ During the whole period of its activity, when deciding cases of this type, the Constitutional Court adopted only 13 final acts: 9 conclusions and 4 decisions on refusing to consider inquiries. These statistics are determined by the fact that the Constitutional Court presents conclusions only on four issues, which are provided for in Paragraph 3 of Article 105 of the Constitution (this list is exhaustive), as well as by an extremely narrow circle of subjects that may initiate such legal proceedings (the Seimas *in corpore* may ask the Constitutional Court to present a conclusion on all issues specified in Paragraph 3 of Article 105 of the Constitution, whereas, as regards the elections to the Seimas and international treaties, the President of the Republic may also request the Constitutional Court to give a conclusion (Paragraph 5 of Article 106 of the Constitution)).

where such decisions are adopted or other acts are carried out by the said commission after the termination of the voting in an election of members of the Seimas or the President of the Republic. The consideration of the inquiry must be completed within 120 hours of its filing with the Constitutional Court (this term also includes non-working days).⁹⁶

The conclusion whether the state of health of the President of the Republic allows him/her to continue to hold office. The Constitutional Court also presents a conclusion on whether the state of health of the President of the Republic allows him/her to continue to hold office. Only the Seimas has the right to address such inquiries to the Constitutional Court, requesting a conclusion on this matter. In such cases, it must apply to the Constitutional Court by means of a resolution adopted by more than half of all the members of the Seimas. The inquiry or appropriate resolution of the Seimas must be accompanied by a conclusion of the medical commission that is approved by the Seimas. If necessary, other evidence describing the state of health is attached thereto (Article 78 of the Law on the Constitutional Court, Paragraph 4 of Article 29¹ of the Statute of the Seimas). Under the Constitution, the powers of the President of the Republic cease, when the Seimas, taking into consideration the conclusion of the Constitutional Court, by a 3/5 majority vote of all the members of the Seimas, adopts a resolution stating that the state of health of the President of the Republic does not allow him/her to hold office. It should be noted that the Constitutional Court has not presented such a conclusion so far.

The conclusion whether an international treaty is in conflict with the Constitution. The President of the Republic or the Seimas may also address an inquiry to the Constitutional Court, requesting its conclusion whether an international treaty of the Republic of Lithuania is in conflict with the Constitution. It is important to note that this inquiry may be filed either before or after the ratification of the international treaty at the Seimas.⁹⁷ The scientific doctrine notes that a serious problem of constitutional and international law would arise if an international treaty ratified by the Seimas (and valid for Lithuania) were ruled to be in conflict with the Constitution.⁹⁸ However, so far, this has been a problem only in the scientific discourse, because, up to now, the Constitutional Court has been requested to present a conclusion on the compliance of an international treaty with the Constitution only once and, most importantly, before its ratification: the President of the Republic addressed an inquiry to the Constitutional Court, requesting a conclusion whether Articles 4, 5, 9, and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 2 of its Protocol No 4, were in conflict with the

⁹⁶ Article 77 (wording of 14 May 2015) of the Law on the Constitutional Court. The Constitutional Court has presented the following conclusions on the violations of the election laws: the conclusions of 23 November 1996 (Official Gazette *Valstybės žinios*, 1996, No 114-2644), 5 November 2004 (*ibid.*, 2004, No 163-5955), 7 November 2008 (*ibid.*, 2008, No 130-4992), 26 October 2012 (*ibid.*, 2012, No 125-6285), and 10 November 2012 (*ibid.*, 2012, No 131-6607).

⁹⁷ See Item 68 of the Rules of the Constitutional Court and Article 181³ of the Statute of the Seimas.

⁹⁸ Kūris, footnote 14, pp. 102–103.

Constitution. On 24 January 1995, in response to this inquiry, the Constitutional Court presented the conclusion that Articles 4, 5, 9, and 14 the said Convention, as well as Article 2 of its Protocol No 4, were not in conflict with the Constitution.⁹⁹ After the Constitutional Court had presented this conclusion, the Seimas ratified this Convention on 27 April 1995 by the Law on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Fourth, Seventh, and Eleventh Protocols Thereof.¹⁰⁰

The conclusion whether the actions of state officials against whom an impeachment case has been instituted are in conflict with the Constitution. As mentioned above, the Constitutional Court gives conclusions on whether the concrete actions of members of the Seimas and state officials, against whom an impeachment case has been instituted, are in conflict with the Constitution. The constitutional grounds of impeachment are established in Article 74 of the Constitution. This article provides that the President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office or have the mandate of a member of the Seimas revoked by a 3/5 majority vote of all the members of the Seimas. This is performed according to the procedure for impeachment proceedings, which is established by the Statute of the Seimas. Impeachment is a special procedure provided for in the Constitution, when the issue of the constitutional liability of the highest state officials indicated in Article 74 of the Constitution is decided, i.e. their removal from office for the following actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or the commission of a crime. A breach of the oath is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath.¹⁰¹

The force of conclusions. Article 107 of the Constitution provides that “The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal” (Paragraph 2). “On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the

⁹⁹ The Constitutional Court’s conclusion of 24 January 1995, Official Gazette *Valstybės žinios*, 1995, No 9-199.

¹⁰⁰ Official Gazette *Valstybės žinios*, 1995, No 37-913.

¹⁰¹ See, e.g. the Constitutional Court’s conclusion of 31 March 2004 and its ruling of 25 May 2004. The Constitutional Court has given three conclusions on the constitutionality of the actions of the members of the Seimas and other state officials against whom impeachment cases were instituted: the conclusions of 31 March 2004 (Official Gazette *Valstybės žinios*, 2004, No 49-1600), 27 October 2010 (*ibid.*, 2010, No 128-6545), and 3 June 2014 (Register of Legal Acts, 05-06-2014, No 7164). The Constitutional Court recognised in all those conclusions that the actions of the said officials had been unconstitutional. In one of such conclusions, the Constitutional Court recognised that certain actions of the President of the Republic had been unconstitutional and that the Constitution had been violated grossly by the said actions (see the conclusion of 31 March 2004); in the other two conclusions, the Constitutional Court recognised that certain actions of respective members of the Seimas had been unconstitutional and that the said actions resulted both in a breach of the oath and in gross violations of the Constitution (see the conclusions of 27 October 2010 and 3 June 2014).

issues set forth in the third paragraph of Article 105 of the Constitution” (Paragraph 3). Consequently, both the Constitutional Court, which presents a final and non-appealable conclusion on a relevant matter, and the Seimas, which adopts a final decision, take part in deciding the issues specified in Paragraph 3 of Article 105 of the Constitution. Accordingly, the following questions arise: What is meant by the phrase “the Seimas shall take a final decision”? What is the legal force of the conclusions of the Constitutional Court? What is their significance?

The Constitutional Court’s conclusion of 31 March 2004, which disclosed the concept of the powers of the Constitutional Court and the Seimas in dealing with the issues referred to in Paragraph 3 of Article 105 of the Constitution, is of particular importance in answering these questions. In this conclusion, the Constitutional Court held that the provision of Paragraph 3 of Article 107 of the Constitution, whereby, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on the issues set forth in Paragraph 3 of Article 105 of the Constitution, means that, in cases where impeachment proceedings are instituted against the President of the Republic for a gross violation of the Constitution, the Seimas has the duty to apply to the Constitutional Court and to request a conclusion on whether the actions of the President of the Republic are in conflict with the Constitution. The provision of Paragraph 2 of Article 107 of the Constitution, whereby the decisions of the Constitutional Court on the issues assigned to its competence by the Constitution are final and not subject to appeal, also means that, when deciding whether or not to remove the President of the Republic from office, the Seimas may not deny, question, or change the Constitutional Court’s conclusion that the concrete actions of the President of the Republic are (or are not) in conflict with the Constitution. No such powers are assigned to the Seimas by the Constitution. The Constitutional Court’s conclusion that the concrete actions of the President of the Republic are in conflict (or are not in conflict) with the Constitution is binding on the Seimas insofar as the Constitution does not empower it to decide whether the conclusion of the Constitutional Court is well founded and legal – it is only the Constitutional Court that may establish the legal fact that the actions of the President of the Republic are (or are not) in conflict with the Constitution. If the Constitutional Court reaches the conclusion that the actions of the President of the Republic are not in conflict with the Constitution, the Seimas may not remove the President of the Republic from office through impeachment proceedings for a gross violation of the Constitution. Thus, the legal basis for removing the President of the Republic from office is determined by the Constitutional Court, but a final decision on his/her removal on the grounds of the said legal basis is adopted by the Seimas.

While developing this official constitutional doctrine, in its ruling of 25 May 2004, the Constitutional Court noted that the conclusion of the Constitution Court that a person has grossly violated the Constitution (and thus has breached the oath) is final. No other

state institution, no other state official, and no other subject may change or revoke such a conclusion of the Constitutional Court.¹⁰²

This means that no state institution and no official may “overrule” (deny, change) a conclusion of the Constitutional Court. Nonetheless, despite the formed clear official constitutional doctrine on this matter, the Seimas once made an attempt to do it: by its resolution of 2 July 2013, the Seimas tried to “overrule” the Constitutional Court’s conclusion of 10 November 2012. The constitutionality of such actions of the Seimas (its resolution of 2 July 2013) was assessed in the Constitutional Court’s ruling of 27 May 2014.¹⁰³ The impugned resolution of the Seimas of 2 July 2013 changed the final results of the 2012 election of members of the Seimas in the multi-member constituency, which had been established by the resolution of the Seimas of 14 November 2012. It is important to note that the final results of the 2012 election of members of the Seimas in the multi-member constituency were established by the resolution of the Seimas of 14 November 2012, adopted on the basis of the Constitutional Court’s conclusion of 10 November 2012. This conclusion recognised that the Law on Elections to the Seimas had been violated by the decision of the VRK determining the final order of candidates on the list of the candidates of the Labour Party for members of the Seimas and establishing the final list of the newly elected members of the Seimas in the multi-member constituency (which included the persons whose election had been sought by committing gross violations of the principles of democratic, free, and fair elections).

The resolution of the Seimas adopted on 14 November 2012 was later changed by its resolution of 2 July 2013: by the latter resolution, the Seimas again included in the final order of candidates on the list of the candidates of the Labour Party the persons who had been removed from that list by the Seimas resolution of 14 November 2012 and whose inclusion in the said final order by the decision of the VRK was judged in the aforementioned Constitutional Court’s conclusion of 10 November 2012 as a violation of the Law on Elections to the Seimas. In this way, the Seimas resolution of 2 July 2013 created the preconditions for the aforementioned persons, who had previously been removed by the Seimas resolution of 14 November 2012 from the list of candidates for members of the Seimas, to take up the available vacant seats of members of the Seimas once such vacancies occurred.

In its ruling of 27 May 2014, the Constitutional Court applied a similar scheme as in impeachment cases. The Court noted that, under the Constitution, the Seimas has the powers to take a final decision on the results of an election to the Seimas only in cases where, subsequent to an inquiry of the Seimas or the President of the Republic, the Constitutional Court gives the conclusion that the election law was violated during the

¹⁰² This doctrine was later repeated in the Constitutional Court’s conclusion of 27 October 2010, in which the actions of the members of the Seimas Aleksandr Sacharuk and Linas Karalius were assessed, as well as in its conclusion of 3 June 2014, in which the actions of the member of the Seimas Neringa Venckienė were assessed.

¹⁰³ The Constitutional Court’s ruling of 27 May 2014, the Register of Legal Acts, 27-05-2014, No 5709.

election of the members of the Seimas. Under Paragraph 3 of Article 107 of the Constitution, the Seimas takes a final decision on the results of elections to the Seimas only on the basis of the conclusions of the Constitutional Court. The Constitutional Court emphasised that it is only the Constitutional Court, as the institution of judicial power, that may establish whether the election law was violated during a particular election to the Seimas, since the establishment of violations of the election law is an object of judicial rather than political assessment. Thus, under the Constitution, the Seimas is not allowed to decide anew the same issue regarding which the Constitutional Court has given its conclusion. In addition, the Seimas has no powers to decide whether the conclusions of the Constitutional Court on violations of the election law are well founded and lawful. This means that the Seimas, which is, by its nature and essence, a political institution, whose decisions reflect the political will of the majority of members of the Seimas, and whose decisions are grounded in political arrangements and compromises, is not allowed to decide the issue of law as to whether the election law was violated or to disregard the Constitutional Court's conclusion that the election law was violated during a particular election to the Seimas. The Seimas has the powers to conclusively decide on the results of an election to the Seimas insofar as these results are related to the violations of the election law that have been established in the respective conclusion of the Constitutional Court. The Constitutional Court noted that the final results of an election to the Seimas that are established by the Seimas under Paragraph 3 of Article 107 of the Constitution may not be altered, unless there is a constitutional ground for doing so (in that case, they could be altered only on the basis of another conclusion of the Constitutional Court).

By the Seimas resolution of 2 July 2013, the final results of the election to the Seimas were altered in the absence of another conclusion of the Constitutional Court and in disregard to the Constitutional Court's conclusion of 10 November 2012, according to which, during the 2012 election to the Seimas, the election law was violated. Thus, according to the Constitutional Court, in its resolution of 2 July 2013, the Seimas disregarded the requirements, which stem from the Constitution, that, when taking a final decision on the results of an election to the Seimas, the Seimas is obliged to base its decision on the respective conclusion of the Constitutional Court, also that it may not create any preconditions for awarding a mandate of a member of the Seimas to the candidates whose election was sought by committing the gross violations of the principles of democratic, free, and fair elections, as well as that it may not alter the final results of the election to the Seimas without a constitutional ground and without another conclusion of the Constitutional Court.

Having assessed in a systemic manner the jurisprudence formed by the Constitutional Court so far on the relationship between the force of conclusions of the Constitutional Court and the powers of the Seimas in deciding on impeachments and violations of the election laws, it must be concluded that similar rules would apply to conclusions presented by the Constitutional Court whether the state of health of the President of the Republic

allows him/her to continue to hold office and whether an international treaty is in conflict with the Constitution.

2.3. The powers of the Constitutional Court to interpret its final acts

Exercising its constitutional powers, the Constitutional Court administers constitutional justice and guarantees constitutional legality and the supremacy of the Constitution in the legal system. Administering constitutional justice, as well as guaranteeing constitutional legality and the supremacy of the Constitution in the legal system, implies that every decision of the Constitutional Court must be argued properly (clearly and rationally) in a relevant act of the Constitutional Court. Still, such situations are possible where certain provisions of a ruling or another final act of the Constitutional Court are not clear enough to the subject that must follow and execute that ruling or another act of the Constitutional Court. Such situations are also possible where, due to certain reasons, the Constitutional Court sees that certain provisions of its ruling or another final act must be interpreted in order to ensure the proper execution of that ruling or another act of the Constitutional Court so that the said ruling or another act of the Constitutional Court would be followed.¹⁰⁴

In such situations, a need (necessity) for interpreting final acts of the Constitutional Court may arise. Thus, the interpretation of its own acts is another element of the competence of the Constitutional Court. The Constitution does not consolidate *expressis verbis* such powers of the Constitutional Court. However, as stated in the jurisprudence of the Constitutional Court, the said powers undoubtedly stem from the Constitution – the overall constitutional legal regulation (*inter alia*, the constitutional principle of the rule of law), and such powers of the Constitutional Court are implied by the constitutional mission of the Constitutional Court.¹⁰⁵

The powers of the Constitutional Court to officially interpret its own final acts are specified explicitly in Article 61 of the Law on the Constitutional Court. Paragraph 1 of the same article stipulates that only the Constitutional Court may officially interpret its own ruling, conclusion, or decision at the request of the persons that participated in the case, other institutions, or the persons specified in the first paragraph of Article 60 of this law, or on its own initiative. It should be mentioned that only in one of its decisions the Constitutional Court has interpreted not only the provisions of its rulings, but also those of its decision;¹⁰⁶ the Constitutional Court has not so far adopted any decision interpreting

¹⁰⁴ See the Constitutional Court's decision of 14 March 2006.

¹⁰⁵ See, in this regard, e.g. the Constitutional Court's decisions of 14 March 2006, 29 November 2012, and 3 July 2013.

¹⁰⁶ The Constitutional Court's decision of 20 April 2010, Official Gazette *Valstybės žinios*, 2010, No 46-2219. In this decision, the Constitutional Court interpreted not only the provisions of its rulings, but also the provisions of its decision of 15 January 2009 on the interpretation of the provisions of certain rulings of the Constitutional Court.

the provisions of its own conclusion. However, the Constitutional Court has adopted two decisions on refusing to interpret its conclusions.¹⁰⁷

Thus, only the Constitutional Court itself may officially interpret its own act. It may do so on its own initiative. The persons involved in a relevant case, as well as the Seimas, the President of the Republic, the Government, the President of the Supreme Court, the Prosecutor General, and the Minister of Justice may ask the Constitutional Court to interpret its decision.¹⁰⁸

The interpretation of the final acts of the Constitutional Court as an instrument is not an objective in itself. The purpose of the institution of the interpretation of final acts of the Constitutional Court is to disclose the content and meaning of certain provisions of a final act of the Constitutional Court more broadly and in more detail where this is necessary so that the proper execution of that final act would be ensured and the said final act of the Constitutional Court would be followed.¹⁰⁹ The interpretation of a final act of the Constitutional Court might be significant not only for ensuring the proper implementation of the decision consolidated in the operative part of the act, but also for ensuring that due regard is paid in the law-making process to the official constitutional doctrine formed by the Constitutional Court.¹¹⁰ It should be emphasised that the mission of the institution of the interpretation of a final act of the Constitutional Court is to explain more comprehensively those provisions and formulations of a final act of the Constitutional Court the meaning of which gives rise to some uncertainties, but not to explain how to implement the said ruling or another final act in a concrete situation, *inter alia*, in the area of the application of law.¹¹¹

The Constitutional Court must interpret its final act without changing its content. The Constitutional Court has noted that, in the course of interpreting its own ruling, the Constitutional Court is bound by the content of both the operative and reasoning parts of its ruling. This provision also means, among other things, that, while interpreting its

¹⁰⁷ The Constitutional Court's decision of 6 April 2004, *ibid.*, 2004, No 51-1701; the Constitutional Court's decision of 29 November 2012, *ibid.*, 2012, No 140-7189.

¹⁰⁸ In this context, attention must be paid to the Constitutional Court's decision of 22 April 2010. By this decision, the petition filed by the Šiauliai Regional Court requesting the interpretation of the provisions of the Constitutional Court's rulings of 9 May 2006 and 22 October 2007 was accepted for consideration. In the same decision, the Constitutional Court established that the Šiauliai Regional Court had not been a person involved in the constitutional justice cases that gave rise to the Constitutional Court's rulings the interpretation of the provisions of which was requested, nor was this court such a subject to whom rulings of the Constitutional Court must be sent under Paragraph 1 of Article 60 of the Law on the Constitutional Court. Nevertheless, in its decision of 22 April 2010, the Constitutional Court held that, having established the constitutionally grounded interest of the petitioner – a court considering a case – to remove doubts about the proper execution of rulings or other final acts (provisions thereof) of the Constitutional Court in order that justice would be properly administered in a case considered by that court, the Constitutional Court may accept requests to interpret certain provisions of a ruling or another final act of the Constitutional Court and investigate these requests in the manner prescribed by law, as well as pronounce decisions on such interpretation.

¹⁰⁹ The Constitutional Court's decisions of 14 March 2006 and 29 November 2012.

¹¹⁰ See the Constitutional Court's decisions of 29 November 2012 and 27 August 2014.

¹¹¹ See, e.g. the Constitutional Court's decision of 29 November 2012.

ruling, the Constitutional Court may not interpret the content of the ruling in such a way that would change the meaning of its provisions, *inter alia*, the notional entirety of the elements constituting the content of the ruling, and the arguments and reasoning upon which that ruling of the Constitutional Court is based. In addition, it also follows from this provision that the Constitutional Court may not interpret what it did not investigate in the constitutional justice case in which the ruling being interpreted was adopted.¹¹²

In the course of interpreting rulings and other final acts of the Constitutional Court, the official constitutional doctrine is developed. The uniformity and continuity of the official constitutional doctrine imply the necessity to interpret each provision of a ruling or another final act of the Constitutional Court in the light of the entire official constitutional doctrinal context, as well as in the light of other provisions (explicit or implicit) of the Constitution that are related to the provision (provisions) of the Constitution in the course of the interpretation of which a particular provision of the official constitutional doctrine was formulated in a certain ruling or another final act of the Constitutional Court. No official constitutional doctrinal provision of a ruling or another final act of the Constitutional Court may be interpreted in isolation, by ignoring its meaningful and systemic links with other official constitutional doctrinal provisions set out in the same ruling, another final act of the Constitutional Court, or in its other acts, as well as with other (explicit or implicit) provisions of the Constitution.¹¹³

In cases where the Constitutional Court is requested to provide the interpretation of the provisions of the operative part of its final act by ignoring their link with the provisions of the official constitutional doctrine set out in the reasoning part and with the other arguments, the Constitutional Court, while taking account of the fact that the provisions of the operative part of a ruling or another final act may not be interpreted in isolation of the provisions of the official constitutional doctrine set out in the reasoning part or in isolation of other arguments, has the powers to refuse to interpret its final act subsequent to such a petition.¹¹⁴

At the same time, it also needs to be emphasised that, in the course of the official interpretation of rulings and other final acts of the Constitutional Court, the official constitutional doctrine is not modified. The modification of the official constitutional doctrine is related to the consideration of new constitutional justice cases and the

¹¹² As regards these aspects, see, e.g. the Constitutional Court's decision 14 March 2006, its ruling of 28 March 2006, as well as its decisions of 10 January 1998, 23 September 2002, 11 February 2004, 15 January 2009, 27 August 2014, and 13 January 2016.

¹¹³ See, e.g. the Constitutional Court's decisions of 14 March 2006, 21 November 2006, 6 December 2007, and 1 February 2008.

¹¹⁴ See, e.g. the Constitutional Court's decision of 29 November 2012. In this decision, the Constitutional Court refused to accept the petition requesting the interpretation of its conclusion of 10 November 2012, among other things, due to the fact that the petitioner had formulated part of his petition requesting the interpretation of the decisions consolidated in Items 1–3 of the operative part of the Constitutional Court's conclusion of 10 November 2012 without taking into account their connection to the arguments set out in the reasoning part of the same conclusion.

establishment of new precedents of the Constitutional Court while deciding those cases, but not with the official interpretation of the provisions of the rulings or other final acts of the Constitutional Court.¹¹⁵

Petitions requesting the interpretation of a final act of the Constitutional Court are often aimed at ascertaining (consulting) how specifically it should be implemented, *inter alia*, in the field of the application of law.¹¹⁶ Such petitions are not within the jurisdiction of the Constitutional Court.¹¹⁷

In its jurisprudence, the Constitutional Court regularly emphasises that, in accordance with the Constitution and the Law on the Constitutional Court, the Constitutional Court does not decide questions concerning the application of legal acts. Such questions are decided by an institution that has the powers to apply legal acts. If laws contain uncertainties, ambiguities, or gaps, the removal of such uncertainties, ambiguities, or gaps is the duty of the legislature. The issues of the application of law that have not been solved by the legislature are a matter case-law. This doctrinal provision means that such questions of the application of law that have not been decided by the legislature may be decided by courts when they consider disputes regarding the application of relevant legal acts (parts thereof).¹¹⁸

Petitions requesting the interpretation of an implemented ruling or another final act of the Constitutional Court may not seek the assessment of the compliance of a legal act

¹¹⁵ The Constitutional Court's decision of 21 November 2006; also see the Constitutional Court's rulings of 28 March 2006 and 9 May 2006, its decisions of 8 August 2006 and 21 November 2006, its ruling of 24 October 2007, and its decision of 6 December 2007.

¹¹⁶ See, e.g. the Constitutional Court's decisions of 2 July 2004, 20 November 2006, 22 December 2010, 5 September 2011, 27 August 2014, and 14 January 2015.

¹¹⁷ Such a conclusion, for example, was drawn in the Constitutional Court's decision of 20 November 2006, having held that the petition of the State Tax Inspectorate requesting the interpretation of the Constitutional Court's ruling of 26 September 2006 was a petition requesting the interpretation of how the provisions of the Law on Tax Administration were to be applied upon the entry into force of the Constitutional Court's ruling of 26 September 2006, which had declared the said provisions unconstitutional. The same conclusion was also drawn in the Constitutional Court's decision of 14 January 2015, having held that the petition of the President of the Supreme Court of Lithuania was to be treated as a petition requesting the interpretation of how to apply the Constitutional Court's ruling of 29 June 2010 after the legislature had failed to take steps to implement this ruling.

¹¹⁸ See, e.g. the Constitutional Court's decision of 20 November 2006.

adopted for implementing the said ruling or another final act of the Constitutional Court with other higher-ranking legal acts, *inter alia* (and, first of all), with the Constitution.¹¹⁹

The powers of the Constitutional Court, which arise from the Constitution and are established in the Law on the Constitutional Court, to officially interpret its rulings may not be interpreted as meaning that they also include the right and/or duty of the Constitutional Court to interpret the arguments or reasons (specified as assumptions by the petitioner requesting the interpretation of a ruling (provisions thereof) of the Constitutional Court, but not indicated in the said ruling) on the basis of which the ruling or separate provisions thereof were consolidated and formulated.¹²⁰

It should also be noted that the interpretation of final acts of the Constitutional Court, as well as the overall activity of the Constitutional Court and the development of the constitutional doctrine, may not be determined by accidental (from the legal point of view) factors (for example, a change in the composition of the Constitutional Court). The Constitutional Court is a legal, but not a political institution. The Constitutional Court decides the legal issues assigned to its competence by the Constitution only by invoking legal arguments, *inter alia*, the official constitutional doctrine and precedents that it itself formulated. The Constitutional Court may not interpret its final acts by following, *inter alia*, the arguments of political expediency, the documents of political parties or different public organisations, the opinions of and assessments by politicians, political science or sociological research, or the results of public opinion polls; otherwise, preconditions for doubting the impartiality of the Constitutional Court might emerge and a threat to the independence of the Constitutional Court and the stability of the Constitution itself, *inter alia*, the official constitutional doctrine, would arise.¹²¹

¹¹⁹ See, e.g. the Constitutional Court's decisions of 29 November 2012, 27 August 2014, and 29 November 2012. For instance, in its decision of 29 November 2012, the Constitutional Court noted that, under Paragraph 3 of Article 107 of the Constitution, on the basis of the conclusions of the Constitutional Court, the Seimas takes a final decision on relevant issues. Thus, after receiving the conclusion of the Constitutional Court that the election law was violated during the election of the members of the Seimas, the Seimas is obliged to adopt a final decision. In cases where, on the grounds of a conclusion of the Constitutional Court, a final decision of the Seimas is adopted, the Constitutional Court has the powers to assess and decide on whether or not the interpretation of that conclusion would be senseless and to refuse to interpret it. A conclusion of the Constitutional Court on the grounds of which a final decision of the Seimas is adopted may be interpreted, *inter alia*, for the purpose that, in the law-making process, proper consideration would be given to the official constitutional doctrine formed by the Constitutional Court. It needs to be noted that a petition requesting the interpretation of the conclusion of the Constitutional Court that during the election of the members of the Seimas the law on elections was violated may not question the compliance of an act of the Seimas adopted on the grounds of the said conclusion with higher-ranking legal acts, *inter alia*, with the Constitution. This may be done by initiating a new constitutional justice case, where subjects provided for in the Constitution apply to the Constitutional Court with a petition. The consideration of a petition requesting the interpretation of a ruling of the Constitutional Court or its other final act does not imply a new constitutional justice case.

¹²⁰ See, e.g. the Constitutional Court's decisions of 14 March 2006 and 29 November 2012.

¹²¹ See the Constitutional Court's decisions of 13 March 2013 and 16 January 2014.

3. The Concept of the Constitution

Although the term “constitution” was already known in ancient Roman times, but the concept of the constitution as supreme law placing restrictions on power became established only in the era of constitutionalism, whose beginning, in the 18th century, is marked by the constitutionalist ideas, the constitutionalist movement, and the first written constitutions. The legal science provides various definitions of a constitution; however, the only notion of a constitution binding on everyone is that formulated in the official constitutional doctrine. It is the concept of a constitution found in the said notion that must be followed in revealing the meaning and content of the constitution.

The jurisprudence of the Constitutional Court¹²² reflects all major aspects of the concept of the Constitution: the Constitution is supreme law, and the legal force of any other legal act is not comparable to that of the Constitution; the Constitution is a social contract and lays down the legal foundation for the common life of the nation as the national community; the Constitution is the obligation of the civil nation to live under the fundamental rules consolidated in the Constitution and to obey those rules, as well as a long-term obligation binding the current and future generations; the Constitution is based on universal and unquestionable values (the belonging of the sovereignty to the nation, democracy, the recognition of human rights and freedoms and respect for them, respect for law and the rule of law, limitation of the scope of powers, the duty of state institutions to serve the people and their responsibility to society, civic consciousness, justice, and the striving for an open, just, and harmonious civil society and a state under the rule of law); the Constitution establishes the most important grounds for the relationships of social and public life; the Constitution is the kernel of a legal system, it serves as the guideline for the whole legal system, which is created on its basis.

The Constitution as supreme law is also characterised by the features revealed in the jurisprudence of the Constitutional Court such as the supremacy of the Constitution, its integrity, the absence of gaps and contradictions in the Constitution, its direct applicability, its stability and viability.

The supremacy of the Constitution. The Constitutional Court has held on more than one occasion that the principle of the supremacy of the Constitution means that the Constitution rests in the exceptional, highest, place in the hierarchy of legal acts, that no legal act may be in conflict with the Constitution, that no one is permitted to violate the Constitution, that the constitutional order must be protected, and that the Constitution itself consolidates the mechanism making it possible to determine whether legal acts (parts thereof) are in conflict with the Constitution. In this respect, the principle of the supremacy of the Constitution, which is established in the Constitution, is inseparably

¹²² See, e.g. the Constitutional Court's rulings of 25 May 2004 (Official Gazette *Valstybės žinios*, 2004, No 81-2903) and 11 July 2014 (Register of Legal Acts, 11-07-2014, No 10117).

linked with the constitutional principle of a state under the rule of law, which is a universal constitutional principle upon which the entire Lithuanian legal system and the Constitution itself are based. A violation of the principle of the supremacy of the Constitution would mean that the constitutional principle of a state under the rule of law is violated as well.¹²³ The Constitutional Court has also held that all provisions of the Constitution should be interpreted by taking into account the principle of the supremacy of the Constitution.¹²⁴ It has also emphasised that the Constitution is the highest-ranking legal act, supreme law, and the measure of the lawfulness and legitimacy of all other legal acts; the discretion of all law-making entities is limited by supreme law – the Constitution; all legal acts, as well as decisions of all state and municipal institutions and officials, must comply with and not contradict the Constitution.¹²⁵ The Constitution equally binds the national community – the civil nation itself; therefore, the supreme sovereign power of the nation may be executed, *inter alia*, directly (by referendum), only in observance of the Constitution.¹²⁶

The integrity of the Constitution, the absence of gaps and contradictions in the Constitution, and its direct applicability. The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The Constitutional Court has held on more than one occasion that all provisions of the Constitution are interrelated to the degree that the content of some provisions of the Constitution determines the content of other provisions thereof; the provisions of the Constitution constitute a harmonious system; no provision of the Constitution may oppose its other provisions. It has been held in the jurisprudence of the Constitutional Court on more than one occasion that the very nature of the Constitution as the highest-ranking act and the idea of constitutionalism imply that the Constitution may not have, nor does it have, any gaps or internal contradictions.¹²⁷ It has also been held in the jurisprudence of the Constitutional Court that, under the Constitution, the legislature does not have the right to establish such a legal regulation that would limit or deny the possibility of applying the Constitution directly.¹²⁸

¹²³ *Inter alia*, the Constitutional Court's rulings of 24 December 2002 (Official Gazette *Valstybės žinios*, 2003, No 19-828) and 10 November 2014 (Register of Legal Acts, 10-11-2014, No 16400).

¹²⁴ The Constitutional Court's ruling of 5 March 2004, Official Gazette *Valstybės žinios*, 2004, No 38-1236, corrigendum, 2004, No 57; the Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

¹²⁵ The Constitutional Court's ruling of 13 December 2004, Official Gazette *Valstybės žinios*, 2004, No 181-6708; the Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

¹²⁶ The Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

¹²⁷ The Constitutional Court's ruling of 25 May 2004, Official Gazette *Valstybės žinios*, 2003, No 19-828; the Constitutional Court's ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478.

¹²⁸ The Constitutional Court's ruling of 24 December 2002, Official Gazette *Valstybės žinios*, 2003, No 19-828; the Constitutional Court's ruling of 29 March 2012, *ibid.*, 2012, No 40-1973.

The stability of the Constitution. The official constitutional doctrine¹²⁹ emphasises that the stability of the Constitution is a great legal value; the stability of the Constitution is one of the preconditions for ensuring the continuity of the state and respect for the constitutional order and law, as well as ensuring the implementation of the objectives declared in the Constitution by the Lithuanian nation, upon which the Constitution itself is founded. The stability of the Constitution is such its feature that, together with its other features (*inter alia*, and, first of all, with the special, supreme legal force of the Constitution) makes the constitutional legal regulation different from the legal (ordinary) regulation established by means of lower-ranking legal acts and makes the Constitution different from all the rest of legal acts. Consequently, the Constitution should not be altered if there is no legal necessity to do so. However, when it comes to the constitutional values such as the innate nature of human rights and freedoms, democracy, and the independence of the state, which constitute the foundation for the Constitution as the social contract, as well as the foundation for the nation's common life, based on the Constitution, and for the State of Lithuania itself, these constitutional values must not be denied at all. In other words, according to the Constitutional Court, the innate nature of human rights and freedoms, the independence of the state, and democracy are categorised as unamendable, or “eternal”, provisions of the Constitution.

The viability of the Constitution. The stability of the Constitution is inseparable from its viability. The coherence of these two legal values is ensured by active actions of the Constitutional Court. As noted in the jurisprudence of this Court, the formation and development of the official constitutional doctrine make it possible to disclose the deep potential of the Constitution without changing its text and, in this respect, to adjust the Constitution to changes in social life and to the constantly changing living conditions of society and the state, as well as to ensure the viability of the Constitution as the legal basis for the life of society and the state.¹³⁰

It was the active action of the Constitutional Court in verifying the constitutionality of legal acts and interpreting the Constitution that led to the gradual formation of the constitution-centric concept of the legal system. This concept has the following key features:

1. The Constitution is not (solely) the basic law. Its assessment and perception cannot be based on the same criteria on the grounds of which ordinary law is understood. The Constitution itself is the highest measure (norm, standard) for evaluating all legal acts.
2. The Constitution must be seen as supreme law with which all other legal acts must comply. The Constitution is namely law, but not a (statutory) law.

¹²⁹ The Constitutional Court's ruling of 16 January 2006, *ibid.*, 2006, No 7-254; the Constitutional Court's ruling of 14 March 2006, *ibid.*, 2006, No 30-1050; the Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292; the Constitutional Court's ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478; the Constitutional Court's ruling of 11 July 2014, *ibid.*, 11-07-2014, No 10117.

¹³⁰ The Constitutional Court's ruling of 11 July 2014, the Register of Legal Acts, 11-07-2014, No 10117.

3. The Constitution (constitutional law) has only a few sources: the text of the Constitution and acts adopted by the Constitutional Court, which present the official and binding interpretation of the text of the Constitution (the official constitutional doctrine). It is also possible to categorise (to the extent specified in Constitution itself) international and EU law as sources of constitutional law. For example, according to Article 135 of the Constitution, the Republic of Lithuania is obliged to follow the universally recognised principles and norms of international law; therefore, the official constitutional doctrine sees international law as a minimum standard for the protection of human rights. According to Article 1 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, which is an integral part of the Constitution, EU law may be a source of interpretation of the constitutional status and powers of state institutions (this article provides that the Republic of Lithuania as a Member State of the European Union shares with or confers on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union). Thus, the Constitution must be understood as being sufficiently open to the gradual influence of international and EU law.

4. The perception of a living constitution. This perception arises from the interpretation of the Constitution as presented in acts adopted by the Constitutional Court. The Constitutional Court must interpret the Constitution with sufficient flexibility in order to be able to cope with modern challenges and keep pace with the changing country, thus creating the possibility of necessary changes and stability while preserving the basic constitutional principles.

5. The Constitution is not only its text, but also its spirit (the overall constitutional legal regulation, including the constitutional provisions and principles, which are enshrined explicitly or implicitly, and the values protected by the Constitution). Therefore, the Constitution is perceived as ideal law, which has no gaps or internal contradictions; there is a possibility of calling into question the constitutionality of any national legal act. The Constitution determines the content and direction of the entire national legal system.¹³¹

Thus, the Constitution is not only the text (provisions) of the highest-ranking legal act, called the Constitution, but also the constitutional jurisprudence in which this act is interpreted and developed. Such conception of the constitution is called a living or jurisprudential constitution. According to this conception, the Constitution is seen as an inseparable connection between the act called the Constitution and the official constitutional doctrine, formulated in acts passed by the Constitutional Court, which interprets the regulation laid down in the Constitution. It was namely because of the constitutional doctrine that the Constitution became a real measure of the highest legality where this measure has clearly defined criteria, which are further developed by the Constitutional Court. The conception of the jurisprudential constitution, inspired by the Constitutional

¹³¹ Žalimas, D., “Viability of the Constitution and the Role of the Constitutional Court”, <http://lrkt.lt/data/public/uploads/2015/10/viability-of-theconstitution-lvivroundtable.pdf> [accessed 21 July 2016].

Court, has changed and continues to change not only the concept of the Constitution, but also the entire legal system of the state; nowadays, this system is viewed primarily through the prism of constitutionalism. The Constitution perceived as the jurisprudential constitution allows the entire legal life to be pointed in a certain direction, allows all legal norms, legal institutions, and branches of law to be merged into a coherent whole, which, at the same time, allows the Constitution to be open to necessary changes in society and the state.

4. The Official Interpretation of the Constitution

The powers of the constitutional courts to officially interpret the constitution are established *expressis verbis* in the texts of some national constitutions. For example, this is done in Paragraph 1(1) of Article 93 of the German Basic Law,¹³² Article 128 of the Constitution of the Slovak Republic,¹³³ Paragraph 1 of Article 149 of the Constitution of the Republic of Bulgaria,¹³⁴ Paragraph 1(b) of Article 135 of the Constitution of the Republic of Moldova.¹³⁵ However, such competence of the constitutional courts is not mentioned literally in the constitutions of many states. The powers to interpret the constitution are not established directly, for example, in Polish, Czech, and Lithuanian constitutions. However, it is evident that, in the course of examining whether a legal act is in conflict with the Constitution, it is necessary to clarify not only the act being examined, but also the act in respect of which the examination is carried out. Having compared these interpretations, the constitutional court holds that the act complies with the constitution or is in conflict with it. Thus, the “primordial” function of constitutional justice – the assessment of the compliance of legal acts with the constitution – implies the interpretation of the constitution as an integral element of constitutional review. Namely the process of ensuring constitutionality brings about a naturally formed need to objectively understand the constitution – that laconic legal document that would be conceptually unworkable in ensuring legality if uncertainties of its perception were not removed.¹³⁶

The Constitution, as well as law in general, is not its text; the Constitution and law are the meaning of a relevant text, i.e. what is behind the text and what the text means (expresses).¹³⁷ Consequently, the need for interpretation is common to all constitutions of the countries all over the world. Therefore, even if this is not included *expressis verbis* in the constitution, the constitutional courts have to interpret the constitution and form the

¹³² The Basic Law for the Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80201000.pdf> [accessed 26 June 2017].

¹³³ The Constitution of the Slovak Republic, <http://www.slovakia.org/sk-constitution.htm> [accessed 30 May 2016].

¹³⁴ The Constitution of the Republic of Bulgaria, <http://www.parliament.bg/en/const> [accessed 30 May 2016].

¹³⁵ The Constitution of the Republic of Moldova, <http://www.presedinte.md/eng/constitution> [accessed 1 June 2016].

¹³⁶ Mesonis, G., “Konstitucijos interpretacinis poreikis” [“The Need for Interpreting the Constitution”], *Jurisprudencija [Jurisprudence]*, 2009, No 4 (118), p. 49.

¹³⁷ Kūris, footnote 13, p. 10.

official constitutional doctrine. Of course, this does not mean that other institutions or persons may not make their own interpretation of the constitution; however, there must not be several official concepts of the constitution in a state: an official interpreter of the Constitution is needed in order to make such an interpretation that would be final and binding on all. After an appropriate doctrine has been formulated, the word of the constitutional court becomes final and, in this respect, its powers to officially interpret the constitution are exceptional – not due to the fact that this institution is the highest, the most authoritative, and infallible, but because it is the constitutional court, and not any other body, that is entrusted with comparing ordinary legal regulation with that established in the constitution.¹³⁸ Thus, the interpretive discretion is a “legitimate baby” of constitutional review.¹³⁹

The interpretation of the constitution is a process, which guarantees harmony between the stability of constitutional provisions and their dynamics, understood as their capability to adapt to the changing social and political environment.¹⁴⁰ When interpreting constitutional principles, the court builds a bridge between the principles set by the current nation and those established by its predecessors.¹⁴¹ The fact that the Constitution is rigid and difficult to change can be compensated for by constitutional justice, where the constitutional courts, while deciding specific cases and taking into account the changing context, interpret the provisions of the Constitution to the extent permitted both by the Constitution itself and by the legal doctrine, thus ensuring that the provisions of the constitution would not become outdated.¹⁴² Thus, the official constitutional doctrine gives the opportunity to adapt the constitution to social changes by means other than formal amendment of this legal act and thus guarantees its stability.

The text of the Constitution becomes only a starting point for revealing the real meaning and content of the constitutional regulation where the actual centre of gravity, when the Constitution is understood as normative reality, is moved from the Constitution – the basic act – through constitutional justice and into the constitutional jurisprudence. The Constitution regulates a significant part of very important social relations only in most general terms. If not interpreted, constitutional norms may seem declarative, lacking legal precision, or even contradictory; however, this does not mean inadequacies in the work performed by the drafters of the Constitution, but reflects the existing objective specifics

¹³⁸ Kūris, footnote 14, p. 93.

¹³⁹ Kūris, E., “Konstitucinis Teismas ir įstatymų leidyba: žvilgsnis ‘iš vidaus’” [“The Constitutional Court and Legislation: A Look ‘from the Inside’”], *Teisės problemos [Legal Issues]*, 2004, No 1(43), p. 120.

¹⁴⁰ Kūris, E., “The Constitutional Court and Interpretation of the Constitution” in Jarašiūnas, E. and others, *Constitutional Justice in Lithuania*, Vilnius: The Constitutional Court of the Republic of Lithuania, 2003, p. 205.

¹⁴¹ Blancher, P., *Contrôle de constitutionnalité et volonté générale*, Paris: Presses universitaires de France, 2001, p. 190.

¹⁴² Jarašiūnas, E., “Apie konstitucinės justicijos funkcijas” [“On the Functions of Constitutional Justice”] in *Konstitucija, žmogus, teisinė valstybė [The Constitution, an Individual, and the Rule of Law]* (conference material), Vilnius: The Lithuanian Centre for Human Rights, 1998, p. 153.

of the constitutional regulation.¹⁴³ It is also necessary to interpret “clear” norms of the Constitution, because clarity is a relative thing – the rule *lex clara non sunt interpretanda* (clear rules of law do not require interpretation) does not apply in respect of the Constitution only due to the fact that the Constitution is not a code of laws, it cannot regulate all relations formed in society in such a way as to establish specific rights and duties of subjects of legal relations.¹⁴⁴

When interpreting the principles and norms of the constitution, the constitutional courts often invoke foreign legal doctrine or jurisprudence. The significance of the Convention for the Protection of Human Rights and Fundamental Freedoms and the jurisprudence of the European Court of Human Rights as a “source of inspiration” for interpreting the norms of the Constitution is especially notable. This is understandable: all courts are oriented towards generally accepted standards of legal practice. In addition, such orientation also reflects the internationalisation of law – a modern trend in the development of law in the countries of our continent.¹⁴⁵

It is important to note that, when officially interpreting the Constitution, the constitutional courts also interpret its provisions that consolidate their own status and competence. As mentioned above, neither the Constitution nor the Law on the Constitutional Court stipulate *expressis verbis* that the Constitutional Court has the powers to interpret the Constitution; therefore, the Constitutional Court itself had to convey this truth – this was done for the first time in its ruling of 30 May 2003,¹⁴⁶ in which the Constitutional Court noted that, under the Constitution, only the Constitutional Court has the powers to officially interpret the Constitution.

The details of the concept of the interpretative mission of the Constitutional Court were revealed in the Constitutional Court’s ruling of 25 May 2004.¹⁴⁷ It held that the Constitution as a legal act is expressed in a certain textual form and has certain linguistic expression. However, since it is impossible to treat law solely as a text in which certain legal provisions and rules of conduct are set out *expressis verbis*, thus, it is also impossible to treat the Constitution as legal reality solely on the basis of its textual form – the Constitution may not be understood as the aggregate of explicit provisions only. The Constitution is an integral act (Paragraph 1 of Article 6 of the Constitution). The nature of the Constitution itself as the highest-ranking legal act and the idea of constitutionality imply that the Constitution may not have and has no gaps; thus, there may not be and

¹⁴³ Mesonis, G., “Kai kurie Konstitucijos interpretavimo aspektai: *expressis verbis* ribos” [“Some Aspects of the Interpretation of the Constitution: The Limits of *Expressis Verbis*”], *Jurisprudencija* [Jurisprudence], 2008, No 5, p. 20.

¹⁴⁴ Sinkevičius, V., “Seimo galių ribojimo konstituciniai pagrindai: kai kurie teoriniai aspektai” [“The Constitutional Grounds for Limitation of the Powers of the Seimas: Some Theoretical Aspects”], http://www.parlamentostudijos.lt/Nr9/9_teise_1.htm [accessed 8 July 2016].

¹⁴⁵ Jarašiūnas, footnote 5, p. 27.

¹⁴⁶ The Constitutional Court’s ruling of 30 May 2003, Official Gazette *Valstybės žinios*, 2003, No 53-2361.

¹⁴⁷ The Constitutional Court’s ruling of 25 May 2004, *ibid.*, 2004, No 81-2903.

there is no such legal regulation established in lower-ranking legal acts that may not be assessed with respect to their compliance with the Constitution. The Constitution as legal reality is comprised of various provisions – constitutional norms and constitutional principles – which are directly consolidated in various formulations of the Constitution or are derived from them. Some constitutional principles are entrenched in constitutional norms formulated *expressis verbis*, others, although not entrenched therein *expressis verbis*, are reflected in them and are derived from constitutional norms, from other constitutional principles reflected in these norms, from the entirety of the constitutional legal regulation, from the meaning of the Constitution as the act that consolidates and protects the system of major values of the national community – the civil nation, and provides for the guidelines for the entire legal system. There may not exist and there is no contradiction between the constitutional principles and the constitutional norms – all constitutional norms and constitutional principles form a harmonious system. It is the constitutional principles that organise all provisions of the Constitution and make them a harmonious whole; the constitutional principles do not permit the existence in the Constitution any internal contradictions or any such interpretation of the Constitution that could distort or deny the meaning of any provision thereof, or any value entrenched in or protected by the Constitution. The constitutional principles reveal not only the letter, but also the spirit of the Constitution – the values and objectives entrenched in the Constitution by the nation who chose a certain textual form and verbal expression of its provisions, established certain norms of the Constitution, and consolidated explicitly or implicitly a certain constitutional legal regulation. Thus, there may not exist and there is no contradiction not only between the constitutional principles and the constitutional norms, but also between the spirit and the letter of the Constitution: the letter of the Constitution may not be interpreted or applied in the manner that would deny the spirit of the Constitution; it is possible to understand the spirit of the Constitution only when the constitutional legal regulation is perceived as a whole and only upon the evaluation of the mission of the Constitution as a social contract and the highest-ranking legal act. The spirit of the Constitution is expressed by the entirety of the constitutional legal regulation, i.e. it is expressed by all provisions of the Constitution: both by the norms of the Constitution directly set out in the text of the Constitution and by the principles of the Constitution, including those that originate from the entirety of the constitutional legal regulation and the meaning of the Constitution as an act that consolidates and protects the system of the major values of the nation, as well as lays down the guidelines for the whole legal system.

The same ruling also stated that the Constitution may not be interpreted only literally by applying exclusively the linguistic (verbal) method of the interpretation of law. When interpreting the Constitution, various methods of the interpretation of law must be applied: systemic, the one of general legal principles, logical, teleological, the one of the intentions of the legislature, the one of precedents, historical, comparative, etc. Only such comprehensive

interpretation of the Constitution may provide the preconditions for the realisation of the mission of the Constitution as a social contract and the highest-ranking legal act, and for ensuring that the meaning of the Constitution will not be deviated from, that the spirit of the Constitution will not be denied, and that the values that were consolidated by the nation in the Constitution that it itself adopted will be upheld in real life.

The powers of the Constitutional Court to officially interpret the Constitution and to provide in its jurisprudence the official concept of the provisions of the Constitution arise from the Constitution itself: in order to be able to establish and adopt a decision whether the legal acts (parts thereof) under investigation are in conflict with higher-ranking legal acts, the Constitutional Court has the constitutional powers to officially interpret both the legal acts under investigation and the said higher-ranking legal acts; a different interpretation of the powers of the Constitutional Court would deny the constitutional mission of the Constitutional Court itself.¹⁴⁸

The Constitutional Court has held on more than one occasion that, under the Constitution, all acts of the Constitutional Court in which the Constitution is interpreted, i.e. the official constitutional doctrine is formulated, by their content are also binding on both law-making institutions (officials) and law-applying institutions (officials).¹⁴⁹ All law-making and law-applying subjects must pay regard to the official constitutional doctrine when they apply the Constitution, they may not interpret the provisions of the Constitution differently from their interpretation in the acts of the Constitutional Court; otherwise, the constitutional principle that only the Constitutional Court enjoys the powers to interpret the Constitution officially would be violated, the supremacy of the Constitution would be disregarded, and preconditions would be created for the occurrence of inconsistencies in the legal system.¹⁵⁰ The Constitutional Court has held that the norms and principles of the Constitution may not be interpreted on the grounds of the acts adopted by the legislature and other law-making subjects, as the supremacy of the Constitution in the legal system would thus be denied.¹⁵¹

The interpretation of the constitution in the constitutional doctrine is a path of intensive development of the constitution.¹⁵² As constitutional justice procedures ensure such development of the constitution, it does not require external intervention (made by

¹⁴⁸ *Inter alia*, the Constitutional Court's rulings of 6 June 2006 (Official Gazette *Valstybės žinios*, 2006, No 65-2400) and 5 September 2012 (*ibid.*, 2012, No 105-5330).

¹⁴⁹ *Inter alia*, the Constitutional Court's decision of 20 September 2005 (*ibid.*, 2005, No 113-4132) and its ruling of 5 September 2012 (*ibid.*, 2012, No 105-5330).

¹⁵⁰ *Inter alia*, the Constitutional Court's decision of 20 September 2005 (*ibid.*, 2005, No 113-4132) and its ruling of 5 September 2012 (*ibid.*, 2012, No 105-5330).

¹⁵¹ *Inter alia*, the Constitutional Court's rulings of 12 July 2001 (*ibid.*, 2001, No 62-2276, corrigendum, 2001, No 86) and 24 September 2009 (*ibid.*, 2009, No 115-4888).

¹⁵² Kūris, E., "Konstitucija, tapatumas ir laikas" ["The Constitution, Identity, and Time"] (report delivered on 5 September 2013, in Vilnius, at the international conference "Modern Tendencies of Constitutional Justice: The Relation Between National and International Law" devoted to the 20th anniversary of the Constitutional Court of the Republic of Lithuania).

political decision makers). Partly for this reason, the concept of the living constitution has not been universally accepted. One of the factors strengthening the anti-interpretative approach is the concern that, when interpreting the constitution, judges can become legislators, i.e. that they can exceed the limits of their jurisdiction.¹⁵³ It is driven by various fears that “aristocrats wearing black robes” will deny the will of the majority.¹⁵⁴ However, in this context, it should be noted that the constitutional courts are bound by the concept of the provisions of the constitution that they themselves presented, as well as by precedents that they themselves created.

The Constitutional Court has held on more than one occasion that the legal position (*ratio decidendi*) of the Constitutional Court has the power of precedent in the corresponding constitutional justice cases.¹⁵⁵ The Constitutional Court has also noted that it is bound both by the precedents that it itself has created and by the official constitutional doctrine that it itself has formulated where this doctrine substantiates such precedents.¹⁵⁶ On the basis of the official constitutional doctrine and precedents that it itself has developed, the Constitutional Court must ensure the continuity (coherence and non-contradiction) of the constitutional jurisprudence and the predictability of its decisions.¹⁵⁷

The specificity of the activities of constitutional justice institutions in formulating the official constitutional doctrine is characterised by the fact that, in the constitutional justice cases, it is revealed gradually. In the course of investigating the compliance of legal acts with higher-ranking legal acts, the Constitutional Court develops the concept of the provisions of the Constitution as presented in its previous acts and reveals new aspects of the legal regulation established in the Constitution, where such aspects are necessary for the consideration of a concrete constitutional justice case.¹⁵⁸

The modification of the official constitutional doctrine is also the exclusive competence of the Constitutional Court. However, jurisprudential law can sometimes take such a direction that could diminish legal security; therefore, in order to overcome such a feature of jurisprudential law and ensure legal security, the constitutional courts formulate the doctrines, binding on their creators, on modifying their own official constitutional doctrine. The Constitutional Court of the Republic of Lithuania is no exception: it has repeatedly stated that it may be possible to deviate from precedents created by the

¹⁵³ Kūris, footnote 140, p. 206.

¹⁵⁴ Kūris, E., “Konstitucinės justicija Lietuvoje: pirmasis dešimtmetis” [“Constitutional Justice in Lithuania: The First Decade”], *Justitia*, 2003, Nos 3–4, pp. 45–46.

¹⁵⁵ *Inter alia*, the Constitutional Court’s rulings of 22 October 2007 (Official Gazette *Valstybės žinios*, 2007, No 110-4511) and 10 December 2012 (*ibid.*, 2012, No 145-7457).

¹⁵⁶ *Inter alia*, the Constitutional Court’s rulings of 28 March 2006 (*ibid.*, 2006, No 36-1293) and 5 September 2012 (*ibid.*, 2012, No 105-5330).

¹⁵⁷ *Inter alia*, the Constitutional Court’s rulings of 28 March 2006 (*ibid.*, 2006, No 36-1293) and 22 December 2014 (Register of Legal Acts, 22-12-2014, No 20411).

¹⁵⁸ *Inter alia*, the Constitutional Court’s rulings of 30 May 2003 (Official Gazette *Valstybės žinios*, 2003, No 53-2361) and 28 March 2006 (*ibid.*, 2006, No 36-1293).

Constitutional Court while adopting decisions in constitutional justice cases and new precedents may be created only in cases where this is unavoidably and objectively necessary, constitutionally grounded and reasoned; also, the official constitutional doctrinal provisions on which the precedents of the Constitutional Court are based must not be reinterpreted in a manner that the official constitutional doctrine may be modified when this is not unavoidably and objectively necessary, constitutionally grounded and reasoned;¹⁵⁹ any change of the precedents of the Constitutional Court or modification of the official constitutional doctrine may not be determined by accidental (in terms of law) factors (for instance, the modification of the official constitutional doctrine may not be determined only by a change in the composition of the Constitutional Court).¹⁶⁰

The Constitutional Court has noted that the said necessity to reinterpret certain official constitutional doctrinal provisions so that the official constitutional doctrine would be modified may be determined only by circumstances such as the necessity to increase possibilities for implementing the innate and acquired rights of persons and their legitimate interests, the necessity to better defend and protect the values enshrined in the Constitution, the need to create better conditions in order to reach the aims of the Lithuanian nation declared in the Constitution, on which the Constitution itself is based, the necessity to expand the possibilities of the constitutional control in this country in order to guarantee constitutional justice and to ensure that no legal act (part thereof) that is in conflict with higher-ranking legal acts would have the immunity from being removed from the legal system.¹⁶¹ The modification of the official constitutional doctrine is also necessary when an amendment to the Constitution comes in force and it becomes no longer possible in a case to unconditionally rely on the doctrine formulated on the basis of the previous provisions of the Constitution.¹⁶² It is impossible and constitutionally impermissible to reinterpret the official constitutional doctrine (provisions thereof) so that the official constitutional doctrine would be modified, if by doing so the system of values entrenched in the Constitution is changed, the protection guarantees of the supremacy of the Constitution in the legal system are reduced, the concept of the Constitution as a single act and harmonious system is denied, the guarantees of rights and freedoms of a person entrenched in the Constitution are reduced, and the model of the separation of powers enshrined in the Constitution is changed.¹⁶³ It is worth mentioning that every case of such reinterpretation of the official constitutional doctrine where the official constitutional

¹⁵⁹ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (ibid., 2006, No 36-1293) and 5 September 2012 (ibid., 2012, No 105-5330).

¹⁶⁰ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (ibid., 2006, No 36-1293) and 5 September 2012 (ibid., 2012, No 105-5330).

¹⁶¹ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (ibid., 2006, No 36-1293) and 5 September 2012 (ibid., 2012, No 105-5330).

¹⁶² Kūris, footnote 14, p. 96.

¹⁶³ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (Official Gazette *Valstybės žinios*, 2006, No 36-1293) and 5 September 2012 (ibid., 2012, No 105-5330).

doctrine is modified must be argued properly (clearly and rationally) in a relevant act of the Constitutional Court.¹⁶⁴

The Constitutional Court has also held that, under the Constitution, the reinterpretation of the official constitutional doctrinal provisions when the official constitutional doctrine is modified is not and may not be the grounds for reviewing the rulings, conclusions, or decisions (or their reasoning (*rationale*)) that were adopted in previous constitutional justice cases, by which corresponding constitutional justice cases were finished.¹⁶⁵ No modification of the official constitutional doctrine in itself constitutes grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new petition requesting an investigation into whether such a law (part thereof) is in conflict with the Constitution (another higher-ranking legal act) whose compliance with the Constitution (another higher-ranking legal act) has already been investigated on the merits, or with such a petition that is analogous to a petition previously filed by a certain subject requesting an investigation into whether such a legal act (part thereof) is in conflict with the Constitution (another higher-ranking legal act) on which the Constitutional Court has already passed the decision to refuse to consider such a petition or the decision (ruling) to dismiss the instituted legal proceedings (case) (if a relevant petition has been received at the Constitutional Court and the preparation of the constitutional justice case for the hearing of the Constitutional Court began or if a relevant petition has already been considered at the hearing of the Constitutional Court), thus, where the Constitutional Court did not decide a relevant question on the merits. As such, the change (reinterpretation, modification) of the constitutional doctrine formed by the Constitutional Court previously does not constitute grounds for the subjects specified in Article 106 of the Constitution to apply to the Constitutional Court with a new inquiry whether there were the violations of election laws during the elections of the President of the Republic or the elections of the members of the Seimas, whether the state of health of the President of the Republic allows him/her to continue to hold office, whether the international treaties of the Republic of Lithuania are in conflict with the Constitution, and whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.¹⁶⁶

5. An Outline of the Jurisprudential Constitution

When deciding constitutional justice cases, the Constitutional Court interprets the content and meaning of the provisions of the Constitution, reveals their interrelations,

¹⁶⁴ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (*ibid.*, 2006, No 36-1293) and 5 September 2012 (*ibid.*, 2012, No 105-5330).

¹⁶⁵ *Inter alia*, the Constitutional Court's rulings of 28 March 2006 (*ibid.*, 2006, No 36-1293) and 22 September 2007 (*ibid.*, 2007, No 110-4511).

¹⁶⁶ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1293.

the balance among the constitutional values, and the essence of the constitutional legal regulation as a single whole. As mentioned above, such formation and development of the official constitutional doctrine is an integral feature of constitutional justice, it is an uninterrupted process that continues case after case, when consistently developing the interpretations of constitutional provisions made in previous acts and revealing new aspects of the regulation established in the Constitution. The jurisprudence of the Constitutional Court and the official constitutional doctrine formed in this jurisprudence ensure the viability of the provisions of the Constitution as well as the constitutional order based on these provisions and determine the entrenchment of the Constitution as a dynamic and living Constitution, which is continuously renewed.

In new constitutional justice cases, the Constitutional Court not only refers to the previously formulated doctrine, but also reveals new aspects of the content of the constitutional regulation and those of the meaning of constitutional provisions – it thus forms a new doctrine. However, the official constitutional doctrine is developed unevenly: as regards certain matters, the doctrine is broad, while there is very scarce doctrine or not at all on other matters, because the Constitutional Court has not been addressed on these issues or there have been only a couple of cases resulting only in the formulation of the rudiments of the doctrine on respective matters. For example, the constitutional principle of the geopolitical orientation of the State of Lithuania was for the first time interpreted only in 2011, after almost eighteen years from the beginning of the activity of the Court.¹⁶⁷ Only in 2011, the Constitutional Court revealed for the first time the constitutional concept of family,¹⁶⁸ in 2012 it interpreted for the first time the state guarantee and care, consolidated in Paragraph 1 of Article 39 of the Constitution, for families raising and bringing up children at home, as well as the guarantee, established in Paragraph 2 of the same article, for working mothers to be granted paid leave before and after childbirth.¹⁶⁹ The doctrine of exceptions to the rule that the force of rulings of the Constitutional Court is prospective was disclosed in more detail only in 2011–2012 as well.¹⁷⁰ The interpretation of Paragraph 1 of Article 53 of the Constitution, which enshrines the constitutional grounds for health protection, was developed only in 2013.¹⁷¹ Even though certain fragments of the doctrine on the constitutionality of constitutional amendments had already been previously formulated in the jurisprudence of the Constitutional Court, the essential development of this doctrine

¹⁶⁷ The Constitutional Court's ruling of 15 March 2011, *ibid.*, 2011, No 3-1503; the Constitutional Court's ruling of 7 July 2011, *ibid.*, 2011, No 84-4106. This principle was developed later in the Constitutional Court's rulings of 24 January 2014 (Register of Legal Acts, 24-01-2014, No 478) and 11 July 2014 (*ibid.*, 11-07-2014, No 10117).

¹⁶⁸ The Constitutional Court's ruling of 28 September 2011, Official Gazette *Valstybės žinios*, 2011, No 118-5564.

¹⁶⁹ The Constitutional Court's ruling of 27 February 2012, *ibid.*, 2012, No 26-1200.

¹⁷⁰ The Constitutional Court's ruling of 25 October 2011, *ibid.*, 2011, No 129-6116; the Constitutional Court's decision of 19 December 2012, *ibid.*, 2012, No 152-7779.

¹⁷¹ The Constitutional Court's ruling of 16 May 2013, *ibid.*, 2013, No 52-2604.

started in 2014.¹⁷² Still, there exists a very broad constitutional doctrine of ownership rights, the right to education (including higher education), taxes, criminal liability, the state language, citizenship, the judiciary, the procedures of the Seimas and the status of a member of the Seimas, the status and powers of the President of the Republic, the powers of the Government, the separation of powers, and numerous other matters. Indeed, there is no doubt that the future will bring new and more complex constitutional justice cases, in which the official constitutional doctrine will be developed and supplemented with new fragments, because the formulation of the constitutional doctrine is not a one-off act, but a process that will never be completely finished.

While all official constitutional doctrine is of the same legal force and, therefore, all its elements are equally important and interesting in their own way, it is clear that a study of limited scope cannot present this entire doctrine. Therefore, this part will deal with only such provisions of the official constitutional doctrine formulated by the Constitutional Court that are found in landmark and high-profile cases, which are likely to draw the attention of the reader.

5.1. The constitutional principle of a state under the rule of law

The disclosure of the contents of the constitutional principle of a state under the rule of law in the constitutional jurisprudence is a gradual, rather coherent, and never-ending process. In the jurisprudence of the Constitutional Court, the principle of a state under the rule of law has in fact been analysed since the beginning of its activity. The notion “a state under the rule of law” was mentioned for the first time in the Constitutional Court’s ruling of 13 December 1993.¹⁷³ In the Constitutional Court’s ruling of 23 February 2000,¹⁷⁴ it was for the first time held that the constitutional principle of a state under the rule of law is a universal one, upon which the whole Lithuanian legal system, as well as the Constitution of the Republic of Lithuania itself, is based, and that the content of the principle of a state under the rule of law is disclosed in various provisions of the Constitution.

The fact that the essence of the constitutional principle of a state under the rule of law is the rule of law was, for the first time, *expressis verbis* held in the Constitutional Court’s ruling of 13 December 2004.¹⁷⁵ This ruling is exceptional also in the aspect that, in this ruling, the Constitutional Court systematised its former doctrine and presented a broad interpretation of the constitutional principle of a state under the rule of law. In this ruling, it was held that the constitutional principle of a state under the rule of law is an especially broad constitutional principle, which comprises a wide range of various interrelated

¹⁷² The Constitutional Court’s ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478; the Constitutional Court’s ruling of 11 July 2014, *ibid.*, 11-07-2014, No 10117.

¹⁷³ The Constitutional Court’s ruling of 13 December 1993, Official Gazette *Valstybės žinios*, 1993, No 70-1320.

¹⁷⁴ The Constitutional Court’s ruling of 23 February 2000, *ibid.*, 2000, No 17-419.

¹⁷⁵ The Constitutional Court’s ruling of 13 December 2004, *ibid.*, 2004, No 181-6708, corrigendum, No 186.

imperatives. Thus, it needs to be emphasised that the content of the constitutional principle of a state under the rule of law should be disclosed by taking account of various provisions of the Constitution, by assessing all values entrenched in and defended and protected by the Constitution, and by taking account of the content of various other constitutional principles as, for instance: the supremacy of the Constitution, its integrity and direct applicability, the sovereignty of the nation, democracy, responsible governance, the restriction of the scope of powers and the fact that state institutions serve the people, the publicity of law, justice (comprising, *inter alia*, natural justice), the separation of powers, civic consciousness, the equality of persons before the law, courts, state institutions and officials, respect for and the protection of human rights and freedoms (comprising, *inter alia*, the recognition that human rights and freedoms are innate), the balancing of interests of a person and society, the secularity of the state and its neutrality in world-view matters, the social orientation of the state, social solidarity (combined with the responsibility of everyone for their own fate), and other constitutional principles of no less importance.

In the Constitutional Court's ruling of 13 December 2004, it was also held that the constitutional principle of a state under the rule of law may not be interpreted as the one that is consolidated only in the Preamble to the Constitution, nor may it be identified only with the declared therein striving for an open, just, and harmonious civil society and a state under the rule of law. On the other hand, since the content of the constitutional principle of a state under the rule of law should be interpreted without denying any single provision of the Constitution, none of the provisions of the Constitution – not a single constitutional principle or constitutional norm – may be interpreted in a way that would deviate from the requirements of a state under the rule of law that arise from the Constitution, since the content of the constitutional principle of a state under the rule of law, thus, also the constitutional concept of a state under the rule of law would also be distorted or even denied. All provisions of the Constitution should be interpreted in the context of both the constitutional principle of a state under the rule of law and the concept of a state under the rule of law, which is consolidated in the Constitution.

The previously quoted provisions of the official constitutional doctrine are a certain general description of this principle, a kind of methodological framework. While turning to the specific standards of a state under the rule of law, the Constitutional Court noted that the principle of a state under the rule of law, which is consolidated in the Constitution, implies, among other requirements, that human rights and freedoms must be ensured, that all institutions exercising state power, other state institutions, municipal institutions, and all officials must act on the basis of law and in compliance with the Constitution and law, that the Constitution is the highest-ranking legal act, and that all other legal acts must be in compliance with the Constitution.

Due to the limited volume of this chapter of the book, it is not possible to present all requirements that stem from the constitutional principle of a state under the rule of law

and are formulated in the said ruling. However, it is important to note that, in this ruling, the Constitutional Court singled out the requirements that stem from the constitutional principle of a state under the rule of law and must be observed by the legislature and other law-making subjects, *inter alia*, the fact that the requirements established in legal acts must be grounded on the provisions of a general character (i.e. on certain legal norms and principles), which could be applied to all envisaged subjects of certain legal relations; any differentiated legal regulation must be based only on objective differences of the situation of the subjects of certain social relations regulated by relevant legal acts; the formulations of legal acts must be precise, the consistency and internal harmony of the legal system must be ensured; in order that the subjects of legal relations could act in accordance with the requirements of law, a legal regulation must be relatively stable; etc.

In its ruling of 13 December 2004, the Constitutional Court also held that the constitutional principle of a state under the rule of law gives rise to the requirement that the legislature and other law-making subjects must observe the hierarchy of legal acts arising from the Constitution, which means, *inter alia*, that lower-ranking legal acts must not regulate those social relationships that are subject to the regulation only by means of higher-ranking legal acts, as well as that lower-ranking legal acts must not establish any such legal regulation that would compete with the one established in higher-ranking legal acts.

The requirements stemming from this principle for law-applying subjects are also distinguished separately. The Constitutional Court held that, when applying law, it is necessary, *inter alia*, to observe such requirements originating from the constitutional principle of a state under the rule of law as the equality of the rights of persons, the prohibition on punishing twice for the same violation of law, etc. It should also be noted that jurisdictional and other law-applying institutions must be impartial; they must seek to find out the objective truth and make decisions based only on law.

Legal certainty, legal security, and the protection of legitimate expectations are distinguished as inseparable elements of the constitutional principle of a state under the rule of law. The Constitutional Court held that the principle of legal security is one of the basic elements of the principle of a state under the rule of law, which is consolidated in the Constitution; the said principle means the obligation of the state to ensure the certainty and stability of a legal regulation, to protect the rights of the subjects of legal relations, including acquired rights, as well as to respect legitimate interests and legitimate expectations. If legal certainty, legal security, and the protection of legitimate expectations are not ensured, the trust of persons in the state and law will not be ensured, either. The state must fulfil its obligations undertaken to a person.

The right to judicial protection is another important element of the principle of a state under the rule of law. The Constitutional Court also noted that the constitutional principle of a state under the rule of law and other provisions of the Constitution give

rise to the imperative whereby a person who believes that his/her rights and freedoms are violated has an absolute right to access an independent and impartial court that would settle a dispute. The right of a person to apply to a court also implies his/her right to the due process of law; the latter right is a necessary condition for the administration of justice. It should be emphasised that the constitutional right of a person to apply to a court may not be artificially restricted and the implementation of this right may not be unreasonably burdened.

Significant time has passed since the adoption of the discussed ruling, during which the development of the doctrine of the constitutional principle of a state under the rule of law has continued and new elements of the constitutional principle of a state under the rule of law have been revealed. In its subsequent rulings, the Constitutional Court identified the constitutional principle of proportionality as one of the elements of the constitutional principle of a state under the rule of law.¹⁷⁶ It also noted that the principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, means that the measures provided for in a law must be in line with the legitimate objectives that are important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrain the rights and freedoms of a person clearly more than necessary in order to reach the said objectives.¹⁷⁷ In the jurisprudence of the Constitutional Court, it is also held that the constitutional principle of a state under the rule of law is also inseparable from the principle of the equality of the rights of persons, which is consolidated in the Constitution, *inter alia*, in Article 29 thereof.¹⁷⁸ The constitutional principle of justice, as an inseparable element of the content of the constitutional principle of a state under the rule of law, which may be implemented by ensuring a certain balance of interests, is also identified in the jurisprudence of the Constitutional Court.¹⁷⁹

The Constitutional Court has also held that the principle of a state under the rule of law, which is consolidated in the Constitution, implies the continuity of jurisprudence.¹⁸⁰ In this context, mention should also be made of the development of the aforementioned doctrinal provisions on the continuity of jurisprudence in the Constitutional Court's decision of 8 August 2006 and its ruling of 22 October 2007,¹⁸¹ in which a wide doctrine of the precedent as a source of law was formulated and, among other things, the guidelines were presented on how to observe the constitutional requirement that similar cases must be decided in a similar manner. Mention should also be made of the Constitutional Court's rulings of 24 January 2014 and 11 July 2014, in which a doctrine was formulated that,

¹⁷⁶ *Inter alia*, the Constitutional Court's ruling of 29 December 2004, Official Gazette *Valstybės žinios*, 2005, No 1-7.

¹⁷⁷ *Inter alia*, the Constitutional Court's ruling of 11 December 2009, *ibid.*, 2009, No 148-6632.

¹⁷⁸ *Inter alia*, the Constitutional Court's ruling of 14 April 2006, *ibid.*, 2006, No 44-1608.

¹⁷⁹ *Inter alia*, the Constitutional Court's ruling of 29 November 2010, *ibid.*, 2010, No 141-7217.

¹⁸⁰ *Inter alia*, the Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1293.

¹⁸¹ The Constitutional Court's decision of 8 August 2006, *ibid.*, 2006, No 88-3475, corrigendum, 2006, No 137; the Constitutional Court's ruling of 22 October 2007, *ibid.*, 2007, No 110-4511.

perhaps, had not been even hinted at previously in the texts of this Court; it was namely the doctrine that formulated the requirements for the procedure of the alteration of the Constitution itself and, at the same time, established limitations on such initiatives of the alteration of the Constitution that would destroy the harmony of the Constitution in a way that it would become internally contradictory.¹⁸²

To summarise the aforementioned provisions of the official constitutional doctrine, it should be noted that, in the jurisprudence of the Constitutional Court, the constitutional principle of a state under the rule of law is actually one of the most important milestones in interpreting the provisions of the Constitution. Actually, it is not only possible, but also necessary to look at any norm of the Constitution or a constitutional principle through the prism of the idea of a state under the rule of law.¹⁸³

5.2. The concept and protection of innate human rights and freedoms

As the Constitutional Court has emphasised on more than one occasion, the constitutional order is based on the priority of the rights and freedoms of a human being and a person, as the greatest value.¹⁸⁴

The nature of human rights itself is the primary source of the innate human rights and freedoms.¹⁸⁵ This principle was, for the first time, formulated by the Constitutional Court in its ruling of 20 November 1996, when it interpreted the fundamental provision that is consolidated in Article 18 of the Constitution: “Human rights and freedoms shall be innate.” The Constitutional Court’s ruling of 9 December 1998,¹⁸⁶ whereby it was recognised that the death penalty provided for by the sanction of Article 105 of the Criminal Code was in conflict with Articles 18 and 19 and Paragraph 3 of Article 21 of the Constitution, was particularly important for the evolution of the concept of innate human rights and freedoms in the official constitutional doctrine. In this ruling, it was held that the innate nature of human rights means that they are inseparable from an individual and are linked with neither a territory nor a nation. An individual possesses his/her innate rights regardless of whether they are entrenched in legal acts of the state or not. Every individual has these rights, and this means that the best and worst people have them. In this ruling, it was also held that innate human rights are an individual’s innate opportunities that ensure his/her human dignity in the spheres of social life. They constitute that minimum, that starting

¹⁸² Kūris, E., “Teisės viešpatavimas” [“The Rule of Law”] in Kūris, E. (scientific editor), *Krizė, teisės viešpatavimas ir žmogaus teisės* [The Crisis, the Rule of Law, and Human Rights], Vilnius: Vilnius University, 2015, p. 49.

¹⁸³ Kūris, E., “Lietuvos Respublikos Konstitucijos principai” [“The Principles of the Constitution of the Republic of Lithuania”] in Birmontienė, footnote 10, p. 253.

¹⁸⁴ *Inter alia*, the Constitutional Court’s rulings of 23 November 1999 (Official Gazette *Valstybės žinios*, 1999, No 101-2916) of 24 September 2009 d. (ibid., 2009, No 115-4889).

¹⁸⁵ The Constitutional Court’s ruling of 20 November 1996, ibid., 1996, No 114-2643.

¹⁸⁶ The Constitutional Court’s ruling of 9 December 1998, ibid., 1998, No 109-3004.

point from which all other rights are developed and supplemented, and which constitute the values unquestionably recognised by the international community.

The content of the principle of the recognition of the innate nature of human rights and freedom is comprehensively revealed in the Constitutional Court's ruling of 29 December 2004,¹⁸⁷ in which it was held that the concrete innate human rights and freedoms are not specified in Article 18 of the Constitution – they are consolidated in other articles (paragraphs thereof) of the Constitution. In this ruling, it was also held that the principle of the recognition of the innate nature of human rights and freedoms, which is consolidated in the Constitution, means that an individual has the rights and freedoms that are inseparable from his/her person and may not be taken from him/her, as well as that an individual has them *ipso facto*. The constitutional recognition of the innate nature of human rights and freedoms implies that it is not allowed to establish such a procedure for implementing the said rights and freedoms that would make their implementation dependent on decisions adopted by state institutions, officials, or other persons in cases where such decisions are lacking any foundation in law.

In this ruling, it was also emphasised that the principle of the recognition of the innate nature of human rights and freedoms is also one of the fundamentals of the constitutional order of the Republic of Lithuania as a democratic state under the rule of law: one of the major tasks of a democratic state under the rule of law is to defend and protect these rights and freedoms. The consolidation of human rights and freedoms in the Constitution implies the duty of the legislature and other law-making subjects, when passing legal acts that regulate the relations of an individual and the state, to follow the priority of human rights and freedoms, to establish sufficient measures of protecting and defending human rights and freedoms, never to violate these rights and freedoms, and not to allow others to violate them.

It should also be noted that it was held in this ruling that it is impossible to make the interpretation that any human right or freedom that is consolidated in the Constitution is innate only due to the fact that it is consolidated in the Constitution. A violation of a certain human right or freedom entrenched in the Constitution in itself does not mean that the principle of the recognition of the innate nature of human rights and freedoms consolidated in Article 18 of the Constitution is violated.

The jurisprudence of the Constitutional Court also reveals the official constitutional doctrine of the duty of the state to ensure the protection and defence of human rights and freedoms. In the Constitutional Court's ruling of 19 August 2006, it was held that the Constitution is an anti-majoritarian act; it protects an individual. In its jurisprudence, the Constitutional Court has held on more than one occasion that the state is constitutionally obliged to ensure, by making use of legal, material, or organisational means, the protection of human rights and freedoms from any unlawful attempt or limitation and to establish

¹⁸⁷ The Constitutional Court's ruling of 29 December 2004, *ibid.*, 2005, No 1-7.

sufficient means for the defence and protection of human rights and freedoms. Under the Constitution, the state must not only ensure the protection of human rights and freedoms from unlawful attempts made by other persons, but also must not permit in any manner any unlawful encroachment on or violation of human rights and freedoms by state institutions or officials themselves.¹⁸⁸

Even though certain conditions of the limitation of the rights and freedoms of an individual had also been revealed in former rulings of the Constitutional Court, a broader doctrine on this question was formulated by the Constitutional Court in its ruling of 29 December 2004, where it was held that the principle of the recognition of the innate nature of human rights and freedoms does not deny the fact that the implementation of human rights and freedoms may be subject to limitation. The Constitutional Court emphasised that, according to the Constitution, it is allowed to limit the implementation of human rights and freedoms if the following conditions are complied with: the limitations are established by means of a law; the limitations are necessary in a democratic society in order to protect the rights and freedoms of other persons and the values consolidated in the Constitution, as well as constitutionally important objectives; the limitations do not deny the nature or essence of the rights or freedoms; and the constitutional principle of proportionality is observed.

In developing the doctrine on the limitation of human rights and freedoms in its subsequent acts, the Constitutional Court held that the constitutional principle of proportionality, as one of the elements of the constitutional principle of a state under the rule of law, also means that the measures provided for by law must be in line with legitimate objectives important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrict the rights or freedoms of a person clearly more than necessary in order to reach the said objectives.¹⁸⁹ In the Constitutional Court's ruling of 7 July 2011, it was held that the requirement of the constitutional principle of proportionality not to limit, by means of a law, the rights and freedoms of a person more than necessary in order to reach legitimate objectives that are important to society, *inter alia*, implies the requirement for the legislature to establish the legal regulation that would create the preconditions for the sufficient individualisation of the limitations on the rights and freedoms of a person: the legal regulation limiting the rights and freedoms of a person, as provided for in a law, must be such that would create the preconditions for assessing, to the extent possible, the individual situation of each person and, in view of all important circumstances, for individualising as appropriate the specific measures that are applicable to and limit the rights of that person.¹⁹⁰

¹⁸⁸ The Constitutional Court's ruling of 19 August 2006, *ibid.*, 2006, No 90-3529, corrigendum, 2006, No 137.

¹⁸⁹ The Constitutional Court's ruling of 11 December 2009, *ibid.*, 2009, No 148-6632.

¹⁹⁰ The Constitutional Court's ruling of 7 July 2011, *ibid.*, 2011, No 84-4106.

In the jurisprudence of the Constitutional Court of recent years, the official constitutional doctrine of the principle of the recognition of the innate nature of human rights and freedoms has been developed in deciding constitutional justice cases in which questions such as the validity of the rulings of the Constitutional Court viewed from the perspective of time,¹⁹¹ as well as the constitutionality of amendments to the Constitution,¹⁹² were raised. While deciding these constitutional justice cases, the Constitutional Court revealed the content of the principle of the recognition of the innate nature of human rights and freedoms as a fundamental constitutional value.

In summarising the concept of innate human rights and freedoms which has been revealed in the jurisprudence of the Constitutional Court, it should be stated that the provision “Human rights and freedoms shall be innate” of Article 18 of the Constitution, being, perhaps, one of the most abstract provision of the Constitution, is no longer considered as such only as a result of the activity of the Constitutional Court as the sole official interpreter of the Constitution. This once again confirms the emergence of the living jurisprudential Constitution in Lithuania.

5.3. Constitutionality of constitutional amendments

In addressing issues concerning the constitutionality of constitutional amendments in the science of constitutional law, rather complicated questions are raised, such as: Do constitutional courts have the right to examine the constitutionality of constitutional amendments in cases where the constitution does not explicitly provide for such powers? If so, what are the criteria against which the constitutionality verification of constitutional amendments must be carried out? May constitutional courts derive from the constitution any substantive requirements implicitly entrenched therein with regard to amendments to the constitution? What status do the constitutional justice institutions have in society if these institutions, which are not directly elected by the nation, have the right to invalidate decisions adopted by the representatives of the nation, or by referendum, regarding constitutional amendments? Although these questions are complicated, it would be appropriate to agree with the position expressed by Aharon Barak, one of the most famous world legal authorities, that “In a democratic society, the role of the court is to protect the constitution and democracy. Protecting the constitution does not only involve protection against statutes that violate the constitution but also against amendments to the constitution that violate its foundations. The role of the court is to protect the basic structure and fundamental values of the constitution. There is thus a strong justification

¹⁹¹ The Constitutional Court’s decision of 19 December 2012, *ibid.*, 2012, No 152-7779.

¹⁹² The Constitutional Court’s ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478; the Constitutional Court’s ruling of 11 July 2014, *ibid.*, 11-07-2014, No 10117.

for recognizing the court's authority to examine whether an amendment to the constitution is constitutional".¹⁹³

When a constitution is in force for a longer time, initiatives to amend or repeal some of its provisions or supplement it with new ones are introduced sooner or later. Irrespective of the aims on which a proposal to amend a constitution is based or how it is proposed to modify the content of the constitutional regulation, the constitution itself consolidates a mechanism for its self-protection against inadmissible, unnecessary, unfounded, or hasty amendments. This mechanism is a procedure for introducing constitutional amendments, which lays down substantive and procedural limitations on the alteration of the constitution. Such established limitations allow the authorised entities to adapt the constitution to changing needs and realities, and prescribe when and in what way this can be done. However, in the absence of any judicial scrutiny of constitutional amendments, any established limitations on the alteration of the constitution may become "soft law".

Thus, despite the fact that the Constitution does not contain explicit provisions directly establishing the powers of the Constitutional Court to assess the compliance of constitutional amendments with the Constitution, it is held in the jurisprudence of the Constitutional Court that the Constitutional Court has the powers to investigate the constitutionality of laws adopted by the Seimas on amending the Constitution.

Even though certain fragments of the doctrine on the constitutionality of constitutional amendments had already been previously formulated in the jurisprudence of the Constitutional Court, the essential development of this doctrine started in 2014. In this respect, two constitutional justice cases considered in 2014 should be mentioned. The first case is related to the constitutionality of the amendment to Article 125 of the Constitution and the constitutionality of the provisions of the Statute of the Seimas regulating the process of the alteration of the Constitution; the second case is related to the constitutionality of the provisions of the Law on Referendums.

On 24 January 2014, the Constitutional Court adopted a ruling in which it, for the first time in the history of Lithuanian constitutional justice, recognised that an amendment to the Constitution (the Law Amending Article 125 of the Constitution) was unconstitutional in view of the procedure of its adoption. This constitutional justice case was initiated by the Seimas, which doubted as to whether, in the course of adopting the said law, the requirement that a motion to alter or supplement the Constitution may be submitted to the Seimas by a group of not less than 1/4 of all the members of the Seimas, as stipulated in Paragraph 1 of Article 147 of the Constitution, had been observed, since, in the course of the consideration of the said law, the Committee on Legal Affairs of the Seimas had substantially changed the content of the draft Law Amending Article 125 of the Constitution, which had been submitted by a group of 45 members of the Seimas.

¹⁹³ Barak, A., "Unconstitutional Constitutional Amendments", *Israel Law Review*, 2011, No 44, pp. 321–341.

In giving one of the main legal reasons why the amendment to Article 125 of the Constitution was declared unconstitutional, the Constitutional Court pointed out that, under Paragraph 1 of Article 147 of the Constitution, a motion to alter the Constitution may be submitted by a group of not less than 1/4 of all the members of the Seimas or not less than by 300 000 voters. The right to put forward a motion to the Seimas concerning the alteration of the Constitution is an exclusive one, i.e. only the aforementioned subjects have the right to submit to the Seimas a concrete draft amendment to the Constitution, i.e. a draft law amending the Constitution. Thus, under the Constitution, only those draft laws amending the Constitution that have been submitted by a group of not less than 1/4 of all the members of the Seimas or not less than 300 000 voters may be considered and voted upon in the Seimas. The Seimas may not consider and vote upon any such motion to alter or supplement the Constitution that would be proposed by subjects other than those specified in Paragraph 1 of Article 147 of the Constitution. In the same ruling, the Constitutional Court held that the circumstances of the adoption of the contested Law Amending Article 125 of the Constitution made it clear that, in the course of the consideration of this constitutional amendment at the Seimas, the draft law that had been put to vote substantially differed from the draft law that had been submitted by the group of more than 1/4 of all the members of the Seimas; such a substantially modified draft law was submitted to the Seimas by the Chair of the Committee on Legal Affairs upon the approval of this committee. In the light of this, the Constitutional Court recognised that the adoption of the Law Amending Article 125 of the Constitution violated Paragraph 1 of Article 147 of the Constitution.

While considering this constitutional justice case, the Constitutional Court revealed the limitations both explicitly and implicitly consolidated in the Constitution with regard to the alteration of the Constitution. In its ruling of 24 January 2014, the Constitutional Court held that the concept, nature, and purpose of the Constitution, the stability of the Constitution as a constitutional value, and the imperative of the harmony of the provisions of the Constitution imply both substantive and procedural limitations on the alteration of the Constitution. The substantive limitations on the alteration of the Constitution are the limitations consolidated in the Constitution regarding the adoption of constitutional amendments of certain content; these limitations stem from the overall constitutional regulation, and they are designed to safeguard the universal values upon which the Constitution is founded and to protect the harmony of these values and the harmony of the provisions of the Constitution. The procedural limitations on the alteration of the Constitution are related to the special procedure set for the alteration of the Constitution in Chapter XIV “The Alteration of the Constitution” of the Constitution.

Thus, a failure to comply with either substantive or procedural limitations set on the alteration of the Constitution would constitute a ground for declaring a particular constitutional amendment as being in conflict with the Constitution.

The substantive limitations revealed in the jurisprudence of the Constitutional Court can be grouped into absolute limitations (which are designed to protect the fundamental constitutional values and entail the impossibility of constitutional amendments that deny such values) and conditional limitations (which imply that the Constitution can be amended upon the fulfilment of particular conditions that stem from the Constitution, where these conditions would ensure that the harmony of the provisions of the Constitution, as well as the harmony of values consolidated in these provisions, is not violated).

In the Constitutional Court's ruling of 24 January 2014, it was noted that the Constitution does not permit such amendments thereto that would deny any of the values lying at the foundations of the State of Lithuania – the independence of the state, democracy, the republic, and the innate character of human rights and freedoms, with the exception of the case where Article 1 of the Constitution would be altered in the manner prescribed by Paragraph 1 of Article 148 of the Constitution, or Article 1 of the Constitutional Law on the State of Lithuania would be altered in the manner prescribed by Article 2 of this law (i.e. only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof). It should be noted that, while elaborating on this interpretation of the constitutional provisions consolidating the fundamental constitutional values of the State of Lithuania, in its ruling of 11 July 2014, the Constitutional Court emphasised that the innate character of human rights, democracy, and the independence of the state are such constitutional values that constitute the foundation for the Constitution as a social contract, as well as the foundation for the nation's common life, which is based on the Constitution, and the foundation for the State of Lithuania itself. No one may deny the provisions of the Constitution consolidating these fundamental constitutional values, since doing so would amount to the denial of the essence of the Constitution itself. Therefore, even in cases where regard is paid to the limitations on the alteration of the Constitution that stem from the Constitution itself, it is not permitted to adopt any such amendments to the Constitution that would destroy the innate nature of human rights, democracy, or the independence of the state; if the Constitution were interpreted in a different way, it would be understood as creating the preconditions for abolishing the restored “independent State of Lithuania, founded on democratic principles”, as proclaimed by the Act of Independence of 16 February 1918. Thus, these doctrinal provisions consolidate the absolute prohibition on making such amendments to the Constitution that would deny the innate nature of human rights, democracy, or the independence of the state, i.e. they form the doctrine of “eternal clauses”.

In the same ruling, it was also noted that the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, the republic – are closely interrelated with the geopolitical orientation of the State of Lithuania, which is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. The geopolitical orientation of the State of Lithuania

is expressed in the text of the Constitution both in the negative and positive aspects. The negative aspect of the geopolitical orientation of the State of Lithuania is expressed in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, whereas the positive aspect is consolidated in the Constitutional Act on Membership of the Republic of Lithuania in the European Union; these constitutional acts are a constituent part of the Constitution.

The Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions lays down the limits that may not be overstepped by the Republic of Lithuania in the processes of its participation in international integration and consolidates the prohibition on joining any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR. According to the Constitutional Court, the provisions of the said constitutional act should enjoy the same protection as the provision “The State of Lithuania shall be an independent democratic republic”, which is stipulated in Article 1 of the Constitution and Article 1 of the Constitutional Law on the State of Lithuania. Thus, under the Constitution, it is not permitted to make any such amendments to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the case where certain provisions of this constitutional act would be amended in the manner provided for in Article 2 of the Constitutional Law on the State of Lithuania. This limitation on the alteration of the Constitution can be defined as *de facto* absolute: in practice, such an amendment is hardly possible (its adoption would require not less than three-quarters of votes of the citizens of Lithuania with active electoral right), although *de jure* there is such a theoretical possibility.

The Constitutional Act on Membership of the Republic of Lithuania in the European Union was adopted in exercise of the will of the citizens of the Republic of Lithuania, as expressed in the referendum; thus, the full participation of the Republic of Lithuania, as a Member of the European Union, in the European Union is a constitutional imperative grounded in the expression of the sovereign will of the nation. The constitutional grounds for the membership of the Republic of Lithuania in the European Union, without the establishment of which in the Constitution the Republic of Lithuania could not be a full Member of the European Union, and the expression of the sovereign will of the nation as the source of these grounds determine the requirement that the provisions of Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union be altered or annulled only by referendum. Under the Constitution, as long as the aforesaid constitutional grounds for membership in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, have not been annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic

of Lithuania arising from its membership in the European Union. Thus, this limitation on the alteration of the Constitution can be considered conditional.

In this ruling, the Constitutional Court also identified two other substantive conditional limitations stemming from the Constitution with regard to the alteration of the Constitution. The first of them is related to the constitutional principle of respect for international law, i.e. the principle of *pacta sunt servanda*, which means the imperative to fulfil, in good faith, the obligations assumed by the Republic of Lithuania under international law, *inter alia*, international treaties. Thus, the Constitution does not permit any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (among them, the obligations of the Republic of Lithuania arising from its membership in NATO) and, at the same time, would deny the constitutional principle of *pacta sunt servanda* as long as the said international obligations have not been renounced in accordance with the norms of international law. The other of the aforesaid two substantive conditional limitations on the alteration of the Constitution implies that it is also not permitted to introduce any such amendments to the Constitution that, without correspondingly amending the provisions of Chapter I “The State of Lithuania” and Chapter XIV “The Alteration of the Constitution” of the Constitution, would lay down a constitutional legal regulation contradicting the provisions of Chapters I and XIV of the Constitution.

While determining the procedural limitations on the alteration of the Constitution, the Constitutional Court pointed out that, under the Constitution, different procedures are established with regard to the alteration of constitutional law and ordinary law. The constitutionally established special procedure for amending the Constitution may not be equated to the passage of laws (*inter alia*, constitutional laws). The constitutionally consolidated special procedure for amending the Constitution includes various special requirements (the prohibition on making amendments to the Constitution during a state of emergency or martial law; the possibility of amending certain provisions of the Constitution only by referendum; the particular subjects entitled to submit a motion to alter or supplement the Constitution; the requirement that amendments to the Constitution be considered and voted twice; the requirement that amendments to the Constitution be adopted by a special qualified majority vote of 2/3 of all the members of the Seimas, etc.).

The provisions of the official constitutional doctrine relevant for the question of the constitutionality of amendments to the Constitution were developed and new doctrinal elements were formulated in the Constitutional Court’s ruling of 11 July 2014. In this ruling, it was held that the Constitution reflects the obligation of the national community – the civil nation to create and reinforce the state by following the fundamental rules consolidated in the Constitution; the Constitution is the legal foundation for the common life of the nation – the national community. Thus, it should also be emphasised that the Constitution equally binds the national community – the civil nation itself; therefore, the supreme

sovereign power of the nation may be executed, *inter alia*, directly (by referendum), only in observance of the Constitution.

It was also held in the said ruling that, since the Constitution equally binds the national community – the civil nation itself, the requirement that the Constitution must be observed when the nation, *inter alia*, directly (by referendum) executes its supreme sovereign power may not be regarded as a restriction or limitation, referred to in Article 3 of the Constitution, on the sovereignty of the nation, or as the arrogation of the sovereign powers belonging to the entire nation. It should be emphasised that the purpose of the provisions of Article 3¹⁹⁴ of the Constitution is to protect the constitutional values referred to in this article (the sovereignty of the nation, the independence of the State of Lithuania, its territorial integrity, and the constitutional order); therefore, these provisions may not be invoked for the purpose of denying the said constitutional values. The provisions of Article 3 of the Constitution may not be interpreted, *inter alia*, in such a way that they allegedly imply the right of the nation to disregard the Constitution, which has been adopted by the nation itself, or the right of any citizen or any group of citizens to equate themselves with the nation and act on behalf of the nation while seeking to violate the aforementioned constitutional values.

The Constitutional Court also noted that the principle of the supremacy of the Constitution, *inter alia*, gives rise to the imperative according to which it is not permitted to put to a referendum any such possible decisions that do not comply with the requirements stemming from the Constitution. Thus, according to the Constitution, it is also not permitted to put to a referendum any such draft amendment to the Constitution that disregards the substantive limitations set on the alteration of the Constitution. Otherwise, the preconditions would be created for denying the principle of the supremacy of the Constitution and for disregarding the imperative, stemming from Paragraph 1 of Article 6 of the Constitution, that no amendments to the Constitution may violate the harmony of the provisions of the Constitution and the harmony of the values consolidated in these provisions.

As mentioned above, in the same ruling, the Constitutional Court formulated the doctrine of “eternal clauses”, i.e. the absolute prohibition on making any such amendments to the Constitution that would deny the innate nature of human rights and freedoms, democracy, or the independence of the state. Therefore, the provision of the Constitution under which the provision of Article 1 of the Constitution “The State of Lithuania shall be an independent democratic republic” may only be altered by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof should not be understood as allowing the repeal of independence and democracy, the Constitution

¹⁹⁴ “No one may restrict or limit the sovereignty of the Nation or arrogate to himself the sovereign powers belonging to the entire Nation. The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.”

should not be understood as an instrument for “committing democratic suicide”.¹⁹⁵ In this context, it is worthwhile pointing out that scholarly sources express the position that “All constitutional arrangements include superconstitutional provisions or principles which are regarded as unamendable”.¹⁹⁶ The constitutions of certain states (e.g. France, Romania, Ukraine) consolidate such “eternal clauses” explicitly; while, in other cases, these provisions are entrenched in the constitutions not *expressis verbis*, but implicitly and are clarified in the process of the interpretation of the respective constitution. The existence of fundamental constitutional principles (values) that may not be denied by any amendments to the constitution was similarly stated in the jurisprudence of the constitutional courts of other states.

The official constitutional doctrine on the constitutionality of constitutional amendments, as developed in the Constitutional Court’s rulings of 24 January 2014 and 11 July 2014, has been highly favourably assessed in national scholarly literature. In the works of Lithuanian constitutionalists, it is emphasised that the substantive limitations formulated in the Constitutional Court’s ruling of 11 July 2014 have considerably enhanced the protection of the constitutionally consolidated fundamental values and, in particular, human rights and freedoms.¹⁹⁷ The scholars also emphasise that, by testifying to the existence of not only explicit but also implicit legal regulation of constitutional amendments, as well as various substantive and procedural limitations on the alteration of the Constitution, the particularities stemming from the integrity and harmony of the Constitution with regard to the alteration of constitutional provisions, interrelations among the substantive and procedural imperatives governing the alteration of the Constitution, internal and external factors determining the limitations on the alteration of the Constitution, inviolable fundamental constitutional values, etc., the official constitutional doctrine has laid the solid foundation for solving issues concerning constitutional alteration in the future.¹⁹⁸

It also needs to be mentioned that the scientific legal doctrine also gives the opinion that, in its ruling of 11 July 2014, the Constitutional Court specified only some of the constitutional values that “no one may deny by means of constitutional amendments”, i.e. the innate nature of human rights and freedoms, democracy, and the independence of the state, as this list of values may not be interpreted as complete (exhaustive); it is maintained that the Constitution contains a considerable number of other constitutional values that similarly may not be denied by means of constitutional amendments (e.g. the provision

¹⁹⁵ Žalimas, D., “The Principle of the Geopolitical Orientation of the State in the Constitution of the Republic of Lithuania”, http://www.lrkt.lt/data/public/uploads/2015/04/zalimas_en2014-10-24.pdf [accessed 21 July 2016].

¹⁹⁶ Fusaro, C. and Oliver, D., *Towards a Theory of Constitutional Change. How Constitutions Change*, Oxford: Hart Publishing Ltd., 2011, p. 428.

¹⁹⁷ Sinkevičius, V., “Konstitucijos keitimo apribojimai” [“Limitations on the Alteration of the Constitution”], *Jurisprudencija [Jurisprudence]*, 2015, No 22(2), p. 224.

¹⁹⁸ Butvilavičius, D., “Konstitucijos pataisų antikonstitucingumas” [“The Unconstitutionality of Amendments to a Constitution”], *Konstitucinė jurisprudencija [Constitutional Jurisprudence]*, 2014, No 3(35), June–August, p. 216.

that justice is administered only by courts, the principles of the equality of the rights of all persons, the rule of law, the separation of powers, checks and balances, and other values).¹⁹⁹

Thus, it can be stated that the Lithuanian scientific legal doctrine is in favour of the further development of the official constitutional doctrine on the constitutionality of constitutional amendments. Undoubtedly, the future will bring new and, possibly, even more complex constitutional justice cases in which this doctrine will be elaborated and supplemented with new aspects, since the constitutionality of constitutional amendments is one of the most important and complicated issues of constitutionalism.

5.4. *The principle of geopolitical orientation*

This constitutional principle stems from the overall constitutional legal regulation and the constitutional tradition of the geopolitical orientation of the State of Lithuania. The constitutional tradition of the geopolitical orientation of the State of Lithuania is the constitutionally enshrined orientation of the Republic of Lithuania to the Euro-Atlantic (European and transatlantic) community of democratic states, based on the commonality of recognised, cherished, and protected democratic values and on the desire to ensure national security and well-being by integrating into this community, *inter alia*, in order to become a full member of the most important organisations of this community, to use the advantages of this membership, and, by acting in the spirit of solidarity, to share joint responsibilities emerging from this membership. This constitutional tradition started when, nearly 70 years ago, the Declaration of the Council of the Lithuanian Freedom Fight Movement (the LLKS Council) of 16 February 1949²⁰⁰ was adopted under the conditions of the struggle against Lithuania's second occupation perpetrated by the USSR. This Declaration consolidated both the continuity of the State of Lithuania and the principles of the restoration of its independence. Adopted by the LLKS Council, which, acting in Soviet-occupied Lithuania, was the only legitimate representation of the nation and the supreme institution exercising the power of the Lithuanian State, the Declaration is a legal act of special constitutional significance, i.e. it is a primary source of constitutional law and one of the constitutional foundations of the independent State of Lithuania.²⁰¹

The principle of the geopolitical orientation of the State of Lithuania was consolidated in Paragraph 22 of the Declaration of the LLKS Council of 16 February 1949, in which the LLKS Council announced its contribution to "the principles of real democracy

¹⁹⁹ Sinkevičius, footnote 197, p. 224.

²⁰⁰ See Appendix 1 to the Republic of Lithuania's Law on the Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 of 12 January 1999, Official Gazette *Valstybės žinios*, 1999, No 11-241.

²⁰¹ Sinkevičius, V., "Lietuvos Laisvės Kovos Sąjūdžio Tarybos 1949 m. vasario 16 d. Deklaracija Lietuvos teisės sistemoje" ["The Declaration of the Council of the Lithuanian Freedom Fight Movement of 16 February 1949 in the Legal System of Lithuania"], *Regnum est: 1990 m. Kovo 11-osios Nepriklausomybės Aktui – 20. Liber Amicorum Vytautui Landsbergiui [Regnum est: The Act of Independence of 11 March Reaches 20. Liber Amicorum Vytautas Landsbergis]*, Vilnius: The Publishing Centre of Mykolas Romeris University, 2010, pp. 56–57, 59, 65–66.

following from an understanding of Christian morality and declared in the Atlantic Charter, Four Freedoms, President Truman's 12 Points, the Declaration of Human Rights and other declarations of justice and freedom", and appealed to all of the democratic world for assistance in implementing its goals. These provisions meant that the geopolitical orientation of the State of Lithuania, on behalf which the LLKS Council was acting, was the democratic Western world, and that the Lithuanian nation and the Lithuanian State saw their future only in the community of Western democracies.²⁰²

Thus, the Constitution of the Republic of Lithuania has a big inner potential that is inseparable from the constitutional traditions of the state.²⁰³ One of such traditions is the constitutional principle of geopolitical orientation, which implies the European and transatlantic integration chosen by the Republic of Lithuania and the necessity to fulfil the international obligations related to membership in the EU and NATO (this is the content of this principle as defined by the Constitutional Court in its rulings of 7 July 2011 and 24 January 2014).

The geopolitical orientation of the State of Lithuania is expressed in the Constitution of 1992 both in the negative and positive aspects.²⁰⁴ In its negative sense, the principle of the geopolitical orientation of the State of Lithuania means the limits that must not be overstepped by the Republic of Lithuania when it participates in global or regional international integration processes, whereas, in its positive sense, it means the establishment of the direction of the geopolitical integration of the state and the promotion of a dynamic activity on that path. In its negative form, the principle of the geopolitical orientation of the State of Lithuania is explicitly expressed in the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, *inter alia*, consolidating the prohibition precluding the State of Lithuania from joining post-Soviet unions of states and international organisations created on the basis of the former USSR. In its positive form, the principle of the geopolitical orientation of the State of Lithuania is, at present, explicitly expressed only partly: the Constitutional Act on Membership of the Republic of Lithuania in the European Union confirmed the membership of this country in the European Union.²⁰⁵ This principle was more explicitly reflected in Article 47 of the Constitution in its wording

²⁰² Ibid., p. 65.

²⁰³ Žalimas, footnote 195.

²⁰⁴ Birmontienė, T. (and others), *Lietuvos konstitucinė teisė [Lithuanian Constitutional Law]*, Vilnius: The Law University of Lithuania, 2001, pp. 271–272.

²⁰⁵ The jurisprudence of the Constitutional Court not accidentally mentions the fact that the country's membership in the European Union was namely confirmed and not consolidated by the Constitutional Act on Membership of the Republic of Lithuania in the European Union. From 1 May 2004, when Lithuania became a member of the EU, until 14 August 2004, when this Constitutional Act came entry into force, there was a certain constitutional vacuum, as there was a lack of explicit constitutional grounds for the EU membership. See Kūris, E., "Europos Sąjungos teisė Lietuvos Respublikos Konstitucinio Teismo jurisprudencijoje: sambūvio algoritmo paieškos" ["Law of the European Union in the Jurisprudence of the Constitutional Court of the Republic of Lithuania: In Search of the Algorithm of Coexistence"], Katuoka, S. (managing editor), *Teisė besikeičiančioje Europoje: Liber Amicorum Pranas Kūris [Law in the Changing Europe: Liber Amicorum Pranas Kūris]* (collection of scientific articles), Vilnius: The Publishing Centre of Mykolas Romeris University, 2008, p. 689.

valid from 21 July 1996 until 23 February 2003,²⁰⁶ which consolidated the criteria of the European and transatlantic integration chosen by the Republic of Lithuania. In general, it is possible to state that the clear consolidation of the geopolitical orientation in Lithuania's Constitution, which includes both negative and positive aspects of the said principle, is also a specific feature of this Constitution, especially if a comparison is made with the constitutions of other states, which contain only the provisions necessary for membership in the EU.²⁰⁷

Given the increasing degree of European and transatlantic integration of the State of Lithuania, the constitutional concept of the principle of its geopolitical orientation is an evolving concept developed by the Constitutional Court. It was only in recent years that the Constitutional Court had the opportunity to formulate the doctrine disclosing the content of the principle of geopolitical orientation only in recent years. Lithuania's geopolitical orientation was for the first time mentioned in the Constitutional Court's ruling of 15 March 2011.²⁰⁸ Later, the principle of geopolitical orientation was developed in the Constitutional Court's rulings of 7 July 2011²⁰⁹, 24 January 2014,²¹⁰ and 11 July 2014.²¹¹

In its ruling of 15 March 2011 on international military operations, exercises, and other events of military cooperation, the Constitutional Court examined the issue of the constitutionality of deploying the military forces of NATO countries and establishing their military bases in Lithuania. Based on a very narrow concept of the provision of Article 137 of the Constitution, whereby "there may not be any foreign military bases on the territory of the Republic of Lithuania", the petitioners in that case tried to challenge the provisions of the Law on International Operations, Exercises, and Other Events of Military Cooperation, which were very important for Lithuania's NATO membership. The question raised in the said constitutional justice case can be rephrased as follows: Does the Constitution obligate the state to commit suicide by prohibiting it from using the most effective measure for its defence, i.e. the assistance of NATO countries?²¹² The Constitutional Court ruled that the impugned provisions of the law were not in conflict with the Constitution.

It was held in the said ruling of the Constitutional Court that the provision of Article 137 of the Constitution that there may not be any foreign military bases on the territory of the Republic of Lithuania, *inter alia*, means that on the territory of the Republic of Lithuania there may not be any such military bases that are directed and controlled by foreign states. Such a prohibition, *inter alia*, does not mean that on the territory of the

²⁰⁶ The Republic of Lithuania's Law Supplementing Article 47 of the Constitution of the Republic of Lithuania, Official Gazette *Valstybės žinios*, 1996, No 64-1501; the Republic of Lithuania's Law Amending Article 47 of the Constitution of the Republic of Lithuania, *ibid.*, 2003, No 14-540.

²⁰⁷ Žalimas, footnote 195.

²⁰⁸ The Constitutional Court's ruling of 15 March 2011, Official Gazette *Valstybės žinios*, 2011, No 3-1503.

²⁰⁹ The Constitutional Court's ruling of 7 July 2011, *ibid.*, 2011, No 84-4106.

²¹⁰ The Constitutional Court's ruling of 24 January 2014, the Register of Legal Acts, 24-01-2014, No 478.

²¹¹ The Constitutional Court's ruling of 11 July 2014, *ibid.*, 11-07-2014, No 10117.

²¹² Žalimas, footnote 195.

Republic of Lithuania there may not be any such military bases that, subsequent to the international treaties of the Republic of Lithuania, *inter alia*, the collective defence treaty ratified by the Seimas, are directed and controlled by the Republic of Lithuania jointly (together) with its states-allies.

The Constitutional Court emphasised that the general grounds (consolidated in the Constitution) for international cooperation carried out by the state, where such cooperation is related, *inter alia*, to the defence of the state, are characterised, *inter alia*, by the consolidation of the geopolitical orientation of the State of Lithuania – the participation of the state in European integration as a Member of the European Union and the striving of the state for ensuring national independence and security by contributing to the creation of international order based on law and justice. The same ruling also held that the geopolitical orientation of the State of Lithuania – the participation of the state in European integration – is inseparable from other international obligations of the Republic of Lithuania, where such obligations arise from the membership of Lithuania in other international organisations, *inter alia*, the United Nations and the North Atlantic Treaty Organisation; this membership provides Lithuania not only with additional security guarantees, but also implies the necessity to observe the international obligations undertaken by it.

The principle of geopolitical orientation was further developed in the Constitutional Court's ruling of 7 July 2011, which held that, while regulating the protection of state secrets, the Republic of Lithuania may not establish lower standards of the protection in question than those pertaining to the protection of classified information in the EU and NATO. In its ruling of 7 July 2011, the Constitutional Court held that the geopolitical orientation of the State of Lithuania means the membership of the Republic of Lithuania in the EU and NATO, as well as the necessity to fulfil the relevant international obligations related to the said membership.

It has been mentioned that, in the Constitutional Court's rulings of 24 January 2014 and 11 July 2014, the official constitutional doctrine of the geopolitical orientation of the Republic of Lithuania was developed in the context of the constitutionality of amendments to the Constitution. It was held in these rulings that it is not permitted to make any such amendments to the Constitution that would deny the provisions of the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions, with the exception of the case where certain provisions of this constitutional act would be altered in the same manner as provided for in Article 2 of the Constitutional Law on the State of Lithuania; it has also been held that, as long as the constitutional grounds for membership of the Republic of Lithuania in the European Union, which are consolidated in Articles 1 and 2 of the Constitutional Act on Membership of the Republic of Lithuania in the European Union, have not been annulled by referendum, it is not permitted to make any such amendments to the Constitution that would deny the obligations of the Republic of Lithuania arising from its membership in the European Union; it has also been stated

that it is not permitted to make any such amendments to the Constitution that would deny the international obligations of the Republic of Lithuania (*inter alia*, the obligations of the Republic of Lithuania arising from its membership in NATO, which are preconditioned by the geopolitical orientation of the Republic of Lithuania) and, at the same time, would deny the constitutional principle of *pacta sunt servanda* as long as the said international obligations have not been renounced in accordance with the norms of international law.

The Constitutional Court's ruling of 24 January 2014 also reflects the commonness of values with Western democratic states as the foundation of the geopolitical orientation of Lithuania. The Constitutional Court noted that the fundamental constitutional values consolidated in Article 1 of the Constitution – the independence of the state, democracy, the republic – are closely interrelated with the geopolitical orientation of the state; the said geopolitical orientation is consolidated in the Constitution and implies European and transatlantic integration pursued by the Republic of Lithuania. Such geopolitical orientation of Lithuania is based upon the recognised and protected universal democratic constitutional values that are common with the values of other European and North American states.

Thus, the Lithuanian constitutional identity, founded upon fundamental constitutional values such as the independence of the state, democracy, and the innate nature of human rights and freedoms, should be understood in a broader context, as an integral part of the democratic constitutional identity of Western states.²¹³ In summary, the principle of geopolitical orientation is one of the most important principles disclosed in the jurisprudence of the Constitutional Court, ensuring the conditions of the viability of the Constitution – the stability of the text of the Constitution, including its openness to change in the democratic development of Europe and Lithuania, as well as its ability to adapt to new challenges in the geopolitical environment.

5.5. The official constitutional doctrine of the institution of impeachment

It has been mentioned that impeachment is a special procedure provided for in the Constitution, when the issue of the constitutional liability of the highest state officials specified in the Constitution is decided, i.e. their removal from office for the following actions provided for in the Constitution: a gross violation of the Constitution, a breach of the oath, or the commission of a crime.²¹⁴ One of the most significant rulings of the Constitutional Court in relation to impeachment as a constitutional institution is its ruling of 25 May 2004.²¹⁵ In this ruling, the Constitutional Court formulated the official constitutional doctrine on the prohibition preventing persons removed from office through impeachment proceedings from entering office that requires taking an oath.

²¹³ Žalimas, footnote 195.

²¹⁴ See Subsection 2.2 of Section 2 of this chapter.

²¹⁵ The Constitutional Court's ruling of 25 May 2004, Official Gazette *Valstybės žinios*, 2004, No 85-3094.

The Constitutional Court held that the Constitution does not provide that, upon the lapse of a certain period of time, the President of the Republic whose actions were declared by the Constitutional Court to have grossly violated the Constitution, and who himself/herself was declared to have breached the oath and was, subsequently, removed from office by the Seimas for a breach of the oath and a gross violation of the Constitution, could be treated as one who has not breached the oath or has not grossly violated the Constitution; if a person who was elected as the President of the Republic took the oath of the President of the Republic to the nation and subsequently breached it, thus grossly violating the Constitution, and, due to this, was removed from office by the Seimas – the representation of the nation – through impeachment proceedings, this person may not, under the Constitution, take an oath to the nation once again; there would always exist a reasonable doubt, which would never disappear, with regard to the certainty and reliability of the oath retaken by this person and, thus, also with regard to whether he/she will really perform the duties of the President of the Republic in the manner that the oath to the nation obliges him/her and whether he/she will be faithful to the repeated oath, i.e. whether the oath retaken by this person to the nation will be genuine.

The Constitutional Court noted that a person who, having grossly violated the Constitution and breached the oath, committed a crime whereby the Constitution was grossly violated and the oath was breached and who, for this reason, was removed through impeachment proceedings from the office of the President of the Republic, the president or a justice of the Constitutional Court, the president or a justice of the Supreme Court, the president or a judge of the Court of Appeal, or whose mandate of a member of the Seimas was revoked, may, under the Constitution, never be elected as the President of the Republic or a member of the Seimas, may never hold the office of a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, a judge of another court, a member of the Government, or the Auditor General, i.e. he/she may never hold such constitutionally specified office whose beginning is linked with taking the oath provided for in the Constitution. The Constitutional Court also pointed out that the Constitution does not prescribe that a person may never stand for election as the President of the Republic if he/she was removed from office or his/her mandate of a member of the Seimas was revoked through impeachment proceedings for having committed such a crime whereby the Constitution was not grossly violated and the oath was not breached.

It should be noted that, by the judgment of the Grand Chamber of the European Court of Human Rights of 6 January 2011 in the case of *Paksas v Lithuania*,²¹⁶ the permanent and irreversible prohibition on standing for election to the Seimas for a person who was removed from office through impeachment proceedings for a gross violation of the Constitution and a breach of the oath was found to be disproportionate and in violation of the right to stand as a candidate for the legislature under Article 3 of Protocol No 1 to

²¹⁶ The ECtHR, the judgment of 6 January 2011, *Paksas v Lithuania* [GC], no 34932/04.

the Convention for the Protection of Human Rights and Fundamental Freedoms. In view of this fact, the Law on Elections to the Seimas was amended by providing, in Paragraph 2 (wording of 22 March 2012) of Article 5 of this law, that a person who was removed from office or whose mandate of a member of the Seimas was revoked by the Seimas through impeachment proceedings was not allowed to stand for election as a member of the Seimas if less than four years had elapsed from the entry into force of the decision to remove him/her from office or to revoke his/her mandate of a member of the Seimas.

In its ruling of 5 September 2012,²¹⁷ the Constitutional Court recognised that Paragraph 5 (wording of 22 March 2012) of Article 2 of the Law on Elections to the Seimas was in conflict with the Constitution. In this ruling, the Constitutional Court recalled the official constitutional doctrine, formulated in its ruling of 25 May 2004, concerning the prohibition preventing persons removed from office through impeachment proceedings from entering office that requires taking an oath. The Constitutional Court emphasised that Paragraphs 1 and 2 of Article 107 of the Constitution give rise to the prohibition on repeatedly establishing, by means of later adopted laws or other legal acts, any such legal regulation that is incompatible with the concept of the provisions of the Constitution as set out in the acts of the Constitutional Court. It was held in the ruling that the above-mentioned legal regulation ignored the concept of constitutional liability for a gross violation of the Constitution and a breach of the oath, as disclosed in the Constitutional Court's ruling of 25 May 2004, and disregarded the fact that, under the Constitution, a person may never stand for election as a member of the Seimas if he/she grossly violated the Constitution and breached his/her oath and, for this reason, was removed from office or his/her mandate of a member of the Seimas was revoked following impeachment proceedings; having established the impugned legal regulation, the legislature tried to overrule the force of the Constitutional Court's ruling of 25 May 2004 and violated the prohibition on repeatedly establishing, by means of later adopted laws or other legal acts, any such legal regulation that is incompatible with the concept of the provisions of the Constitution as set out in the rulings of the Constitutional Court, as well as failed to comply with the principles of the integrity and supremacy of the Constitution, exceeded its powers established in the Constitution, and violated the constitutional principles of the separation of powers and a state under the rule of law.

The Constitutional Court also held that the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No 1 – ratified international treaties – have the force of a law in the Lithuanian legal system. The Constitutional Court emphasised that, in cases where a legal regulation laid down in an international treaty that has been ratified by the Seimas and has entered into force competes with a legal regulation established in the Constitution, the provisions of such an international treaty do not take precedence in terms of application. The Lithuanian legal system is based on

²¹⁷ The Constitutional Court's ruling of 5 September 2012, Official Gazette *Valstybės žinios*, 2012, No 105-5330.

the principle that no law or another legal act, including the international treaties of the Republic of Lithuania, may be in conflict with the Constitution. Consequently, in itself, a judgment of the European Court of Human Rights may not serve as the constitutional grounds for the reinterpretation (modification) of the official constitutional doctrine if such reinterpretation, in the absence of relevant amendments to the Constitution, were to change the overall constitutional regulation in substance, disturb the system of values entrenched in the Constitution, and diminish the guarantees set for the protection of the supremacy of the Constitution in the legal system. The Constitutional Court held that the constitutional institutes of impeachment, the oath, and electoral rights are closely interrelated and integrated; the change of any of the elements of these institutes would result in the change of the content of other related institutes, i.e. the system of values entrenched in related constitutional institutes would also be changed.

At the same time, the Constitutional Court underlined that respect for international law and compliance with the voluntarily undertaken international obligations constitute a legal tradition and a constitutional principle of the restored independent State of Lithuania; under Paragraph 1 of Article 135 of the Constitution, the Republic of Lithuania must observe the universally recognised principles and norms of international law; therefore, this leads to the duty of the Republic of Lithuania to remove the incompatibility between the provisions of Article 3 of Protocol No 1 to the Convention and the provisions of the Constitution. In view of the fact that the Lithuanian legal system is based on the principle of the supremacy of the Constitution, the Constitutional Court held that the adoption of the appropriate amendment to the Constitution is the only way to remove this incompatibility.

5.6. The constitutional concept of the family

The constitutional concept of the family was first disclosed by the Constitutional Court only in its ruling of 28 September 2011.²¹⁸ This constitutional justice case was initiated by a group of members of the Seimas, requesting an investigation into the constitutionality of the resolution of the Seimas of 3 June 2008 on the approval of the State Family Policy Concept (hereinafter also referred to as the Concept), insofar as the Concept, as approved by the said resolution, consolidated the definitions of the concepts of the family, harmonious family, extended family, and incomplete family.

It was held in the ruling that, under the Concept, family was directly linked to the fact of the conclusion of marriage, i.e. it consolidated the concept of the family as exclusively based on marriage. A man and a woman though not married to each other but living together, who could also be raising children (adopted children), were not regarded as a family; a man or a woman who had not been married and his/her children (adopted children) were not regarded as an incomplete family. Although meeting all the criteria of

²¹⁸ The Constitutional Court's ruling of 28 September 2011, Official Gazette *Valstybės žinios*, 2011, No 118-5564.

the harmonious family, multi-child family, family living through a crisis, or family at social risk, a man and a woman not married to each other, who could also be raising children (adopted children), or a man or a woman who had not been married and his/her children (adopted children), were not respectively regarded as a harmonious family, multi-child family, family living through a crisis, or family at social risk. The Constitutional Court noted that, in the context of the provisions consolidating the concept of the family, the provisions of the State Family Policy Concept regarding the promotion of employment of family members, the creation of a favourable residential environment for families, and the provision of families with housing, social assistance, and services, as well as regarding family health and child safety in families, i.e. the provisions designated to ensure certain social and financial welfare of families, meant that only families founded exclusively on the basis of marriage were to benefit from the sought aims to ensure more favourable conditions for obtaining and using housing, the more effective harmonisation of social assistance in cash and the social services system, and the prevention of all forms of violence against children growing up in families of parents who live or formerly lived in a marriage, etc.

Having consolidated such concepts of the family under which only a man and a woman who were or had been married as well as their children (adopted children) were regarded as a family, the Seimas created the preconditions for establishing such a legal regulation that would not protect and not defend other family relations, *inter alia*, where a man and a woman who neither are nor were married and their children (adopted children) live together and have relations based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, the shared upbringing of the children, and similar ones, as well as on the voluntary determination to take on certain rights and duties – which all are characteristic of the family as a constitutional institute. Having narrowed the content of the family as a constitutional institute, the Seimas did not observe the concept of the family, as a constitutional value stemming from the Constitution, *inter alia*, Paragraphs 1 and 2 of Article 38, which may be founded not only on the basis of marriage. In the light of these arguments, the Constitutional Court recognised that the resolution of the Seimas of 3 June 2008 was in conflict with Paragraphs 1 and 2 of Article 38 of the Constitution, insofar as the provisions of Item 1.6 of the State Family Policy Concept, as approved by this resolution, consolidated the concepts of the harmonious family, multi-child family, extended family, family living through a crisis, incomplete family, family at social risk, and family – which all were founded exclusively on the basis of marriage.

The Constitutional Court held that the constitutional concept of the family may not be derived solely from the institution of marriage, consolidated in the provisions of Paragraph 3 of Article 38 of the Constitution. The fact that the institutions of marriage and the family are consolidated in the same Article 38 of the Constitution is indicative of an inseparable and unquestionable relationship between marriage and family. Marriage is one of the grounds of the constitutional institution of the family for the creation of

family relations. It is a historically established family model that has undoubtedly had an exceptional value in the life of society and ensures the viability of the nation and the state, as well as their historical survival. Nevertheless, this does not mean that the Constitution, *inter alia*, the provisions of Paragraph 1 of Article 38, does not (do not) protect or defend families other than those founded on the basis of marriage, *inter alia*, where a man and a woman live together without concluding a marriage and have relations based on the permanent bonds of emotional affection, reciprocal understanding, responsibility, respect, the shared upbringing of children, and similar ones, as well as on the voluntary determination to take on certain rights and duties, which all form the basis for the constitutional institutes of motherhood, fatherhood, and childhood. Thus, the constitutional concept of the family is based on mutual responsibility between family members, understanding, emotional affection, assistance, and similar bonds, as well as on the voluntary determination to take on certain rights and duties, i.e. the constitutional concept of family is based on the content of relations, whereas the form of expression of these relations has no essential significance for it. The duty, stemming from Paragraph 1 of Article 38 of the Constitution, for the state to establish, by means of laws and other legal acts, a legal regulation that would ensure the protection of the family as a constitutional value implies not only the obligation of the state to establish such a legal regulation that, *inter alia*, would create the preconditions for the proper functioning of families, strengthen family relations, and defend the rights and legitimate interests of family members, but also the obligation of the state to regulate, by means of laws and other legal acts, family relations in such a way that no preconditions would be created for discrimination against certain participants in family relations (as, for instance, against a man and a woman who live together without having registered their union as a marriage, their children (adopted children), single parents raising their child (adopted child), etc.).

It was noted in the ruling that the Seimas, as the institution of legislative power, has broad discretion in forming the state policy in various areas of the life of society, *inter alia*, the state family policy, as well as in regulating social relations in these areas by legal acts. When implementing its powers to form the state policy in certain areas of the life of society and the state, *inter alia*, the state family policy, the Seimas is obliged to pay regard to the norms and principles of the Constitution.

Under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, the Seimas, as the institution of legislative power, when exercising its constitutional powers and regulating family relations by legal acts, *inter alia*, formulating the concepts of subjects of these relations, must pay regard to the Constitution and the requirements stemming from it, *inter alia*, those of the equality of rights, human dignity, and respect for private life. Under the Constitution, *inter alia*, the constitutional principle of a state under the rule of law, in the course of regulating family relations by means of laws and other legal acts and defining the family as a subject of legal relations, the duty arises for

the Seimas, as the institution of legislative power, to take account of the specific character of the relations under regulation, *inter alia*, the particularities of the subjects of these legal relations, as the said specific character objectively determines the necessity to define these subjects in the context of their concrete relations.

Summing up the constitutional concept of the family as disclosed in the above-mentioned ruling, it can be concluded that priority is given to the content of family relations, rather than the form of their expression. The formal definition of the family may seem attractive in that it provides certain clarity and, by drawing on it, it is possible to demonstrate whether a family exists or not; however, the formal concept of the family does not resolve but rather exacerbates the matter in question. If the formal concept were applied, it would exclude multiple cases where two or more people feel and consider themselves to be a family; these people could reasonably argue that they are discriminated against. The actual social and demographic situation indicates that marriage can no longer be the sole criterion for defining a family; the number of families that are not founded on the basis of marriage has been growing in society. Thus, the concept of the family as disclosed in this ruling provides further proof that the living jurisprudential Constitution is established in Lithuania – the responsiveness of the Constitution to the development of society is guaranteed in the process of interpreting the Constitution.

5.7. *The constitutional doctrine of judicial precedent*

The official constitutional doctrine of judicial precedent was, for the first time, formulated in the Constitutional Court's ruling of 28 March 2006.²¹⁹ The provisions of the doctrine formulated in that ruling were reiterated and developed in the Constitutional Court's ruling of 9 May 2006,²²⁰ its decisions of 8 August 2006²²¹ and 21 November 2006,²²² and (in particular), its ruling of 24 October 2007.²²³ It had taken nearly thirteen years of constitutional justice activity in Lithuania before this doctrine was “directly” formulated. In this context, it should be noted that the beginnings of the doctrine of judicial precedent in the constitutional jurisprudence could also be noticed in previous acts of the Constitutional Court, e.g. in its ruling of 12 July 2001,²²⁴ in which the imperative of the continuity of jurisprudence (thus, also the constitutional jurisprudence) is emphasised, or in its ruling of 30 May 2003,²²⁵ in which it was, for the first time, explicitly stipulated that the acts of the Constitutional Court are a source of law.

²¹⁹ The Constitutional Court's ruling of 28 March 2006, Official Gazette *Valstybės žinios*, 2006, No 36-1292.

²²⁰ The Constitutional Court's ruling of 9 May 2006, *ibid.*, 2006, No 51-1894.

²²¹ The Constitutional Court's decision of 8 August 2006, *ibid.*, 2006, No 88-3475, corrigendum, 2006, No 137.

²²² The Constitutional Court's decision of 21 November 2006, *ibid.*, 2006, No 127-4849.

²²³ The Constitutional Court's ruling of 24 October 2007, *ibid.*, 2007, No 111-4549.

²²⁴ The Constitutional Court's ruling of 12 July 2001, *ibid.*, 2001, No 62-2276, corrigendum, 2001, No 86.

²²⁵ The Constitutional Court's ruling of 30 May 2003, *ibid.*, 2003, No 53-2361.

The most important provisions of the official constitutional doctrine of judicial precedent formulated in the Constitutional Court's ruling of 28 March 2006²²⁶ are the following: the reference to the precedents is a condition for uniform (coherent, consistent) case-law, as well as that of the implementation of the principle of justice. Thus, judicial precedents must not be unreasonably ignored when analogous cases are decided. Courts, when adopting decisions in cases of certain categories, are bound by their own precedents – decisions in analogous cases. Courts of lower instance, when adopting decisions in cases of certain categories, are bound by decisions of courts of higher instance – precedents in cases of the same categories. In reviewing decisions of courts of lower instance, courts of higher instance must assess these decisions by always following the same legal criteria; these criteria must be clear and known *ex ante* to the subjects of law, *inter alia*, to the courts of lower instance, as the jurisprudence of courts must be predictable. The already existing precedents in cases of certain categories that were created by courts of higher instance are binding not only on courts of lower instance that adopt decisions in analogous cases, but also on courts of higher instance that created those precedents. Courts must follow such a concept of the content of particular provisions (norms, principles) of law (including such a concept of the application of such provisions of law) that was formed and was followed when applying these provisions (norms, principles) in previous cases, *inter alia*, when previously deciding analogous cases. The case-law of courts in cases of particular categories must be modified and new judicial precedents in cases of the same categories may be created only when this is unavoidably and objectively necessary, when this is constitutionally grounded and justified. Such modification of case-law (deviation from previous precedents, which was binding on courts until then and the creation of new precedents) must in all cases be properly (clearly and rationally) argued in relevant decisions of courts. When deviating from its previous precedents, a court must not only properly argue an adopted decision (a created precedent) itself, but also must clearly set out the reasoning and arguments substantiating the necessity to deviate from a previous precedent.

In the jurisprudence of the Constitutional Court, a court decision is considered not only a law-applying act, but also an authoritative source of law, obliging, thus, binding not only other courts that will consider analogous cases, but also the creator of the precedent itself (until a court of higher instance has adopted a decision negating the created precedent). Thus, judicial precedent is a source of law that is binding both vertically and horizontally. If we accept as indisputable the postulate of certain legal theories that sources of law must be classified into primary (or compulsory) and secondary (optional), then the judicial

²²⁶ The Constitutional Court's ruling of 28 March 2006, *ibid.*, 2006, No 36-1292.

precedent in the Constitutional Court's ruling of 28 March 2006 was kind of moved from the class of secondary sources of law into the class of primary sources of law.²²⁷

It should be emphasised that the specified doctrinal maxims on the bindingness of judicial precedent were also applied by the Constitutional Court to its created doctrinal precedents and legal positions in relevant cases. In the Constitutional Court's ruling of 24 October 2007, the official constitutional doctrine of judicial precedent was developed by emphasising that the meaning of judicial precedents as the sources of law may not be overestimated, let alone made absolute. Court precedents must be invoked with particular care. It was once again emphasised that, in the course of the consideration of cases by courts, only those previous decisions of courts have the power of precedent that were created in analogous cases, i.e. a precedent is applied only in those cases whose factual circumstances are identical or very similar to the factual circumstances of a case in which a relevant precedent was created and with regard to which the same law should be applied as in the case in which such a precedent was created.

In the same ruling, the Constitutional Court presented the "model" list of rules for deciding between competing precedents: (1) the precedent created by a court of higher instance (higher level) must be followed (i.e. high importance is placed on the hierarchy of judicial precedents); (2) it is necessary to take into account the time when the precedent was created; (3) it is necessary to take into account the fact whether a certain judicial precedent reflects established case-law or whether it is a single occurrence; (4) it is necessary to take into account the fact whether the reasoning of a decision is convincing; (5) it is necessary to take into account the composition of a court that adopted a relevant decision (whether such a decision was adopted by a single judge, or by a panel of judges, or whether by the enlarged panel of judges, or whether by a court (its chamber) in its entire composition); (6) it is necessary to take into account the fact whether there were any separate opinions of judges expressed because of a previous court decision; (7) it is necessary to take into account possible significant (social, economic etc.) changes that might take place after the adoption of a relevant court decision that has the significance of precedent, etc. The above list is far from exhaustive, and any future relevant cases will most likely have something to add to this list.

It is particularly important that the official constitutional doctrine underlines the possibility of changing precedents in cases where this is necessary and constitutionally justified. Such objective necessity and constitutional justification are subject to two conditions: (1) the necessity to further ensure, protect, and defend certain values; (2) the necessity to reason both the decision to ignore an existing precedent and the creation of a new one.

²²⁷ Kūris, E., "Teismo precedentas kaip teisės šaltinis Lietuvoje: oficiali konstitucinė doktrina, teisinio mąstymo stereotipai ir kontrargumentai" ["Judicial Precedent as a Source of Law in Lithuania: The Official Constitutional Doctrine, Stereotypes of Legal Thinking and Counter-arguments"], *Jurisprudencija [Jurisprudence]*, 2009, No 2(116), pp. 132–133.

The scholarly literature emphasises that the doctrine of judicial precedent established in acts of the Constitutional Court concretised and explicitly consolidated what had evolved as “living law” for many years.²²⁸ This confirms the idea, expressed earlier in the previous section of this chapter of the book, that the Constitutional Court, when interpreting the provisions of the Constitution in the light of the changing context, does not allow them to become outdated, and the official constitutional doctrine of judicial precedent clearly confirms the said idea.

5.8. *The official constitutional doctrine of the independence of judges and courts*

As courts assume a greater role in society, their independence is becoming increasingly important. It is clear that courts would be unable to perform their role if they were not independent. In a democratic state governed by the rule of law, independence is part and parcel of the concept of a court: a court dependent on the executive or legislature may not be considered a court at all. If the independence of courts is not ensured in a state, it is pointless to discuss the possibility for individuals to defend themselves against the arbitrariness of state authorities; under such conditions, the proclaimed democracy, the state under the rule of law, and respect for human rights have no more than a declaratory effect.

All European states probably face various violations undermining the independence of courts; however, difficulties in ensuring the independence of judges and courts have more impacted the relatively new democracies of central and eastern Europe, including Lithuania. Because of the lack of the traditions of democracy and legal culture, politicians sometimes cannot resist the temptation of seeking to exert influence over courts by resorting to various means and measures, e.g. by way of interfering in the process of the selection of candidates for judicial office and the appointment of judges, by trying to influence the establishment of the remuneration and other social guarantees of judges, by making public statements expressing the aims to limit the powers of courts, as well as by not complying with or ignoring court judgements.²²⁹ In addition to the challenges that can be accounted for by the lack of traditions common to democracies and by insufficient legal culture, there may be other specific challenges, such as those related to austerity measures, aimed during an economic crisis at reducing public expenditure and lowering the level of social guarantees, including the funding necessary to perform state functions (thus, also in the area of the administration of justice), remuneration, pensions, and other social benefits. By adjudicating various constitutional justice cases in relation to the principle of

²²⁸ Sagatys, G., “Teismo precedentas Lietuvoje: konstitucinė maksima ir jos įgyvendinimo problemos” [“Judicial Precedent in Lithuania: The Constitutional Maxim and the Problems of Its Implementation”], *Justitia*, 2009, No 2(72), p. 15.

²²⁹ Masnevaitė, E., Pūraitė-Andrikiienė, D., and Žalimas, D., “Teismų nepriklausomumas ir teisinių ginčų sprendimas” [“The Independence of Courts and Legal Dispute Resolution”] in *Krizė, teisės viešpatavimas ir žmogaus teisės* [Crisis, the Rule of Law and Human Rights in Lithuania], footnote 182, pp. 454–455.

the independence of judges and courts and formulating the official constitutional doctrine on the independence of judges and courts, the Constitutional Court has significantly contributed to overcoming the above-mentioned challenges.

The Constitutional Court has identified the principle of the independence of judges and courts as one of the underlying features of a democratic state.²³⁰ The independence of courts is an essential guarantee for ensuring human rights and freedoms, as well as a necessary condition for the fair consideration of a case and, consequently, for trust in the judiciary.²³¹

Some authors believe this principle is most precisely represented by the guarantees attached to it.²³² When interpreting the provisions of Articles 5, 109, 112, and 115 of the Constitution, the Constitutional Court, *inter alia*, formulated a rather broad official constitutional doctrine defining the following guarantees of the independence of judges and courts: the inviolability of the term of powers of judges; the inviolability of the person of a judge; the reality of the social (material) guarantees of judges; the self-government of the judiciary as a fully fledged branch of state power; and the guarantees of the financial and material–technical provision of courts (the organisational independence).²³³

The Constitutional Court has developed the doctrine related to the guarantees of the inviolability of the powers of judges in the course of considering different issues concerning the release of judges from duties, *inter alia*, when a justice of the Supreme Court was released from office due to his appointment as a justice of the Constitutional Court,²³⁴ when the President of the Supreme Court was not released from office by a resolution of the Seimas upon the expiry of the term of powers,²³⁵ also when the judges were released from the office of a judge of a regional court and the offices of the presidents of local courts because they had discredited the name of judges by their conduct,²³⁶ etc.

Regarding the term of powers of judges, the constitutional jurisprudence underscores that only an independent court, i.e. a court whose judges are guaranteed the inviolability of the term of powers, can be regarded as a court that administers justice as required by the Constitution. The guarantee of the inviolability of the term of powers of judges is also

²³⁰ *Inter alia*, the Constitutional Court's ruling of 6 December 1995, Official Gazette *Valstybės žinios*, 1995, No 101 2264.

²³¹ The Constitutional Court's ruling of 12 February 2001, *ibid.*, 2001, No 14-445.

²³² Valančius, V., *Teismo ir teisėjo nepriklausomumo principo įgyvendinimas: daktaro disertacija [The Implementation of the Principle of the Independence of Courts and Judges]* (doctoral dissertation), Vilnius, 2000, p. 104.

²³³ Birmontienė, T., "Konstitucinė teismų nepriklausomumo garantijų sistema" ["The Constitutional System of the Guarantees of the Independence of Courts"] in *Teismų nepriklausomumo garantijos: Lietuvos Respublikos Konstitucinio Teismo ir Ukrainos Konstitucinio Teismo teisėjų konferencijos medžiaga [The Guarantees of the Independence of Courts]* (material of a conference of the justices of the Constitutional Court of the Republic of Lithuania and the Constitutional Court of Ukraine), Vilnius: The Constitutional Court of the Republic of Lithuania, 2013, p. 18.

²³⁴ The Constitutional Court's ruling of 2 June 2005, Official Gazette *Valstybės žinios*, 2005, No 71-2561.

²³⁵ The Constitutional Court's decision of 15 May 2009, *ibid.*, 2009, No 58-2251.

²³⁶ The Constitutional Court's ruling of 16 January 2007, *ibid.*, 2007, No 7-287; the Constitutional Court's ruling of 17 December 2007, *ibid.*, 2007, No 134-5427.

important because of the fact that a judge, whatever political forces are in power, must remain independent and must not adjust to the possible changes in political forces. The Constitutional Court has also noted that the constitutionally consolidated principle of the independence of judges implies only such a legislative regulation of the term of powers of judges under which, upon being appointed, a judge knows his/her term of powers (until the time prescribed by law or until he/she reaches the pensionable age established by law). Thus, the term of powers of a judge must not depend on any future discretionary decisions adopted by the state authority institutions that have appointed him/her as a judge.²³⁷ From the earliest constitutional justice cases, the Constitutional Court has developed the guarantees of the inviolability of the term of powers of judges while clarifying various questions related to the release of judges from office. The Constitutional Court, while interpreting the powers of the President of the Republic in this respect, formulated the constitutional doctrine of the special institution of judges; it also interpreted the powers of the members of the Seimas, which derive from the constitutional principle of a free mandate of a member of the Seimas, to act so that the Seimas is able to fulfil the requirements stemming from the Constitution when adopting decisions related to the career of judges.

The Constitutional Court has developed an extensive official constitutional doctrine of the material guarantees of the independence of judges and courts, i.e. the social and material guarantees of judges, as well as the material guarantees of the provision of courts and their protection from pressure by other branches of state power. As it is clear, *inter alia*, from the Constitutional Court's decision of 14 January 2015,²³⁸ these guarantees are not an objective in themselves and are not considered privileges under the Constitution; the establishment of these guarantees is related to the special constitutional status of judges and, primarily, to the requirement of the independence of judges, which is established in the Constitution, *inter alia*, Article 109 thereof. In this decision, the Constitutional Court also noted that the social (material) guarantees of judges are one of the means of ensuring the independence of judges; thus, it can be concluded that only the provision of real rather than nominal social (material) guarantees, which are in line with the constitutional status of judges and their dignity, may ensure that, in administering justice, judges are not exposed to any influence by the decisions of the legislative or executive branch of power, or to any interference with their activities by the institutions of state power and governance or their officials or other persons; the provision of real social (material) guarantees may protect judges against such possible decisions of the legislative, executive, or public administration subjects that could put pressure on the decisions of judges in the course of administering justice; in addition, the provision of social (material) guarantees to judges may reduce the risk of corruption. It is obvious that, in order to ensure the independence of courts under the conditions of an economic crisis from the influence of the political authority institutions

²³⁷ *Inter alia*, the Constitutional Court's ruling of 9 May 2006, *ibid.*, 2006, No 51-1894.

²³⁸ The Constitutional Court's decision of 14 January 2015, the Register of Legal Acts, 15-01-2015, No 650.

applying austerity measures, it is essential to maintain a sufficient level of the social and material guarantees of courts (and judges).

The Constitutional Court has held that the imperative of the constitutional protection of the remuneration and other social (material) guarantees of judges stems from the principle of the independence of judges and courts, which is consolidated in the Constitution (*inter alia*, Article 109 thereof); this principle is meant to protect judges, vested with the powers of the administration of justice, from the influence of the legislative and executive branches of power, as well as from the influence of other state establishments and officials, political and public organisations, commercial economic structures, and any other legal and natural persons.²³⁹ The Constitutional Court has also more than once noted that the imperative to secure the social guarantees of judges derives not only from the very principle of the independence of judges, but also from the peremptory prohibition, stipulated in Article 113 of the Constitution, on receiving any remuneration other than remuneration established for judges or payment for educational or creative activities; if this prohibition is compared against the dignity and high professional requirements applicable to the profession of judges, it follows that the Constitution is the source of the imperative to secure not only the social guarantees of judges but also the reality of such guarantees.²⁴⁰ The social (material) guarantees of judges stemming from the Constitution and the principle of the independence of judges entail that the state is under the duty to ensure such social (material) provision of judges that is commensurate with their status both at the time of acting in judicial capacity and upon the termination of their term of powers. Under the Constitution, the material and social guarantees established for judges must be in line with the constitutional status of judges and their dignity.²⁴¹

The official constitutional doctrine on the remuneration of judges, as formulated by the Constitutional Court, is based, *inter alia*, on the following requirements: the remuneration of judges must be laid down exclusively by means of a law; the Constitution prohibits reductions in the remuneration of judges, except in the event of a severe economic and financial situation in the state, provided that any such reductions are imposed only by means of a law and on a temporary basis in compliance with the constitutional principle of proportionality, which implies that the remuneration of judges may not be reduced to the extent that would make courts incapable of fulfilling their constitutional function and duty – to administer justice; these constitutional guarantees of the remuneration of judges are determined by the constitutional status of judges acting in their capacity as the judicial power; this constitutional status of judges derives from the constitutional function of the administration of justice.²⁴²

²³⁹ The Constitutional Court's ruling of 29 June 2010, Official Gazette *Valstybės žinios*, 2010, No 134-6860.

²⁴⁰ The Constitutional Court's ruling of 29 June 2010, *ibid.*, 2010, No 134-6860; the Constitutional Court's ruling of 14 February 2011, *ibid.*, 2011, No 20-967.

²⁴¹ The Constitutional Court's ruling of 22 October 2007, *ibid.*, 2007, No 110-4511.

²⁴² The Constitutional Court's ruling of 15 January 2009, *ibid.*, 2009, No 6-170.

Other guarantees that are important for the independence of judges are the social guarantees of judges upon the termination of their powers. When interpreting the provisions contained in Article 109 of the Constitution, the Constitutional Court formulated the requirement for the legislature to establish such a legal regulation that would ensure the independence of judges and courts, *inter alia*, the social and material guarantees of judges not only while they hold office, but also upon the termination of their term of powers.²⁴³ However, the legislature has certain discretion in this area, as the social (material) guarantees of judges upon the termination of their powers may be varied, *inter alia*, payments made periodically (e.g. the state pension of judges), as well as one-off payments, etc. The constitutional basis for establishing such guarantees is the exceptional constitutional status of judges, which is determined by the function of the administration of justice; therefore, the said guarantees may depend only upon such circumstances that are related to the constitutional status of judges, but they may not be regarded as replacing other social (material) guarantees that must be ensured to former judges on other grounds, including those that are common to all working persons; the social (material) guarantees of judges after their powers cease must be real and not merely nominal. Having regard to the Constitution, the legislature, regulating the relations connected with the state pension of judges, must establish, by means of a law, the grounds and conditions for granting this pension.²⁴⁴

The Constitutional Court has held on more than one occasion that the social (material) guarantees that are established for (applied to) judges upon the termination of their judicial powers (in particular, guarantees related to certain periodic payments such as pensions) could become (under a different economic or social situation) not only unreal but, in fact, even nominal, i.e. fictitious, in cases where judges whose powers already ceased were to be granted such guarantees that, once fixed, were not to be reviewed despite the fact that for other judges of the same system and the same level of courts, whose powers would cease at some point in the future, the corresponding guarantees were to be higher (in view of the changing economic and social situation).²⁴⁵

The doctrine formulated at the time of the economic crisis in the jurisprudence of the Constitutional Court on the adjustment (limitation) of social rights under the conditions of an economic downturn is equally applicable to the social guarantees of judges. In relation to ensuring the independence of courts, this doctrine contains two principal provisions. Firstly, judges do not represent any exceptional social group that should remain immune from austerity measures; just like other individuals remunerated from the state or municipal budget and just like other recipients of state pensions, judges should be subject

²⁴³ The Constitutional Court's ruling of 29 June 2010, *ibid.*, 2010, No 134-6860; the Constitutional Court's decision of 14 January 2015, the Register of Legal Acts, 15-01-2015, No 650.

²⁴⁴ The Constitutional Court's ruling of 29 June 2010, Official Gazette *Valstybės žinios*, 2010, No 134-6860.

²⁴⁵ The Constitutional Court's ruling of 29 June 2010, *ibid.*, 2010, No 134-6860; the Constitutional Court's decision of 14 January 2015, the Register of Legal Acts, 15-01-2015, No 650.

to reductions in remuneration and pensions at the time of an economic crisis; just like any other area of the activity of the state, the judiciary should also be subject to a proportionate reduction in appropriations allocated from the state budget.²⁴⁶ In its ruling of 1 July 2013, the Constitutional Court held that the constitutional principle of social solidarity implies the proportionate distribution of losses arising from a severe economic and financial situation in the state among the members of society, *inter alia*, among civil servants and judges. Secondly, reductions in the level of social guarantees of judges and the worsening of the material provision of courts in the absence of an economic crisis, as well as any disproportionate and discriminatory reduction or worsening of such social (material) guarantees during an economic crisis, should be regarded as an encroachment upon the independence of courts (and judges).²⁴⁷

The Constitutional Court has also noted that the financial and material conditions established by law for the functioning of courts may be worsened and the remuneration and state pensions of judges may be reduced only by means of a law and only on a temporary basis for the period of time when the economic and financial situation in the state is severe; such reductions in the remuneration and state pensions of judges must not give rise to any preconditions for violating the independence of courts by any other state institutions or their officials.²⁴⁸

The Constitutional Court laid the beginnings for the official doctrine of the organisational independence of courts in its ruling of 21 December 1999,²⁴⁹ in which the principle of the independence of judges and courts is interpreted as also encompassing the organisational independence of courts – no institution or official of the executive may interfere with the exercise of the functions of courts or organise the internal work of courts; the activity of courts is not and may not be assigned to the governance of any ministry. In this ruling, the Constitutional Court developed the constitutional preconditions for the organisational independence of courts and the main requirements as to how this independence must be guaranteed to courts and the whole corps of judges.

As held in the jurisprudence of the Constitutional Court more than once, the fact that the judiciary is a fully fledged and independent branch of state power presupposes its self-government. The self-government of the judiciary includes the organisation of the work of courts and the activities of the professional corps of judges. The system of the

²⁴⁶ Masnevaitė, E., Pūraitė-Andrikienė, D., and Žalimas, D., “Teismų nepriklausomumas ir teisinių ginčų sprendimas” [“The Independence of Courts and Legal Dispute Resolution”] in *Krizė, teisės viešpatavimas ir žmogaus teisės* [Crisis, the Rule of Law and Human Rights in Lithuania], footnote 182, p. 501.

²⁴⁷ The Constitutional Court’s ruling of 1 July 2013, Official Gazette *Valstybės žinios*, 2013, No 103-5079.

²⁴⁸ The Constitutional Court’s ruling of 1 July 2013, *ibid.*, 2013, No 103-5079; the Constitutional Court’s decision of 14 January 2015, the Register of Legal Acts, 15-01-2015, No 650.

²⁴⁹ The Constitutional Court’s ruling of 21 December 1999, Official Gazette *Valstybės žinios*, 1999, No 109-3192.

self-regulation and self-government of the judiciary must ensure that judges perform their duties properly and that any unlawful or unethical conduct of a judge is properly assessed.²⁵⁰

It is essential to underline that the guarantees of the independence of judges and courts are interpreted in the jurisprudence of the Constitutional Court collectively and as determining one another. The independence of judges and courts is indivisible.²⁵¹

5.9. The official constitutional doctrine related to the economic crisis (2008–2012)

From 2008 to 2012, some Member States of the EU, Lithuania included, suffered the most severe economic downturn since the Great Depression of 1929–1933. The crisis forced the political authorities to resort to harsh austerity measures (reduce public financing) in all areas, limit the obligations (in particular, social) that the state had undertaken and had been fulfilling to different groups of society, and, in some areas, increase the obligations of different legal subjects to the state – impose new obligations (such as taxes) and, in this way, at least to some extent, shift the burden of the crisis onto the shoulders of various members of society.²⁵² As the crisis was unfolding in Lithuania, the law-making initiatives focussing on public spending savings hit painfully various areas of economic and public life.

In the same way as the constitutional review institutions of some other European states, the Constitutional Court faced the immense responsibility of assessing the constitutionality of the austerity measures (legal acts and provisions aimed at overcoming the economic crisis) applied by the political authorities. The Constitutional Court adjudicated on the following issues related to the economic crisis: *inter alia*, the recalculation and payment of pensions upon the occurrence of the severe economic and financial situation in the state;²⁵³ the reduction in the amount of pension contributions accumulated in pension funds;²⁵⁴ the procedure for adopting the 2009 state budget and the related laws;²⁵⁵ the reduction in the amount of the granted maternity (paternity) benefits;²⁵⁶ the reduced remuneration of state servants and judges;²⁵⁷ and the reduced coefficients of the positional salaries of prosecutors and some other state officials.²⁵⁸

The Constitutional Court had to assess whether certain austerity measures had indeed been determined by objective factors, as well as whether these measures had been compliant with constitutional requirements and had been adopted without denying the

²⁵⁰ The Constitutional Court's ruling of 21 December 1999, *ibid.*, 1999, No 109-3192; the Constitutional Court's ruling of 12 July 2001, *ibid.*, 2001, No 62-2277.

²⁵¹ *Inter alia*, the Constitutional Court's rulings of 21 December 1999 and 29 June 2010.

²⁵² *Krizė, teisės viešpatavimas ir žmogaus teisės [Crisis, the Rule of Law and Human Rights in Lithuania]*, footnote 182, p. 506.

²⁵³ The Constitutional Court's ruling of 6 February 2012, Official Gazette *Valstybės žinios*, 2012, No 109-5528.

²⁵⁴ The Constitutional Court's ruling of 29 June 2012, *ibid.*, 2012, No 78-4063.

²⁵⁵ The Constitutional Court's ruling of 15 February 2013, *ibid.*, 2013, No 19-938.

²⁵⁶ The Constitutional Court's ruling of 16 May 2013, *ibid.*, 2013, No 52-2604.

²⁵⁷ The Constitutional Court's ruling of 1 July 2013, *ibid.*, 2013, No 103-5079.

²⁵⁸ The Constitutional Court's ruling of 22 December 2014, the Register of Legal Acts, 22-12-2014, No 20411.

social orientation of the state. One of the most challenging tasks faced by the Constitutional Court was finding a balance between different constitutional values under the conditions of the deep economic and financial crisis: the stability of public finances (the unavoidable losses entailed by this interest as a result of reductions in the scope and amounts of social guarantees), on the one hand, and the social orientation followed by the state and the related guarantee that social and economic human rights will be ensured, on the other.²⁵⁹

In the course of considering the above-mentioned issues, the Constitutional Court further developed the doctrinal provisions in relation to reductions in social guarantees as formulated in its jurisprudence between 2002 and 2007, when the Constitutional Court assessed the legal acts reducing social guarantees in response to the so-called Russian economic crisis of 1999–2002.

In this context, the Constitutional Court's decision of 20 April 2010,²⁶⁰ comprehensively clarifying the previous doctrine concerning the application of austerity measures, is of particular relevance. In this decision, *inter alia*, the Constitutional Court held that, under the Constitution, *inter alia*, under the constitutional principles of a state under the rule of law and responsible governance, the state institutions forming and implementing state economic and financial policies must also assess that a severe economic and financial situation might arise in the state due to specific circumstances (an economic crisis etc.). Therefore, state institutions must take all possible measures in order to predict the tendencies in the economic development of the state and prepare for the possible occurrence of critical economic and financial situations.

The Constitutional Court noted that, in itself, the occurrence of a severe economic and financial situation (due to an economic crisis) in the state does not imply the right of the legislature to modify the legal regulation of relations connected with pensions – to reduce the granted and paid pensions; upon the emergence of a severe economic and financial situation, the state must take all possible measures to overcome the economic crisis and secure the accumulation of the funds necessary for paying pensions. In this context, it should be pointed out that the state institutions forming and implementing state economic and financial policies may not, as a first step in order to cope with the economic and financial crisis, resort to such measures (*inter alia*, reductions in pensions and other social guarantees) whose implementation means that the burden of coping with the crisis will be placed upon individuals. The measures for overcoming a severe economic and financial situation in the state must be implemented taking an integrated and coordinated approach, *inter alia*, so that the balance entrenched in the Constitution between the interests of a person and society would not be distorted. Only in exceptional cases, after all internal and external possibilities have been exhausted and it is still impossible to accumulate the

²⁵⁹ Žalimas, D., “Taupymo priemonių konstitucingumo kriterijai Lietuvos Respublikos oficialioje konstitucinėje doktrinoje” [“Criteria of the Constitutionality of Austerity Measures in the Official Constitutional Doctrine of the Republic of Lithuania”], *Teisė [Law]*, 2015, No 94, p. 60.

²⁶⁰ The Constitutional Court's decision of 20 April 2010, Official Gazette *Valstybės žinios*, 2010, No 46-2219.

amount of funds necessary to pay pensions (or attempts to do so have failed), may the legal regulation be modified by reducing pensions. However, even in such exceptional cases, the granted and paid pensions must not be reduced in violation of the balance entrenched in the Constitution between the interests of a person and society, i.e. in breach of the constitutional principle of proportionality.

In this decision, the Constitutional Court also pointed out that temporary reductions in the pensions of persons are allowed only in the event of such a severe economic and financial situation in which, *inter alia*, the collection of the state budget revenue is disordered to the extent that, due to this, the state is unable to perform the obligations undertaken by it. Such reductions in pensions must be based on the circumstances testifying to the existence of a severe economic and financial situation in the state. Thus, only following an official statement that there is a severe economic and financial situation, which is not short-term and due to which the state is unable to perform the assumed obligations, may the legislature reduce pensions on a temporary basis.

In its ruling of 6 February 2012,²⁶¹ assessing the constitutionality of the recalculation and payment of pensions under the conditions of the severe economic situation in the state, the Constitutional Court drew on the previously formulated official constitutional doctrine disclosing the requirements that stem from the Constitution and must be observed by the legislature when the legal regulation of pensions is modified upon the occurrence of a severe economic and financial situation in the state. It was noted in the ruling that, in an extreme situation, when an economic and financial downturn makes it impossible to accumulate the amount of funds necessary to pay pensions, the granted and payable pensions may be subject to reduction; however, in doing so, the legislature is obliged to pay regard to the constitutional principles of the equality of rights and proportionality and provide for a balanced and non-discriminatory scale of reductions; the reduced pensions may be paid only on a temporary basis after a mechanism of compensation for incurred losses has been provided for. The Constitutional Court emphasised that, in order to ensure that the losses incurred due to reductions in old-age or disability pensions, or large-scale reductions in state pensions, are compensated for within a reasonable time and in a fair manner after the extreme situation recedes, the legislature must, without unreasonable delay and by means of a law, provide for compensation for the reduced pensions and the essential elements (grounds, amounts, etc.) based on which the procedure for compensating for the reduced pensions must be prepared.

In its ruling of 29 June 2012,²⁶² the Constitutional Court formulated the official constitutional doctrine in relation to the powers of the legislature, in the event of a severe economic and financial situation in the state, to reduce the amounts of funds transferred to pension funds for the accumulation of future old-age pensions. The Constitutional Court

²⁶¹ The Constitutional Court's ruling of 6 February 2012, *ibid.*, 2012, No 109-5528.

²⁶² The Constitutional Court's ruling of 29 June 2012, *ibid.*, 2012, No 78-4063.

held that, in exercising its discretion to choose a system of pensions, the legislature may establish various models of the system of old-age pensions, guaranteed under Article 52 of the Constitution, *inter alia*, those based upon the collection of the funds necessary to pay old-age pensions from the income of persons working at that time, or based upon the accumulation of the funds designated for future old-age pensions in special pension funds, as well as based upon the combination of these models. When establishing a model of the system of old-age pensions by means of a law, the legislature must comply with the requirements arising from Article 52 of the Constitution, the constitutional imperative of social harmony, and the principles of justice, reasonableness, and proportionality.

Having chosen such a model of the system of old-age pensions whereby the funds (or part thereof) designated for old-age pensions are accumulated in special pension funds administered by state or private economic operators, the legislature must also pay regard to the provisions of Paragraphs 2 and 3 of Article 46 of the Constitution, stipulating that the state supports economic efforts and initiative that are useful to society and regulates economic activity so that it serves the general welfare of the nation.

The Constitutional Court ruled that, even though the funds designated for old-age pensions and accumulated in pension funds may not be identified with cumulative pensions themselves (payable benefits), whose amount also depends on the results of the economic activity (investment) of the economic operators administering particular pension funds, the right of a person to the funds already accumulated in these pension funds should be linked to the protection of the rights of ownership; the property aspects of this right are protected under Article 23 of the Constitution.

The Constitutional Court emphasised that, in the event of a severe economic and financial situation in the state, due to which, in order to secure the vitally important interests of society and the state, as well as to protect other constitutional values, it is necessary to temporarily reduce the funds that are transferred to special pension funds and are designated for the accumulation of old-age pensions (or part thereof), the legislature may provide for only such an extent of a reduction that is necessary to reach the said objectives and would not deny the essence of a cumulative pension.

The Constitutional Court indicated that the amount of funds that are transferred to special pension funds and are designated for the accumulation of old-age pensions (or part thereof) is one of the preconditions for reaching good results of the economic activity (investment) of the economic operators administering these funds; therefore, if the legislature decides to reduce this amount in the event of necessity (e.g. during an economic downturn), it must not deny the essence of a cumulative pension; more importantly, it must strive for a situation where persons who have accumulated this pension would not sustain great losses; if such losses are unavoidable, the legislature must establish fair compensation for these losses, taking into account the financial and economic capacities of the state; to achieve this, the legislature may choose various methods of compensation.

While assessing the constitutionality of the Law on the 2009 State Budget, the Law on the Budget of the State Social Insurance Fund, the Law on the Budget of the Compulsory Health Insurance Fund, and over 50 related legal acts in its ruling of 15 February 2013,²⁶³ the Constitutional Court formulated the official constitutional doctrine connected with the requirement that amendments to laws affecting the revenue and expenditure of the state must be enacted before the Seimas approves the state budget, as well as with the requirement to provide for a proper *vacatio legis*.

The Constitutional Court noted that the constitutional concept of the state budget and the constitutional principle of responsible governance require that the state budget must be realistic and the revenue and expenditure provided for therein must be underpinned by an assessment of the needs and possibilities of society and the state. Since the Government, while preparing a draft state budget, and the Seimas, while considering and approving it, are bound by laws that affect the amount of envisaged state revenue and expenditure (i.e. tax laws and other laws that create the preconditions for planning and collecting state budget revenue, as well as laws that determine the financial obligations of the state and the planned state budget expenditure) and, at the same time, have the duty to predict the tendencies in the economic development of the state and assess the needs and possibilities of society and the state, the necessity may arise to amend those laws respectively. Where such legislative amendments lay down duties or limitations with respect to persons, the constitutional requirement to provide for a proper *vacatio legis* must be observed, i.e. enough time must be left before such amendments take legal effect (or start to be applied) so that the persons concerned could properly prepare for them. Thus, while preparing a draft state budget and considering it, among other things, it is necessary to assess whether, prior to the approval of the state budget at the Seimas, relevant amendments should be made to tax laws and other laws that affect the revenue and expenditure of the state and whether the constitutional requirement should be followed to provide for a sufficient *vacatio legis* applicable before the entry into force of such laws. All this implies that, in line with the constitutional principle of responsible governance, the preparation of a draft state budget should be started sufficiently far in advance to allow, if the need arises, the necessary amendments to the above-mentioned laws to be made in a timely manner. Any derogation from these requirements may be possible only in exceptional circumstances, if it is justified by an important public interest.

The Constitutional Court held that derogations from the requirements set for the adoption and entry into force of the laws that stem from the Constitution and affect the state budget and its revenue and expenditure, *inter alia*, the requirement that amendments to the laws that affect the state budget and its revenue and expenditure must be enacted before the Seimas approves the state budget, as well as the requirement to provide for a sufficient *vacatio legis*, may be constitutionally justifiable if they are aimed to ensure an

²⁶³ The Constitutional Court's ruling of 15 February 2013, Official Gazette *Valstybės žinios*, 2013, No 19-938.

important public interest – to guarantee the stability of public finances and prevent an excessive budget deficit in the circumstances of a severe economic and financial situation caused by an economic crisis – determining the necessity of taking urgent and effective decisions. The Constitutional Court emphasised that any derogation from the constitutional requirement to adopt amendments to the laws that affect state revenue and expenditure before the Seimas approves the state budget may be justifiable only if a severe economic and financial situation breaks out suddenly, leaving no time to prepare in advance. Under the Constitution, it is intolerable if the said derogation is justified by the necessity to adopt urgent decisions in order to handle the consequences of an economic crisis where a severe economic and financial situation is long-term and extends over more than one year. When considering and before approving the state budget for the next year, the legislature has the duty to reassess the actual economic and financial situation in the state and decide whether it is still severe. State institutions must communicate to the public the concrete criteria based on which an economic and financial situation in the state is assessed in order to plan the state budget revenue and expenditure and decide on the necessity to accordingly amend the laws that affect the revenue and expenditure, in particular those that impose certain obligations or limitations on persons.

It is also pertinent to mention the acts of the Constitutional Court adopted in constitutional justice cases concerning reductions in remuneration in the public sector. In its ruling of 1 July 2013,²⁶⁴ the Constitutional Court dealt with the questions concerning the reductions in the remuneration of state servants and judges. The Constitutional Court declared the unconstitutionality of the provisions of laws that had consolidated a disproportionate scope of the reductions in the remuneration of state servants and judges, as well as the unconstitutionality of the legal regulation that had three times prolonged the validity of the provisions of these laws and postponed the entry into force of the legal regulation that had been in effect prior to the reductions.

In this ruling, the Constitutional Court set out the constitutional doctrine in relation to the powers of the legislature to amend the legal regulation of remuneration upon the occurrence of a severe economic and financial situation in the state. It was held that the provision “everyone [...] shall have the right [...] to receive fair pay for work” of Paragraph 1 of Article 48 of the Constitution, interpreted in conjunction with the constitutional principles of a state under the rule of law, the equality of rights, justice, and proportionality, gives rise, *inter alia*, to the following requirements for a legislative regulation reducing, due to a severe economic and financial situation in the state, the remuneration of persons who are paid for their work from the funds of the state or municipal budget:

– in establishing a certain scope of reductions in remuneration, it should be taken into account that the losses incurred by society due to a severe economic and financial

²⁶⁴ The Constitutional Court’s ruling of 1 July 2013, *ibid.*, 2013, No 103-5079.

situation must be distributed among its members, *inter alia*, state servants and judges, in a proportionate manner;

- any reductions in remuneration must be proportionate; *inter alia*, they must not violate the proportions of the amounts of remuneration applicable before the severe economic and financial situation to different categories of persons who are paid for their work from the funds of the state or municipal budget; the amount of remuneration set for a highly qualified person, who performs complex work, must not be approximated to or, less so, equalised with the remuneration of a lower-qualified person, who performs less complicated work; the remuneration of certain groups of state servants may not be reduced if account is taken only of the individual constituent parts of the remuneration of state servants, but not of the entire remuneration received by them;

- any reductions in remuneration must be non-discriminatory; remuneration must be reduced proportionately for all categories of persons who are paid for their work from the funds of the state or municipal budget regardless where they work (state or municipal institutions) and which positions they hold;

- the requirement to establish a proportionate and non-discriminatory reduction in the remuneration of persons who are paid for their work from the funds of the state or municipal budget, *inter alia*, implies that a proportionate reduction in remuneration must not violate the proportions of the amounts of remuneration applicable before the severe economic and financial situation in the state to the persons of the same category (for instance, state servants or judges) who hold different positions.²⁶⁵

It is also worth noting that, in the ruling of 1 July 2013, the Constitutional Court held that the Constitution gives rise to the duty of the legislature to establish a mechanism of compensation for the losses suffered by particular persons as a result of the above-mentioned reductions, i.e. to establish the procedure under which the state will compensate for the said losses in a fair manner – to the extent these losses were disproportionate – within a reasonable period of time; such a legal regulation should be established without unreasonable delay. As held in the Constitutional Court's decision of 16 April 2014,²⁶⁶ the legislature may postpone the establishment and (or) implementation of a mechanism of compensation for the losses incurred due to a disproportionate scale of a reduction in

²⁶⁵ In its ruling of 22 December 2014 (Register of Legal Acts, 22-12-2014, No 20411), the Constitutional Court considered the questions concerning the reduced coefficients of the positional salaries of prosecutors and some other state officials. The Constitutional Court declared the unconstitutionality of the legal regulation consolidated in the Law on the Work Pay of State Politicians and State Officials and in laws amending it, insofar as, under these laws, upon the occurrence of the severe economic and financial situation in the state, the coefficients of the positional salaries of the said officials had been disproportionately reduced. The Constitutional Court invoked the provisions of its previous rulings, including its ruling of 1 July 2013 concerning the constitutionality of the reduced remuneration of state servants and judges, and drew on the constitutional requirements (disclosed in the said provisions) governing the establishment by the legislature of a legal regulation by means of which the remuneration of persons paid for their work from the funds of the state or municipal budget is reduced due to an economic crisis.

²⁶⁶ The Constitutional Court's decision of 16 April 2014.

remuneration for a reasonable time, which should be determined in the light of the existing economic and financial situation in the state and the consequences of the extreme situation, as well as the capabilities of the state, including various obligations assumed by the state in relation to financial discipline. A similar obligation is set out in the reasoning part of the ruling of 22 December 2014.²⁶⁷

To sum up, the review carried out by the Constitutional Court over the constitutionality of acts passed by the political authorities gains all the more profound relevance at times of various upheavals within society, including an economic crisis, when the goal of economic stabilisation often marginalises human rights and freedoms. During such a period, the Constitutional Court faced the task of preventing human rights breaches resultant from short-sighted decisions adopted by other branches of power for the sake of short-lived political benefit. The development of the constitutional doctrine related to the application of austerity measures was determined by the issues that were brought before the Constitutional Court by petitioners and were dictated by the realities of the given period. This very much reflects the conception of the living Constitution, whereby the provisions of the Constitution are interpreted having regard to the ever-changing context, thus adjusting them to social changes.

SUMMARISING REMARKS

The Constitution of the Republic of Lithuania – a social contract and supreme law – has a vast and deep potential, which is revealed by the Constitutional Court of the Republic of Lithuania in the course of fulfilling its constitutional mission. This is a way in which a living jurisprudential Constitution is “cultivated”. As one can see from the present analysis and the outline of the jurisprudential Constitution, the real Constitution is namely the jurisprudential Constitution, i.e. the official interpretation of the text of the Constitution and its meaning in the jurisprudence of the Constitutional Court. Disregarding the concept of the jurisprudential Constitution and emphasising only the literal text of the Constitution with possible subjective interpretations might lead to the risk of misunderstanding of the constitutional reality and the content of the Constitution.

Despite all the criticism that the concept of the jurisprudential Constitution might receive, it is worth emphasising that only that concept can ensure the real supremacy of the Constitution, which implies the uniform and binding understanding and implementation of the provisions of the Constitution. That is also a necessary precondition for the development of the democratic State of Lithuania subject to the rule of law. The Constitution, perceived as the jurisprudential Constitution, can also ensure the stability of the constitutional order and, what is most important, the effective safeguarding of the constitutional foundations for the existence of the State of Lithuania and its people, i.e. the independence of the State,

²⁶⁷ The Constitutional Court's ruling of 22 December 2014, the Register of Legal Acts, 22-12-2014, No 20411.

democracy, respect for human rights, and the western geopolitical orientation. Ultimately, the Constitution, perceived as the jurisprudential Constitution, is the “living” Constitution. It is capable of adapting the text of the Constitution, which remains unchanged, to the changes in the development of society and international life, as well as to successfully respond to the newly emerged challenges to the values safeguarded by the Constitution. It also serves as a tool for integration into the constitutional order and national legal system the progressive developments of law and legal thought in Europe and worldwide, even the elements of other legal traditions, such as a judicial precedent, which contributes to a proper administration of constitutional justice and justice in general. The development of the jurisprudential Constitution leads to the continuous disclosure of new elements of the constitutional reality and the further development of the already existing ones, as well as the harmony between the spirit and letter of the Constitution. It is a gradual, consistent, ongoing, and never-ceasing process. The peaceful and progressive development of our states and societies should also follow the same path.

ANNEXES

EXTRACTS FROM THE FIRST LITHUANIAN STATUTE (1529)¹

The Sovereign Pledges [to] the State by His Grace the Grand Principality and [to] the Council of Lords to Belittle Nothing.

Also, if the Lord God deigns to grant to us another state or kingdom, then not only shall we not belittle our state, the Grand Principality of Lithuania and our councils, but we shall guard that state from all defamation and degradation as our father did [in] glorious memory at the time of his fortunate reign.

Section Three. Concerning the Liberties of the Nobility and the Expansion of the Grand Principality. [Article] one.

The Sovereign Pledges to Expand the Grand Principality of Lithuania and Restore to the State What Is Taken Illegally.

Also, we shall not reduce the estates (dobra) of that Grand Principality of Lithuania, and that which is torn away unjustly or illegally taken or obtained we wish and shall return to the authority of that principality.

Section Three. Concerning the Liberties of the Nobility and the Expansion of the Grand Principality. [Article] two.

The Sovereign Pledges to Preserve All Old Decisions, and Pass New Ones with the Lords of the Council.

Also, everything concerning the preservation of land privileges and customs which are described in those privileges is confirmed and established, and we shall make and implement new decisions [and] increases in their number which would assist our and the state's benefit only in the spirit of the old time, and also with the knowledge, counsel and consent of our councils of the Grand Principality of Lithuania.

Section Three. Concerning the Liberties of the Nobility and the Expansion of the Grand Principality. [Article] six.

His Highness, the Sovereign, Pledges to Preserve Intact the Freedoms of the Princes, Lords, Nobles and Burghers.

We pledge by our royal person to preserve for all nobles, princes, banner-lords and all common

boyars, burghers and their people, liberties and freedoms given to them both by our predecessors and by us.

Section Three. Concerning the Liberties of the Nobility and the Expansion of the Grand Principality. [Article] seven.

In Order That They Judge by the Laws; and if [the Judge] Judges Otherwise, [He] Must Be Punished.

We also decree, that each of our governors and elders and land marshalls and court marshalls, and our *derzhavtsy*, each in his own county, may not judge our subjects nor fulfill [his obligation] in any way other than by these laws which we give to all our subjects of the Grand Principality. If somehow from one of the litigant sides it is indicated that he was not tried by these laws, then when we ourselves, the sovereign, with all our lords of the council, and in our absence the lords of the council are somewhere at the next diet, then that one to whom damage [was caused] may complain about [the ruling of] our lord official to us or our council lords. We or our council lords must open the books of that law and examine it; if the law [was implemented] as described in these laws, such a legal decision must remain valid in accordance with the sentence of our official. If this trial was resolved otherwise, not as stated in the books of written law, then we or our council lords must open the books [and] in accordance with those written laws which we gave to the whole land must pass sentence. If it is established that the judge passed sentence not according to the written law, and that that one [who is appealing] incurred damage, then that one who passed sentence not in accordance with the law must compensate the damage and expenses, and [the verdict] of that trial is annulled. And if a judge sentences someone and for that something is taken [by his verdict], it must be restored to him without debate. And if he incurs losses in expenses and income to which [he] presents appropriate proof or swears, the judge must pay him. If the judge rules correctly and sentences in accordance with these written

¹ Pirmasis Lietuvos Statutas [*The First Statute of Lithuania*], Vilnius: Artlora, 2014, pp. 45, 47, 63, 77, 115, 117.

laws, and [the one losing the matter] discredits him, that one must pay [the judge] for this insult twelve rubles of grosh. However, if in such a matter someone of our *derzhavtsy* is accused, each such person must be called before the governor of his county, and is obligated to justify his decision. And if someone of our council lords, governors, or elders, who are not judged in the county is also accused, [he] must answer to the next diet or on the land date (*rok zemskii*). If someone does not wish to appear, [he] may be called by the sovereign or by other lords [and] is obligated to appear and answer. But if [he] is ill, or is in royal service, or at a *kopa* on the appearance date (*rok zavityi*), [the examination of] such a matter must be postponed until another diet. However, if [the defendant] is well, [and] without [valid] reasons does not want to appear, the lords must open the books and reach a decision concerning the compensation for damage to [the plaintiff] in accordance with that stated above, and must fix the land period of payment of four weeks. And should that be ordered, and the defendant does not wish to pay, then those lords may order for damage [the plaintiff be given possession of] the estate and people [of the defendant to that extent which corresponds to] what the damage cost. And [the plaintiff] may hold [the estate] until the damage is paid for [by the defendant]. If in these articles there is not written any article [pertinent to a certain matter], then the matter must be resolved in accordance with old custom, and later at the general diet (*val'nyi seim*) this article [and] others which are necessary must be written down.

Section Six. Concerning Judges. [Introduction].

[At the Time of the Examination of a Matter] at a Trial No One May Appeal to the Sovereign, but Each Side Is Obligated to Finish the Matter [in Court].

[At the time of the examination of a matter] at a trial, no one may appeal before a court either to us, the sovereign, or to the diet, so that there is no administrative difficulty, but each side is obligated to finish the matter [in court]. And if one of the parties considers the verdict unjust, and in his opinion not carried out in accordance with the written law, then [he] may request the judges' document on the matter with an indication of by what custom [the judges] reached the verdict. The

judges are obligated to give the paper, [certified] by their seal, and [the one dissatisfied with the verdict] may argue before us, or at the next diet, with those judges, and present the document of those judges. If a judge does not want to issue the copy, [the one dissatisfied with the verdict] may take with him three nobles and ask [the judge] again. Then [the judge] is obligated to issue it without fail. And if [the judge] does not issue [it], and this is proven, [he] must pay a fine of twelve rubles to the sovereign and compensate for damages to that one [who suffered].

Section Six. Concerning Judges. [Article] one.

No One May Suffer for [the Crime of] Another, but Everyone for His Own.

Also, no one may be punished or tried for someone else's crime, [but] only that one who is guilty. Thus, in accordance with Christian laws, one [whose guilt] has not been established by a court may not be punished, i.e., a wife not for the crime of her husband, nor a father for the crime of his son, nor a son for [the crime of his] father, nor anyone [for the crime of his] relatives, nor a servitor for [the crime of] his lord.

[Section One]. [About Sovereign's Personality]. [Article] seven.

Everyone in the Grand Principality of Lithuania Must Be Tried by One Law.

We desire and establish to be preserved for all time that all our subjects, poor and rich alike, whatever their condition or position, be tried equally and identically by these written laws.

[Section One]. [About Sovereign's Personality]. [Article] nine.

Everyone Is Obligated to Serve [in] War.

We decree with the agreement of our complete councils and all subjects, that every prince and lord, and *dvorianin* and widow, and also that every orphan, whether he has reached majority or not, and every other man who has reached majority and who has a land estate (*imenie zemskoe*), when the necessity arises, is obligated to serve [in] war with us and our descendents, or under our hetmen, and to equip for military service as many people as deemed necessary at that time by a land decree [...].

Section Two. Concerning Land Defense. [Introduction].

EXTRACTS FROM THE CONSTITUTION OF 3 MAY 1791²

[...] We acknowledge the rank of the noble Equestrian order in Poland to be equal to all degrees of nobility wherever used – all persons of that order to be equal among themselves, not only in the eligibility to all posts of honour, trust, or emolument, but in the enjoyment of all privileges and prerogatives appertaining to the said order: and in particular, we preserve and guarantee to every individual thereof personal liberty and security and security of territorial and moveable property, as they were formerly enjoyed; nor shall we even suffer the least encroachment on either by the Supreme national power (on which the present form of government is established), under any pretext whatsoever, contrary to private rights, either in part, or in the whole; consequently we regard the preservation of personal security and property, as by law ascertained, to be a tie of society, and the very essence of civil liberty, which ought to be considered and respected for ever. It is in this order that we repose the defence of our liberties and the present constitution: it is to their virtue, valour, honour, and patriotism, we recommend its dignity to venerate, and its stability to defend, as the only bulwark of our liberty and existence.²

Article II. Nobility, or the Equestrian Order.

The law made by the present Diet, entitled, “Our Royal Free Towns Within the Dominions of the Republic,” we mean to consider as a part of the present constitution, and promise to maintain it as a new, additional, true, and effectual support, of our common liberties, and our mutual defence.

Article III. Towns and Citizens.

This agricultural class of people, the most numerous in the nation, consequently forming the most considerable part of its force, from whose hands flows the source of our riches, we receive under the protection of national law and government, from the motives of justice, humanity, Christianity, and our own interest well understood: enacting, that whatever liberties, grants, and conventions, between the proprietors and villagers, either individually or collectively, may be allowed

in future, and entered authentically into; such agreements, according to their true meaning, shall import mutual and reciprocal obligations, binding not only the present contracting parties, but even their successors by inheritance or acquisition – so far that it shall not be in the power of either party to alter at pleasure such contracts, importing grants on one side, and voluntary promise of duties, labour, or payments on the other, according to the manner and conditions therein expressed, whether they are to last perpetually, or for a fixed period. Thus having insured to the proprietors every advantage they have a right to from their villagers, and willing to encourage most effectually the augmentation of the population of our country, we publish and proclaim a perfect and entire liberty to all people, either who may be newly coming to settle, or those who, having emigrated, would return to their native country; and we declare most solemnly, that any person coming into Poland, from whatever part of the world, or returning from abroad, as soon as he sets his foot on the territory of the Republic, becomes free and at liberty to exercise his industry, wherever and in whatever manner he pleases, to settle either in towns or villages, to farm and rent lands and houses, on tenures and contracts, for as long a term as may be agreed on; with liberty to remain, or to remove, after having fulfilled the obligations he may have voluntarily entered into.

Article IV. Peasants and Villagers.

All power in civil society should be derived from the will of the people, its end and object being the preservation and integrity of the State, the civil liberty, and the good order of society, on an equal scale, and on a lasting foundation. Three distinct powers shall compose the government of the Polish nation, according to the present constitution; viz.

1st. Legislative power in the States assembled.

2d. Executive power in the King and the Council of Guardians.

3d. Judicial power in the Jurisdictions existing, or to be established.

Article V. Form of Government, or the Definition of Public Powers.

² *Konstytucja 3 Maja 1791 = 1791 Gegužės 3-osios Konstitucija = The Constitution of May 3, 1791, Warszawa: Wydawnictwo Sejmowe, 2001, s. 202–210, 214, 217, 220–222.*

The Diet [Seimas], or the Assembly of Estates, shall be divided into two Houses; viz. the House of Deputies, and the House of Senate, where the King is to preside. The former being the representative and central point of Supreme national authority, shall possess the pre-eminence in the Legislature; [...]

In regard to the House of Senate, it is to consist of Bishops, Palatines, Castellans, and Ministers, under the presidency of the King, who shall have but one vote, and the casting voice in case of parity, which he may give either personally, or by a message to the House. Its power and duty shall be,

1 st. Every General Law that passes formally through the House of Deputies is to be sent immediately to this, which is either accepted, or suspended till farther national deliberation, by a majority of votes, as prescribed by law. If accepted, it becomes a law in all its force; if suspended, it shall be resumed at the next Diet; and if it is then agreed to again by the House of Deputies, the Senate must submit to it.

2d. Every Particular Law or Statute of the Diet in matters above specified, as soon as it has been determined by the House of Deputies, and sent up to the Senate, the votes of both Houses shall be jointly computed, and the majority, as described by law, shall be considered as a decree and the will of the Estates. [...]

As the legislative power cannot be performed by all and because the nation works through its representatives, therefore the deputies elected by the Dietines will be recognized as the representatives of the whole nation in whom the trust of the nation will be vested.

The majority of votes shall decide every thing, and everywhere; therefore we abolish, and utterly annihilate, liberum veto, all sorts of confederacies and confederate Diets, as contrary to the spirit of the present constitution, as undermining the government, and as being ruinous to society. [...]

Article VI. The Diet, or the Legislative Power.

The most perfect government cannot exist or last without an effectual executive power. The happiness of the nation depends on just laws, but the good effects of laws flow only from their execution. Experience has taught us that the neglecting this essential part of government has overwhelmed Poland with disasters.

Having, therefore, secured to the free Polish nation the right of enacting laws for themselves, the supreme inspection over the executive power, and the choice of their magistrates, we entrust to the King, and his Council, the power of executing the laws.

This Council shall be called Straż, or the Council of Guardians.

The duty of such executive power shall be to watch over the laws, and to see them strictly executed according to their import, even by the means of public force, should it be necessary.

All departments and magistracies are bound to obey its directions. To this power we leave the right of controlling such as are refractory, or of punishing such as are negligent in the execution of their respective offices.

This executive power cannot assume the right of making laws, or of their interpretation. It is expressly forbidden to contract public debts; to alter the repartition of the national income, as fixed by the Diet; to declare war; to conclude definitively any treaty, or any diplomatic act; it is only allowed to carry on negotiations with foreign Courts, and facilitate temporary occurrences, always with reference to the Diet. [...]

Article VII. The King, or Executive Power.

As judicial power is incompatible with the legislative, nor can be administered by the King, therefore tribunals and magistratures ought to be established and elected. It ought to have local existence, that every citizen should know where to seek justice, and every transgressor can discern the hand of national government. [...]

Article VIII. Judicial Power.

The nation is bound to preserve its possessions against invasion; therefore all inhabitants are natural defenders of their country and its liberties.

The army is only an extract of defensive regular force, from the general mass of national strength.

The nation owes to the army reward and respect, because of its devoting itself wholly for the defence of the country.

The army owes to the nation, to guard the frontiers against enemies, and to maintain public tranquillity within: in a word, it ought to be the strongest shield in the nation.

That these ends may be fully answered, the army should ever remain under the subordination and obedience to the executive power; it shall therefore take an oath, according to law, of fidelity to the nation, and to the King, and to maintain the national constitution. This national force, therefore, shall be employed for the general defence of the country, for garrisoning fortresses, guarding frontiers, and assisting the civil power in the execution of the law against those that are refractory.

Article XI. National Force, or the Army.

The Mutual Guarantee of the Two Nations *October 20, 1791*

For the eternal commemoration of the below described issue We, Stanisław August, by the grace of God and the will of the Nation King of Poland, the Grand Duke of Lithuania, Rus', Prussia, Mazovia, Samogitia, Kiev, Volhynia, Podolia, Podlasie, Livonia, Smolensk, Siewier and Czernichow, with the consent of the lords of the Senate Councils, both clergymen and laymen, as well as land deputies of the Polish Crown and the Grand Duchy of Lithuania, ever heedful of our duty towards our homeland, the Polish Commonwealth, whose enhancement, common welfare and, predominantly, protection against all external and internal threats we should assure, at the same having in mind the laudable and desirable relationship and association between our Two Nations, which was by the Act of Union created forever by our ancestors, and many times confirmed by the common agreement of the Polish Crown and the Grand Duchy of Lithuania, and maintained until today, thanks to the friendship and steadfastness of both parties, we proclaim that as we have one Law on Government for our whole State, serving the Polish Crown and the Grand Duchy of Lithuania, we express our desire to have under the rule of this Government our Army united, and treasuries included in one National Treasury,

but under the following conditions: first, the Army Commission and the Treasury Commission of the Two Nations are to be composed of equal parts of representatives of the Crown and the Grand Duchy of Lithuania; the composition of the Commission of Police, as regards the number of its members, is the result of the voluntary permission of the Grand Duchy of Lithuania and can never serve as *praeiudicatum* for the Duchy; all the magistratures which the Commonwealth were to establish later on as joint for the two nations, should include an equal number of persons from the Crown and the Grand Duchy of Lithuania. Second, the Grand Duchy of Lithuania is to have the same number of ministers and national officials, with the same titles and duties as in the Crown. Third, the heads of the Military and Treasury Commissions will be interchangeably Lithuanian and from the Crown, with equal terms in office. Fourth, the Treasury funds from the Lithuanian public income of the Commonwealth should remain in the Grand Duchy of Lithuania. Fifth, all questions dealing with the Treasury Commission concerning Lithuania and entrusted to the Court should be tried in their own court established in the Grand Duchy of Lithuania according to a separate law and composed of persons who are not members of the Commission. All matters here decided and guaranteed, We the King, with the consent of the Confederated States, considering them to be necessary and useful for the Two Nations, the Polish Crown and the Grand Duchy of Lithuania, as for the one common and undivided Commonwealth, We acknowledge to be the articles of the Act of Union between these Nations, by this Act We guarantee, confirm and strengthen the durability and inviolability of these articles, with the same conditions, confirmation, and strength as in the Act of Union between the Polish Crown and the Grand Duchy of Lithuania. And We the King consider all of this as an article of the *pacta conventa*, We wish that it would be placed with the *pacta conventa* to be sworn by our successors. [...]

THE ACT OF INDEPENDENCE OF LITHUANIA (16 FEBRUARY 1918)

Resolution

The Council of Lithuania in its session of 16 February 1918 decided unanimously to address the governments of Russia, Germany, and other states with the following declaration:

The Council of Lithuania, as the sole representative of the Lithuanian nation, in conformity with the recognised right to national self-determination and in accordance with the resolution of the Vilnius Conference of 18–23 September 1917, proclaims the restoration of the independent state of Lithuania, founded on democratic principles, with Vilnius as its capital, and declares the termination of all state ties that formerly bound this State to other nations.

The Council of Lithuania also declares that the foundation of the Lithuanian State and its relations with other states must be finally determined by

the Constituent Assembly (Seimas), to be elected democratically by all the inhabitants of Lithuania, and convoked as soon as possible.

The Council of Lithuania, in informing the Government of to this effect, kindly requests the recognition of the Independent State of Lithuania.

Vilnius, 16 February 1918

Dr. J. Basanavičius, S. Banaitis, M. Biržiška,
K. Bizauskas, P. Dovydaitis, S. Kairys, P. Klimas,
Donatas Malinauskas, P. Mironas, S. Narutowicz,
Alfonsas Petrulis, K. Šaulys, Dr. J. Šaulys,
J. Šernas, A. Smetona, J. Smilgevičius,
J. Staugaitis, A. Stulginskis,
J. Vailokaitis, J. Vileišis

THE FUNDAMENTAL PRINCIPLES OF THE PROVISIONAL CONSTITUTION OF THE STATE OF LITHUANIA (1918)

Until the form of government and Constitution of the State of Lithuania are determined by the Constituent (Founding) Assembly (Seimas), the State Council of Lithuania, expressing the sovereign power (*suprema potestas*) of Lithuania, based on the foundations of the Provisional Constitution stipulated below, shall establish a provisional Government of the State of Lithuania:

I. General Provisions

1. The interim supreme state bodies shall consist of: (a) the State Council and (b) the Presidium of the State Council (III, 9) together with the Cabinet of Ministers.

2. The seat of supreme power institutions shall be Vilnius, the capital of the State of Lithuania.

3. The right of legislative initiative shall belong to the State Council and the Cabinet of Ministers.

4. All fundamental principles of the Provisional Constitution shall be adopted by at least 2/3 of

the votes. The fundamental principles may be supplemented or amended only when at least 1/2 of the Members of the State Council so request and upon adopting such a supplement or amendment by at least 2/3 of the votes.

II. The State Council

5. The State Council shall consider and decide on the temporary laws and treaties with other countries.

6. The Presidium of the State Council shall publish draft temporary laws approved by the State Council and planned treaties with other countries.

7. The right of interpellation and inquiry shall belong to the State Council.

8. Sessions of the State Council shall be appointed by the State Council itself, or shall be convened by the Presidium of the State Council on its own initiative or at the request of 1/3 of the Members of the State Council.

III. The Provisional Competence of the Presidium of the State Council

9. Until the establishment of the separate highest government body, its competence shall be entrusted with the Presidium of the State Council, consisting of the President and two Vice-Presidents.

10. The executive power shall be vested with this Presidium, which shall exercise it through the Cabinet of Ministers responsible to the State Council.

11. On behalf of the State Council, the Presidium shall: (a) promulgate temporary laws and treaties with other countries provided they bear the signature of the Presidium; (b) invite the Prime Minister, commission him to form the Cabinet of Ministers, and approve its composition; (c) represent the State; (d) appoint ambassadors and receive accredited ambassadors of foreign states; (e) appoint senior military and state civil officials; (f) have the army at its disposal in order to defend the independence of Lithuania and the integrity of its lands and appoint the commander of the armed forces.

12. All acts promulgated by the Presidium must bear the signature of the Prime Minister or the respective Minister.

13. The signature of the Presidium shall consist of the signatures of all its three Members.

14. The seal of the State of Lithuania shall be at the disposal of the Presidium.

IV. The Cabinet of Ministers

15. The Cabinet of Ministers shall be formed by the Prime Minister.

16. The Composition of the Cabinet of Ministers shall be approved by the Presidium of the State Council, which carries out the highest authority functions on a temporary basis (III, 9).

17. The Cabinet of Ministers shall work and be responsible as a unit (jointly and severally).

18. Should the State Council express no confidence in the Cabinet of Ministers, the latter must resign.

19. The Cabinet of Ministers shall be represented by the Prime Minister or the Minister who is substituting for him.

20. After joining the Cabinet of Ministers, Members of the State Council continue to be its Members.

21. At the request of the State Council or its commissions, the Cabinet of Ministers and individual Ministers must provide information and explanations.

V. The Fundamental Rights of Citizens

22. All citizens of the State, regardless of sex, nationality, religion, or estate, shall be equal before the law. There shall be no estate privileges.

23. The right to the inviolability of the person of an individual, home, and property, as well as freedoms of religion, the press, speech, assembly, and associations, shall be guaranteed as long as their purpose and executive instruments are not contrary to the laws of the State. Gatherings of armed persons shall be prohibited.

24. In the areas where the State of Lithuania has not issued new laws, the laws that have been in effect before the war shall apply insofar as they do not contradict the fundamental principles of the Provisional Constitution.

25. In time of war, also in order to prevent a revolt or riot against the State, special regulation shall apply, by which the guarantees of the freedoms of citizens will be temporarily restricted.

VI. The Constituent Assembly (Seimas)

26. The interim authority shall establish and promulgate the Law on Electing the Constituent Assembly (Seimas).

27. The Constituent Assembly (Seimas) shall be elected on the basis of universal, equal, and direct suffrage by secret ballot.

28. After the election of the Constituent Assembly (Seimas), it shall convene in Vilnius on the day chosen by the Provisional Government.

29. The Constituent Assembly (Seimas) shall begin its work after at least 2/3 of the representatives convene.

The Presidium of the State Council:

A. Smetona

J. Šaulys

J. Staugaitis

Prime Minister

Prof. A. Voldemaras

THE RESOLUTION OF THE CONSTITUENT ASSEMBLY (SEIMAS) (15 MAY 1920)

The Constituent Assembly (Seimas) of Lithuania, expressing the will of the people of Lithuania, proclaims that the independent State of Lithuania is restored as a democratic republic

within its ethnographic boundaries and free from all state ties that formerly bound it to other countries.

THE CONSTITUTION OF THE STATE OF LITHUANIA (1922)

Preamble

In the name of Almighty God, the Lithuanian Nation, gratefully mindful of the glorious deeds of her sons and their noble sacrifices made to free their fatherland, having reconstituted her independent State, and desiring to establish for her independent life a firm democratic base, to create conditions for the establishment of right and justice, and to assure to all her citizens equality, freedom and welfare, and proper state protection for the work and morals of her people, through her duly authorised representatives formally convened as the Constituent Assembly, on the first day of August 1922, adopted this the Constitution of the State of Lithuania.

I. General Principles

Paragraph 1. The State of Lithuania is an independent democratic Republic.

The sovereign Power of the State shall be vested in the Nation.

Paragraph 2. The governmental functions of the State shall be performed by the Seimas, the Executive Authority, and the Judiciary.

Paragraph 3. In the State of Lithuania, no law that is contrary to the Constitution shall have force.

Paragraph 4. The boundaries of the territory of Lithuania may be changed only in the manner prescribed by law.

Paragraph 5. The law shall determine the administrative divisions of the territory of Lithuania.

For the purpose of special local needs of inhabitants, autonomous units, whose boundaries and rights shall be fixed by law, may be formed from separate districts of Lithuania.

Paragraph 6. The Lithuanian language shall be the language of the State. The use of local languages shall be determined by law.

Paragraph 7. The colours of the State shall be yellow, green, and red. The coat-of-arms of the State shall be a white Vytis on a red field.

II. Lithuanian Citizens and Their Rights

Paragraph 8. Citizenship may be acquired and revoked in accordance with the citizenship laws.

Citizens of foreign States may become citizens of Lithuania provided they have resided in Lithuania not less than ten years.

Paragraph 9. No person may be at the same time a citizen of Lithuania and a citizen of any other State.

Paragraph 10. All citizens of Lithuania, men and women, shall be equal before the law. No special privileges can be given to, nor shall the rights of citizens be restricted because of, origin, belief, or nationality.

Paragraph 11. The person of a citizen shall be inviolable. A citizen may be brought to justice only in cases and manner prescribed by law. A citizen may be apprehended or his liberty may be restricted only if he is found committing an offence, or by the decision of a judicial body. The cause of apprehension must be made known to

such a citizen and a copy of the indictment must be given to him within forty-eight hours. No such indictment having been given, the apprehended person shall be released immediately.

Paragraph 12. The home of a citizen shall be inviolable. Entry into a home and the making of a search therein shall be permitted only in cases and manner prescribed by law.

Paragraph 13. Citizens shall have freedom of religious belief and conscience.

Practised religion or the profession of one's convictions may not form the basis for justification of an offence or for refusing to perform public duties.

Paragraph 14. The secrecy of correspondence and communication by post, telephone, and telegraph shall be guaranteed to citizens. Exception may be made only in cases provided for by law.

Paragraph 15. Freedom of speech and of the press shall be guaranteed to citizens. This freedom may be restricted only in cases provided for by law whenever it is necessary to protect the morals and the order of the State.

Paragraph 16. Citizens' freedom of assembly without arms and without disturbance of public peace, in the manner prescribed by law, shall be recognised.

Paragraph 17. The freedom to form societies and associations shall be guaranteed to citizens provided the purpose thereof and the methods of putting them into effect are not contrary to the penal laws.

Paragraph 18. Any citizen aggrieved by an official in the performance of his duties shall have the right, in the manner prescribed by law, to have such an official brought before a court of justice without first obtaining the permission or consent of his superiors, and to seek damage compensation.

Paragraph 19. Each citizen shall have the right of petition to the Seimas.

Paragraph 20. Citizens shall have the right of legislative initiative. Twenty-five thousand citizens, possessing the right to elect representatives to the Seimas, may submit their proposals to the Seimas in the manner prescribed by law, and the Seimas shall be obliged to consider these proposals.

Paragraph 21. The right of ownership shall be protected. The property of citizens may be expropriated, in the manner prescribed by law, only for public needs.

III. The Seimas

Paragraph 22. The Seimas shall be composed of the representatives of the Nation.

Paragraph 23. Representatives shall be elected by a universal, equal, direct suffrage by secret ballot based upon a proportional election system. The laws shall determine the number of representatives and the manner of conducting elections.

Paragraph 24. All qualified Lithuanian citizens, men and women, not less than 21 years of age, shall have the right to elect representatives to the Seimas, and those not less than 24 years of age to be elected.

Paragraph 25. The Seimas shall be elected for three years.

Should the State be at war, or should there be martial law in more than half of its territory, the President of the Republic may, by a special act, extend the term of the Seimas beyond the term for which it has been elected. Such an act of the President of the Republic must be approved by the Seimas.

Paragraph 26. The election of a new Seimas must take place before the expiry of the term of the old Seimas. The President of the Republic shall fix the date for the election of the new Seimas.

The term of the new Seimas shall commence upon the expiry of the term of the old Seimas.

The Seimas shall convene not later than thirty days after its election. The President of the Republic shall designate the day for the convening of the Seimas.

Paragraph 27. The Seimas shall pass laws. The manner of the publication of laws, and the time when they become effective, shall be determined by a separate law.

Paragraph 28. The Seimas shall supervise the work of the Executive Authority, submitting questions and interpellations, and conducting investigations.

Paragraph 29. The State Budget and its execution shall be approved by the Seimas.

Paragraph 30. The following state agreements and treaties entered into by the Executive Authority shall be confirmed by the Seimas: peace treaties, agreements for the acquisition, abandonment or conveyance of territory by the State, commercial treaties with other States, foreign loans, agreements that wholly or partially abolish or amend existing laws, agreements that impose duties on Lithuanian citizens, agreements that fix direct or indirect monopoly or expropriation rights.

Paragraph 31. The Seimas shall have the power to declare and end war.

Acts of war may be commenced without the Seimas if an enemy country declares war against Lithuania, or if an enemy, without declaration of war, invades the borders of Lithuania.

Paragraph 32. In case of war, armed uprising, or other disturbances dangerous to the peace of the State, the President of the Republic, upon a proposal of the Cabinet of Ministers, may impose martial law or declare a state of emergency in the entire State or in certain parts thereof, temporarily place in abeyance the constitutional rights of citizens (Paragraphs 11, 12, 14, 15, 16, 17), and use means to prevent or remove such danger, even using armed force, and, at the same time, he shall bring all of these matters to the attention of the Seimas, which shall either approve or reject such an act of the Executive Authority.

Paragraph 33. The Seimas shall elect its Speaker and other members of the presidium.

In order to define the rules of its own activities, the Seimas shall adopt its Statute, which shall have the force of a law.

Paragraph 34. The sessions of the Seimas shall be called in the manner determined by the Seimas. If the President of the Republic or one-fourth of the number of the representatives so request, the Speaker of the Seimas must call the Seimas into session.

Paragraph 35. Each representative, upon assuming office, shall take an oath or solemnly affirm that he will be loyal to the Republic of Lithuania, protect its laws, and conscientiously carry out his powers and fulfil his duties as a representative of the people.

Any representative who declines to take an oath or make an affirmation, or who takes an oath or affirms conditionally, shall lose his powers as a representative.

Paragraph 36. Representatives shall be guided only by their own consciences, and they shall not be restricted by any mandates whatsoever.

Paragraph 37. Representatives shall not be punished by courts of justice for speeches made in the course of their duties; nevertheless, they may be made to answer in the ordinary manner for injury to the reputation of another.

Paragraph 38. The person of a representative shall be inviolable. A representative may be detained only with the consent of the Seimas, except in cases where the representative is found in the act of committing an offence (*in flagranti*).

Notice of the arrest of a representative and the cause for such detention in such a case shall be given not later than forty-eight hours to the Speaker of the Seimas, who shall announce the same to the Seimas at its next session. The liberty of such representative may be restored by the Seimas.

Paragraph 39. Representatives shall have the right of free transportation on all the railways of Lithuania.

The remuneration that representatives receive for the performance of their duties shall be determined by law.

IV. The Executive Authority

Paragraph 40. The executive authority shall be vested in the President of the Republic and the Cabinet of Ministers.

Paragraph 41. The President of the Republic shall be elected by the Seimas.

The President of the Republic shall be elected by secret ballot of the absolute majority of the representatives. If, after taking two ballots, none of the candidates have received the absolute majority of the votes of the representatives, the President of the Republic shall then be elected from the two candidates who have received the most votes, and he shall be deemed elected President who has obtained the more votes. If both candidates have obtained an equal number of votes, the senior in years shall be deemed elected.

Paragraph 42. The President of the Republic, upon assuming office, shall take an oath or solemnly affirm, with all his power, to look after the welfare of the Republic and the Nation, protect the Constitution and laws, conscientiously fulfil his duty, and be just equally to all.

Paragraph 43. Any Lithuanian citizen who is eligible for election as a representative to the Seimas, and who is not under 35 years of age, may be elected as President of the Republic.

Paragraph 44. The President of the Republic shall be elected for three years.

The President of the Republic shall remain in office until the election of his successor.

The President of the Republic may be dismissed from office by a two-thirds vote of all the representatives of the Seimas.

The same person shall not be elected President of the Republic for more than two three-year terms in succession.

Paragraph 45. If the President of the Republic leaves the country, falls ill, or is temporarily unable to hold office, his duties shall devolve upon the Speaker of the Seimas. If the President of the Republic resigns from office, dies, or becomes too ill to perform the duties of his office, another President shall be elected to complete the unexpired term.

Paragraph 46. The President of the Republic shall represent the Republic, accredit emissaries, and accept the envoys of foreign countries.

Paragraph 47. The President of the Republic shall appoint the Prime Minister, authorise him to form the Cabinet of Ministers, confirm the same, and accept the resignation of the Cabinet of Ministers.

Paragraph 48. The President of the Republic shall appoint and release the Auditor General.

The Auditor General shall be responsible to the Seimas, and shall resign if the Seimas expresses no confidence in him.

Paragraph 49. The President of the Republic shall appoint and release officials of the Republic whose appointment and release are vested in him by law.

Paragraph 50. The President of the Republic shall promulgate laws.

The laws adopted by the Seimas shall be promulgated by the President of the Republic within twenty-one days, to be calculated from the day on which the law was submitted to him.

The President of the Republic shall have the right, within twenty-one days to be calculated from the day on which the laws have been submitted, to return to the Seimas, with his remarks, a law adopted by the Seimas for second consideration. If the Seimas then passes the same law by an absolute majority of the votes of all of the representatives, the President of the Republic must promulgate it.

If the Seimas by a two-thirds vote of all of the representatives shall declare the promulgation of a law as urgent, the President of the Republic shall not have the right to return it to the Seimas for second consideration.

Paragraph 51. The President of the Republic shall have the right of pardon.

The President of the Republic may pardon only with the consent of the Seimas the offences of Ministers who have been sentenced for abuse of office.

Paragraph 52. The President of the Republic shall have the right to dissolve the Seimas.

Upon the meeting of a new Seimas, the President of the Republic shall be re-elected.

The election of a new Seimas must take place not later than sixty days after the dissolution of the Seimas. The term of the new Seimas shall commence from the day of election.

Paragraph 53. The President of the Republic is the Commander-in-Chief of all armed forces of the Republic.

The Cabinet of Ministers and the proper Ministers shall be responsible to the Seimas for the control and administration of the armed forces of the Republic.

In time of war, upon the proposal of the Cabinet of Ministers, the President of the Republic shall appoint the Commander of the Armed Forces.

Paragraph 54. The President of the Republic shall have the right to participate in the sessions of the Cabinet of Ministers, and preside over them, and to require from the Cabinet of Ministers or individual Ministers information in writing relating to their office.

Paragraph 55. All the acts of the President of the Republic, in order to have force, must have the signature of the Prime Minister or the proper Minister. Responsibility for the act shall rest upon the Minister who have signed it.

Paragraph 56. The Cabinet of Ministers shall consist of the Prime Minister and other Ministers. The number of Ministers and their duties shall be determined by law.

Paragraph 57. The Prime Minister shall submit the names of the Ministers selected by him to the President of the Republic for approval. The President of the Republic shall have the power to release the Ministers from their duties.

Paragraph 58. Upon assuming office, the Ministers shall take an oath or solemnly affirm that they will impartially and conscientiously perform the duties of their office and uphold the Constitution and laws.

Paragraph 59. The Cabinet of Ministers shall be responsible as a whole to the Seimas for the

common policies of the Government, and each individual Minister shall be separately responsible for the work assigned to him in the administration of his special department.

The Ministers must have the confidence of the Seimas. If the Seimas directly expresses no confidence in them, the Cabinet of Ministers and each Minister must resign.

Paragraph 60. The Cabinet of Ministers shall formulate and submit to the Seimas proposed laws.

Ministers who remain in the minority, when considering a proposed law in the Cabinet of Ministers, shall have the right to present, in writing, to the Seimas their minority view in respect thereto, together with the proposal submitted by the Cabinet of Ministers.

Paragraph 61. The Cabinet of Ministers shall uphold the Constitution and the laws, conduct the internal and foreign policies and protect the integrity of the territory and the internal order of the Republic.

Paragraph 62. The Auditor General shall have the right to participate in an advisory capacity in the sessions of the Cabinet of Ministers.

Paragraph 63. The Seimas alone, by the absolute majority of votes of all the representatives, shall have the right to commence criminal action against the President of the Republic, the Prime Minister, or any Minister for abuse of office or treason.

Such instituted action shall be passed upon by the Supreme Court of Lithuania.

V. Courts

Paragraph 64. The courts shall render decisions in the name of the Republic in accordance with the laws.

Paragraph 65. No decision of a court may be modified or reversed, except by judicial authority in the manner prescribed by law.

Amnesty may be granted in the manner provided for by law.

Paragraph 66. The organisation, competence, and jurisdiction of courts shall be fixed by law.

Paragraph 67. There shall be one Supreme Court for the entire territory of the Republic.

Paragraph 68. The courts shall decide upon the legality of acts proceeding from the administration.

Paragraph 69. All citizens are equal before the courts.

Special courts shall pass judgement upon soldiers for offences committed while in service.

Special courts may be established only in time of war or while a state of war exists.

VI. Local Governments

Paragraph 70. The right of self-government shall be guaranteed to rural districts and cities within the limits of law.

Universal, equal, and direct suffrage by secret ballot shall be made the basis for the election of local government bodies.

Paragraph 71. The bodies of local governments shall look after the needs of state governance at local level in the manner prescribed by law.

They shall have the right to impose taxes for the needs of local self-government, in accordance with special tax laws provided for that purpose.

Paragraph 72. The Executive Authority shall be charged with seeing that the bodies of local governments execute their duties, and that their work is not contrary to the laws of the State.

The courts shall finally decide upon any disputes arising between the bodies of local governments and state bodies.

VII. Rights of National Minorities

Paragraph 73. National minorities of citizens, which form an appreciable part of the citizenry, shall have the right, within the limits of the law, to administer autonomously the affairs of their national culture – public education, charity, mutual aid – and to elect necessary bodies to conduct these affairs in the manner prescribed by law.

Paragraph 74. The national minorities set forth in Paragraph 73 shall have the right, in accordance with special laws for that purpose, to impose upon their members dues for needs of national culture,

and they shall have the benefit of the proper portion of the sums set aside by the State and local governments for matters of education and charity, provided the sums allowed by the common State and local government bodies are not sufficient for these needs.

VIII. Defence of the Republic

Paragraph 75. All the citizens of the Republic shall participate in the defence of its territory in the manner prescribed by law.

Paragraph 76. For the defence of the Republic, armed forces shall be organised. The organisation of armed forces, the means of mobilisation, and the nature and term of service shall be fixed by law.

Paragraph 77. The care and protection of the State shall be guaranteed to the families of servicemen and to the servicemen themselves who lose their health or life in line of duty.

IX. Education

Paragraph 78. The education of their children shall constitute the supreme right and natural duty of parents.

Paragraph 79. Schools may be established by the State, local governments, public organisations, and individuals. All schools shall be under state supervision in the manner prescribed by law.

Paragraph 80. Religious education in schools shall be compulsory, with the exception of schools established for children whose parents do not belong to any religious organisation. Religion shall be taught in accordance with the requirements of those religious organisations to which the pupils belong.

Paragraph 81. Primary education shall be compulsory.

The manner and time of the establishment of compulsory primary education shall be fixed by law.

Primary education in schools maintained by the State and local governments shall be free.

Paragraph 82. Private religious schools, provided they comply with the minimum of the

programme fixed by law, shall receive from the State Treasury for the purposes of education the part of the budget appropriation that corresponds to the number of Lithuanian citizens and pupils belonging to the religious organisations whose teaching forms the basis of education in such schools.

X. Matters of Religion and Cult

Paragraph 83. The State recognises the equal right of all religious organisations existing in Lithuania to administer their affairs in accordance with the requirements of their canons or statutes, to freely publish their religious doctrines and practise their cult ceremonies, to establish and manage their cult buildings, schools, educational and charitable establishments, to establish cloisters, religious congregations, and fraternities, to impose upon their members dues for the needs of the religious organisations, and to acquire and manage movable and immovable property.

Religious organisations shall possess the rights of legal entities in the State.

Priests shall be relieved from military obligations.

Paragraph 84. The State shall recognise newly formed religious organisations provided their beliefs and moral teachings and statutes are not contrary to public order and morals.

The formation of such organisations and their existence shall be determined by law.

Paragraph 85. Birth, marriage, or death certificates, made by the faithful before their spiritual advisers, if they comply with the form determined by law, shall have legal force in Lithuania, and citizens shall not be compelled to repeat such acts in another institution.

Paragraph 86. The laws shall protect Sundays and other holidays recognised by the State as days of rest and spiritual need.

Paragraph 87. Servicemen shall be granted leave to attend to their religious duties.

Persons in hospitals, prisons, and other public institutions shall be given the opportunity to attend to their religious duties.

XI. Fundamentals of the State Economic Policy

Paragraph 88. The freedom of husbandry and initiative in all areas of economy shall be guaranteed to each citizen. This freedom can be restricted only by law in cases of public necessity.

The economic life shall be so regulated that each citizen shall have work.

Paragraph 89. The laws shall guarantee special self-government to the separate departments of economy. There shall be established by law bureaus of agriculture, commerce and industry, labour and other bureaus, whose cooperation with the State Government for the standardisation of the economic life shall be prescribed by law.

Paragraph 90. The principle of private ownership shall be made the basis for the management of land.

To the State shall be reserved the right to regulate the management of land in such a manner that there shall be established suitable conditions for the proper cultivation of agricultural lands, and especially for the development of the smaller and average farms.

Estates shall be parcelled in the manner prescribed by law.

XII. State Finances

Paragraph 91. The imposition of taxes on the inhabitants, the appropriation of money from the State Treasury, the making of internal loans, or the issuance of paper money may be done only in the manner provided for by law.

Paragraph 92. The Auditor General shall supervise the accountability and responsibility of revenue, expenditure, and debts of the State.

Paragraph 93. The Auditor General shall prepare each year a report on the functioning of the State Budget for the past year and submit the same to the Seimas not later than the fifteenth day of October.

Paragraph 94. The Cabinet of Ministers shall prepare an estimate of all the revenue and expenditure of the State for the ensuing year and

submit the same to the Seimas for approval not later than the fifteenth day of October.

Paragraph 95. The estimate of state revenue and expenditure shall be fixed by law for each year separately before the beginning of the budget year.

Paragraph 96. The budget year shall commence on the first day of January and shall end on the last day of December.

XIII. Social Security

Paragraph 97. The working power of the people shall be guarded and protected by special laws.

The State shall protect by separate laws a workman while ill, during old age, in cases of misfortune, and when unemployed.

Paragraph 98. The basis of the family life shall be motherhood. The equality of rights for both sexes shall be a fundamental principle of the home.

The social welfare and family health shall be protected and maintained by special laws.

Maternity shall be under the special care of the State.

Paragraph 99. Public morals and health shall be protected by special laws.

Paragraph 100. All classes of schools shall be equally accessible to all.

Paragraph 101. For the purpose of maintaining temperance, all the citizens of a rural area shall have the right to decide whether establishments for the sale of intoxicating liquors shall be maintained within their residential district.

XIV. Amending or Supplementing the Constitution

Paragraph 102. The Seimas, the Executive Authority, or 50 000 citizens having the right to elect to the Seimas, shall have the right to propose an amendment or supplement to the Constitution.

Paragraph 103. A proposed amendment or supplement to the Constitution shall be adopted by a vote of three-fifths of all the representatives of the Seimas.

An amendment or supplement to the Constitution, adopted by the Seimas, shall be submitted for decision to the Nation by a general vote, provided that within three months from the date of its publication the President of the Republic, or one-fourth of the number of the representatives, or 50 000 citizens having the right to elect to the Seimas, shall require the same. A constitutional amendment or supplement adopted by the Seimas, if there is no such requirement, shall become effective after three months from the date of publication.

A constitutional amendment or supplement, adopted by the Seimas, shall be regarded as rejected by the Nation if not less than half of all the citizens having the right to vote have participated in the voting, and not less than half of the citizens having participated in the voting have voted against such an amendment or supplement.

A constitutional amendment or supplement that is adopted by the Seimas by a vote of four-fifths of all the representatives shall acquire force from the date of publication.

XV. Introductory Regulations

Paragraph 104. Upon the publication of this Constitution, the Constituent Assembly shall remain in place of the Seimas until the election of the Seimas.

The first term of the Seimas shall commence from the date of its election.

The date of election of the first Seimas shall be fixed by the President of the Republic, having in view that it must not be later than three months from the date of the publication of the Constitution.

Paragraph 105. The Speaker of the Constituent Assembly shall act as the President of the Republic until the President of the Republic is elected.

From the date upon which the Constitution takes effect he shall have all the rights given in the Constitution to the President of the Republic.

Paragraph 106. All the laws in force in Lithuania up to the date of the publication of this Constitution that are not contrary to the Constitution and that will not be abolished or amended by this Constitution in the manner provided shall remain in force.

Paragraph 107. The Provisional Constitution of the State of Lithuania ceases to be in force.

Paragraph 108. This Constitution of the State of Lithuania becomes of full force and effect from the date of its publication.

THE CONSTITUTION OF LITHUANIA (1938)

The Lithuanian Nation, mindful of its illustrious past, has restored the independent sovereign State of Lithuania and has defended it by arms so that, realising its eternal right to be free and independent in the lands of its fathers, it may guard by the united will of the Nation everything that has belonged to it through the ages, that it may continue its noble deeds, and that by the efforts of the present and future generations it may augment the power of Lithuania.

In the light of the experience of the Lithuanian nation, gained from its antiquity and the tradition of its statehood, from its rebirth and its struggles for independence, from the efforts of resurrected Lithuania, and from its creation as a Nation State, this Constitution is determined for Lithuania:

CHAPTER I General Provisions

Article 1

The State of Lithuania shall be independent and sovereign.

Its sovereignty shall be inherent in the Nation.

Article 2

The territory of the State of Lithuania shall consist of such areas as are within the borders determined by international treaties entered into up to the present time by the State of Lithuania. These integral parts must not be separated.

Article 3

The State of Lithuania is a republic.
The President of the Republic is its head.
He leads the State.

Article 4

The power of the State is one and indivisible. It is enforced by the President of the Republic, the Seimas, the Government, and the Judiciary.

Article 5

The governing organs shall base all their actions on justice.

Article 6

The Capital of Lithuania is Vilnius. A provisional Capital may be envisaged by law.

Article 7

The State language is the Lithuanian language.
It shall be determined by law in which districts and in which public offices other languages besides Lithuanian may be used.

Article 8

The coat-of-arms of the State shall be a white Vytis on a red field.

The national colours shall be yellow, green, and red. The coat-of-arms of the State, the national flag, and the use thereof shall be determined by law.

Districts and towns of Lithuania may have their own emblems determined by law.

Article 9

The national holidays shall be:

- (1) February 16, in commemoration of the restoration of the Independence of Lithuania; and,
- (2) September 8, in commemoration of the Great Past of Lithuania.

Article 10

National holidays, Sundays, and other holidays recognised by the State shall be days of rest and spiritual elevation.

Work shall be allowed on holidays in instances determined by law.

CHAPTER II Citizenship

Article 11

Citizenship shall be acquired by birth, marriage, and other family ties, also by options or reinstatement.

Article 12

Citizenship may be granted to:

- (1) a Lithuanian who has established residence in the State of Lithuania;
- (2) a non-Lithuanian who has resided in the State of Lithuania for at least ten years; and
- (3) a person who has rendered meritorious service to the State of Lithuania.

Article 13

A citizen who has acquired foreign citizenship shall lose his Lithuanian citizenship.

In instances determined by law, a citizen who has foreign citizenship may also retain his Lithuanian citizenship.

Article 14

A citizen may lose his Lithuanian citizenship if he has not resided in the State of Lithuania for at least two years and has severed all ties with the life of Lithuania.

Citizenship rights may be withdrawn for actions inimical to the security of the State.

Article 15

The conditions and procedure for the acquisition of citizenship, acceptance as Lithuanian citizen, and the withdrawal and loss of citizenship shall be determined by law.

CHAPTER III The Rights and Duties of Citizens

Article 16

The State is the foundation of existence to a citizen.

The State shall protect the freedom, honour, health, life, and property of the citizen.

Article 17

A citizen shall enjoy his freedom without detriment to the rights of others, always mindful of his duties toward the State.

It shall be the duty of the citizen to be loyal to the State.

Article 18

Citizens shall be equal before the law.

The rights of a citizen must not be restricted on account of his religion or national origin.

Article 19

Taxes shall be imposed by law.

Article 20

It shall be the duty of the State to safeguard the freedom of conscience of a citizen. A citizen shall be free to belong or not to belong to any of the churches recognised by the State or to other equivalent religious organisations.

Religious persons who are subject to the jurisdiction of any person shall be given time to fulfil their religious duties.

The belief of a citizen must not be the basis for the justification of a crime or abstention from the fulfilment of obligations imposed by the State.

Article 21

The person of a citizen shall be inviolable.

No citizen shall be summoned before a court or detained except in the cases and in accordance with the procedure determined by law.

The warrant for the detention of a citizen shall be delivered to him within forty-eight hours, and the grounds for the detention shall be indicated. A detained person who has not received that warrant shall be released.

Article 22

The State shall protect the inviolability of the home of a citizen.

The State may restrict by law the inviolability of the home of the citizen insofar as it is necessary in order that the State may combat crime.

Article 23

The State shall protect the secrecy of the contents of the communications of citizens.

The State may ascertain the content of the communications of citizens by law insofar as it is necessary for the State to combat crime.

Article 24

A citizen may move freely within the whole territory of the State and may reside in any part thereof.

The State may restrict this right by law in the interests of the security of the State.

Article 25

The State shall safeguard the freedom of the public activity of citizens, especially in the press, societies, and meetings, mindful that such activities must not be detrimental to the State.

Article 26

A citizen shall have the right of petition.

This right shall be exercised by citizens in accordance with the procedure determined by law.

CHAPTER IV

Religion

Article 27

Cognisant of the value of religion in the life of a person, the State recognises the existing churches in Lithuania and equivalent religious organisations.

Other churches and equivalent religious organisations may be recognised by the State if their doctrines and rituals are not contrary to morals and public order.

Article 28

The churches and equivalent religious organisations recognised by the State may freely teach their doctrines, perform their services, maintain houses of prayer, and operate religious schools for the preparation of their clergy.

Article 29

Religious orders, congregations, and brotherhoods of churches and equivalent religious organisations recognised by the State shall have freedom of action insofar as their activity is restricted to the teaching of religious doctrines and religious services and prayer.

Article 30

Churches and equivalent religious organisations recognised by the State shall have the rights of a juridical person. The limits of these rights shall be determined by law.

Article 31

The clergy of religions recognised by the State may be released from military service by law.

Article 32

The teaching of doctrines, performance of religious services and prayers, and other religious activity of churches recognised by the State and equivalent religious organisations, and also houses of prayer, shall not be used for purposes that are contrary to the Constitution and the laws.

Article 33

The status of churches and equivalent religious organisations in the State shall be determined by agreement or by law.

CHAPTER V

Family and Motherhood

Article 34

A sound family is the foundation of the strength of the State.

The State shall respect, guard, and protect the family. Large families shall be especially protected.

Article 35

Motherhood shall be respected, guarded, and protected. In protecting motherhood, children, and youth, the State shall seek a sound body and strong spirit in the growing generation.

CHAPTER VI

Nurture and Education

Article 36

The basic centres of nurture and education are the family and the school.

The State also recognises the value in nurture of the Church and of equivalent religious organisations.

Article 37

The duty of parents shall be to bring up their children, imbue them with love for their Fatherland and the determination to sacrifice themselves for the Fatherland.

The duty of children shall be to honour their parents, care for them in their old age, and protect their inheritance.

Article 38

For the nurture, instruction, and education of youth, the State shall maintain training institutions, schools, and youth organisations.

The State shall endeavour that the spiritual and physical powers of youth be so developed that they may be usefully applied to the spiritual and economic life of Lithuania.

Article 39

Individual citizens and organisations, as well as churches and equivalent religious organisations, shall be permitted, according to the provisions and procedure determined by law, to maintain training institutions and schools.

Article 40

Elementary education shall be compulsory. Education in the primary schools of municipalities and of the State shall be free.

Article 41

In primary and secondary schools, religion shall be taught to pupils belonging to the churches or to equivalent religious organisations recognised by the State. It shall be determined by law in which other schools religion shall be taught.

When few pupils belong to any church or equivalent religious organisations in a school, religion shall not be taught to those pupils according to the cases provided for by law.

Religion shall not be taught to pupils belonging to a church or equivalent religious organisation when it is impossible to provide a teacher.

Article 42

The State shall supervise the work of education and teaching and shall also supervise training institutions and schools.

Article 43

The primary purpose of Lithuanian science and the arts shall be to serve the progress of Lithuania.

The State shall be the guardian of science and the arts and shall protect the monuments of Lithuania's past and her other cultural wealth.

CHAPTER VII**Labour****Article 44**

All labour is a part of universal production and is equally honourable.

The State is maintained by unending labour.

The working power of a citizen is also the wealth of the State.

The citizen shall be imbued with the love of work and the spirit of constructive work.

Article 45

It shall be the concern of the State that the worker and his family share in the advantages of the cultural life of Lithuania.

It shall be the duty of the State to see that the worker shall have rest and proper conditions for rest.

Article 46

The State shall aspire that all those who are capable of work be provided with work. Those who avoid work may be compelled by the State to work.

Article 47

Provision shall be made for the rational and regular use of the working powers of citizens. The State, acting as guardian, may regulate the performance of labour tasks.

CHAPTER VIII**The Economy of the Nation****Article 48**

The purpose of the economy of the Nation shall be to provide the material conditions necessary for the welfare of the State and a citizen.

Article 49

The successful economic activity of the nation is based on the conscientious determination of a

citizen to strive and to produce for his own welfare and that of the State with activity between labour and capital.

Article 50

The welfare of the State and a citizen is attained when the citizen works rationally in an orderly manner and avoids waste.

Article 51

The State shall protect the right of ownership.

Property imposes the obligation upon its administrator to adjust the use of that property in conformity with the interests of the State.

The State may by law expropriate property in the public interest with compensation.

Article 52

A citizen shall have the right to undertake work of his choice within the area of the State, and to choose the form and place of his economic activity.

The State may restrict this right by law in the interests of the security of the State.

Article 53

The State shall take care that agriculture be based on sound economic units and that farmers take active part in the expedient and rational agricultural production and have the necessary conditions for that purpose.

The State shall endeavour to see that industry, commerce, and trade make rational use of economic possibilities.

Article 54

The State shall support the sound economic efforts of citizens and, when it appears necessary, may itself engage in economic activity.

Article 55

The State may establish labour service in the public interest.

Article 56

Concerned with the establishment of a sound and rational form of national economy and activity, the State shall supervise and may regulate economic activity in general and individual enterprises in particular.

CHAPTER IX Health and Social Security

Article 57

The State shall take an interest in the health of its citizens. The State shall take care of workers and their families in sickness, old age, and in case of accidents.

Article 59

The State shall support and strengthen the will and the capability of citizens to provide for themselves and for their families.

The State shall aspire to provide for citizens who are unable to provide for themselves and for their families.

Article 60

Individual citizens and organisations, as well as churches and equivalent religious organisations, shall be permitted to maintain charity institutions according to the conditions and procedure determined by law.

CHAPTER X The President of the Republic

Article 61

The President of the Republic shall represent the State of Lithuania, receive the representatives of foreign states, appoint the representatives of the State of Lithuania, and fulfil other functions assigned to him by the Constitution and the laws.

Article 62

The President of the Republic shall be elected for a term of seven years.

He may be re-elected.

Article 63

A citizen who on the day of election is at least forty years of age and who is eligible for election as a Member of Seimas may be elected President of the Republic.

Article 64

The President of the Republic shall be elected by the Representatives of the Nation.

It shall be determined by law who may be elected a Representative of the Nation, how the

Representatives of the Nation are elected, and how the Representatives elect the President of the Republic.

Article 65

The President-elect of the Republic shall assume the leadership of the State by taking an oath in the presence of the Representatives of the Nation.

The words of the oath are as follows:

“I swear before Almighty God that, in leading the State, I shall concern myself with the unity of the Nation, protect its honour, develop the power and welfare of Lithuania, and rightfully use the power vested in me by the Constitution, always mindful of my responsibility for the present and future of Lithuania. May the Great Past of Lithuania and the heroic struggle for the restoration of Independence inspire me to that end, so help me God.”

The act of the oath shall be signed by the President of the Republic and the Prime Minister.

The oath shall be taken also by the re-elected President of the Republic.

Article 66

The period of the leadership of the State by the President of the Republic shall commence on the day on which he assumes such leadership.

Article 67

The presidential election shall take place in the last half year of the term of office of the incumbent President of the Republic.

The elected President of the Republic shall assume the leadership of the State on the day following the expiry of the seven-year leadership of the State by the incumbent President of the Republic, or, if on that day the results of the election have not yet come into force, the next day after they have come into force.

Article 68

In the event that the President of the Republic should die or resign, the presidential election shall take place soon after his death or resignation.

The elected President of the Republic shall assume the leadership of the State the next day after the results of the election come into force.

Article 69

If the President of the Republic cannot be elected or the election is postponed on account of war or other insurmountable difficulties, the election shall take place immediately after such difficulties disappear.

The elected President of the Republic shall assume the leadership of the State on the next day after the results of the election come into force.

Article 70

Until the elected President of the Republic assumes the leadership of the State, it shall be under the leadership of the incumbent President of the Republic.

Article 71

In the event that the President of the Republic is ill or away from the country, the Prime Minister shall act in his stead.

The Prime Minister in charge shall carry out for the President of the Republic actions within the presidential power.

Article 72

In the event of the death or resignation of the President of the Republic, the Prime Minister shall assume the leadership of the State until a President of the Republic is elected and until he assumes the leadership of the State.

While heading the State, the Prime Minister shall have all the powers of the President of the Republic.

Article 73

The President of the Republic shall not be responsible for actions taken within his powers. For other actions, the President of the Republic shall not be called to account while he is leading the State.

Article 74

A decree of the President of the Republic shall require the signature of the Prime Minister or of the appropriate Minister.

A decree of the President of the Republic by which the Prime Minister or Auditor General is appointed or released or which grants permission to prosecute the Prime Minister or Auditor

General for a service crime shall require neither the signature of the Prime Minister nor that of any other Minister.

CHAPTER XI The Seimas

Article 75

The Seimas shall be elected for a term of five years.

The number of Members of the Seimas and the method of their election shall be determined by the Seimas Election Law.

Article 76

Citizens who are not less than thirty years of age may be nominated as candidates to be Members of the Seimas.

The Seimas Election Law shall determine who may nominate candidates to be Members of the Seimas, who may be nominated, and how they shall be nominated.

Article 77

Candidates to be Members of the Seimas shall be voted for by universal, direct, equal, and secret ballot.

The system of election shall be that of proportional representation.

Article 78

Citizens who are not less than twenty-four years of age shall have the right to vote for candidates to be Members of the Seimas. The Seimas Election Law shall determine who does not have the right to vote.

It shall be the duty of every citizen to vote provided that he possesses the right to vote.

The voting days shall be determined by the President of the Republic.

Article 79

An elected Member of the Seimas shall take an oath or give a solemn promise.

The oath or solemn promise shall be administered by the President of the Republic or by the Prime Minister upon his authorisation.

The words of the oath or solemn promise shall be determined by the Seimas Election Law.

Article 80

An elected Member of the Seimas may not enter upon the duties of a Member of the Seimas and shall not enjoy the rights of a Member of the Seimas prior to his taking an oath or giving his solemn promise.

An elected Member of the Seimas who, within the time limit determined by law, does not take an oath or give a solemn promise, or who takes or gives the same conditionally, or who refuses to take or give the same, shall lose his right to be an elected Member of the Seimas.

Article 81

The President of the Republic shall dissolve the Seimas after a term of five years.

The President of the Republic may dissolve the Seimas before the expiry of the term of five years.

Article 82

The term of office of the Seimas shall begin on the day that is chosen by the President of the Republic for the first session of the Seimas.

The term of office of the Seimas shall expire five years after the first session of the Seimas, or on the day of the dissolution of the Seimas if it is dissolved prior to the expiry of the five-year term.

Article 83

If Members of the Seimas cannot be elected on account of war or other insurmountable difficulties, the President of the Republic may extend the term of office of the Seimas.

The term of office of the Seimas, in the event that it is extended, shall end upon the expiry of the period for which it was extended, or on the day of dissolution if the Seimas is dissolved prior to the expiry of the period of extension.

Article 84

Upon the expiry of the term of office of the Seimas, the voting days for the election of the Members of the Seimas shall be determined not later than within six months.

In the event that the Members of the Seimas cannot be elected or the election is postponed owing to war or other insurmountable difficulty, the election shall take place as soon as the difficulties have disappeared.

Article 85

The Seimas shall elect the Speaker of the Seimas and the other Members of the Presidium of the Seimas.

Until the new Seimas elects the Presidium of the Seimas, the Members of the Provisional Presidium from among the Members of the Seimas shall be appointed by the President of the Republic or by the Prime Minister upon the President's authorisation.

Article 86

The Seimas shall adopt its working statute. It shall be determined by law.

Article 87

The Seimas shall have two ordinary sessions annually. The spring session shall open on February 15 and close on April 15; the autumn session shall open on September 15 and end on December 31.

Ordinary sessions shall be convened by the President of the Republic.

The President of the Republic may close an ordinary session prior to the expiry of the time period of the session.

Article 88

Extraordinary sessions of the Seimas shall be called by the President of the Republic either upon his own initiative, when he draws up the agenda of the session, or upon the demand of three-fifths of the Members of the Seimas. The demand shall set forth the matters to be considered by the session.

The agenda of the extraordinary sessions may be supplemented by the President of the Republic in the course of the session.

An extraordinary session may be closed by the President of the Republic even before the agenda has been exhausted.

Article 89

The sessions of the Seimas shall be opened by the President of the Republic or by the Prime Minister upon the President's authorisation.

Article 90

The Seimas may consider and make decisions when not less than one half of the Members of the Seimas are present at the meeting.

The Seimas shall make its decisions by ballot.

The Seimas shall reach a decision by a vote of the majority of the Members of the Seimas present at the meeting, whenever the Constitution does not provide for a larger majority.

By the provisions of the Constitution, matters that require a larger majority shall be considered by the Seimas when the number of Members of the Seimas participating constitutes such a majority.

Article 91

A Member of the Seimas, during his work in the Seimas, must seek the general welfare of Lithuania and shall not abnegate it because of personal business or that pertaining to some Lithuanian district or for any other partial interest.

Article 92

A Member of the Seimas who participates in work that is inconsistent by law with his duties, or who loses the qualifications determined by law for a Member of the Seimas, shall cease to be a Member of the Seimas.

Article 93

A Member of the Seimas shall not be held responsible for his speeches made in the Seimas, but, in the event that his speeches are detrimental to the security of the State, he may be called upon to answer for them according to the general procedure. A Member of the Seimas shall be held responsible according to the same procedure for insulting statements made in his speeches during a meeting of the Seimas.

Article 94

A Member of the Seimas may be detained during the session of the Seimas only when he is found in the act of committing a crime, or when he has committed a crime for which he may be sentenced to hard labour; the warrant to detain a Member of the Seimas shall be reported to the Speaker of the Seimas not later than twenty-four hours after the Member of the Seimas has been detained. In all other cases, a Member of the Seimas may be detained during the session of the Seimas only with the approval of the Seimas.

CHAPTER XII The Government

Article 95

The Prime Minister and other Ministers shall constitute the Government.

One of the Ministers shall be the Deputy Prime Minister.

Article 96

The Prime Minister shall lead the Government and represent it.

A Minister shall administer within the jurisdiction assigned to him by the State.

The Ministers shall act uniformly.

Article 97

The President of the Republic shall appoint and release the Prime Minister and, upon his recommendation, he shall appoint and release the Deputy Prime Minister and other Ministers.

Upon the release of the Prime Minister from his duties, the other Ministers shall also be released from their duties.

Article 98

Prior to taking over the office assigned to them by the President of the Republic, the Ministers shall take an oath or give a solemn promise.

The President of the Republic shall administer the oath or solemn promise.

The text of the oath or the solemn promise shall be determined by the Statute of the Council of Ministers.

Article 99

The Prime Minister and the other Ministers shall constitute the Council of Ministers.

The Council of Ministers shall discuss and reach decisions concerning state affairs.

The Auditor General shall participate in an advisory capacity at the meetings of the Council of Ministers.

Article 100

The President of the Republic shall preside over the meeting of the Council of Ministers when he is present at the meeting.

The President of the Republic may call meetings of the Council of Ministers.

Article 101

The Deputy Prime Minister shall act for the Prime Minister when the latter cannot perform his duties, or when the Prime Minister entrusts his duties to be performed for a certain time or for a certain reason.

Article 102

When the Prime Minister acts for the President of the Republic or when, upon the death or resignation of the President of the Republic, he leads the State, he shall not act as Prime Minister. The duties of the Prime Minister during such time shall be performed by the Deputy Prime Minister.

Article 103

A court case may be instituted against the Prime Minister or against any Minister for service offences only with the consent of the President of the Republic. Such cases shall be decided at a meeting of the Supreme Tribunal, in which not less than five judges shall participate. The procedure shall be determined by law.

Article 104

The State Council shall consider the preparation and discussion of laws and regulations, express its views thereupon, and discuss the codification of laws and other pertinent questions.

The composition and competence of the State Council shall be determined by law.

Article 105

The Statute of the Council of Ministers shall be determined by law.

CHAPTER XIII Laws

Article 106

Laws that are contrary to the Constitution shall be null and void.

Article 107

The Seimas shall discuss and pass draft laws.

Draft laws shall be proposed by the Council of Ministers or by at least one-fourth of the Members of the Seimas.

Article 108

A draft law passed by the Seimas shall be presented to the President of the Republic.

The President of the Republic, not later than within thirty days, shall either approve the draft law passed by the Seimas and promulgate it as a law, or shall return it to the Seimas for reconsideration, indicating the reasons for which it is not approved.

Article 109

If the Seimas, considering a draft law for the second time, passes the unchanged draft law by a majority of at least three-fifths of the Members of the Seimas, the President of the Republic shall either approve such a draft law and promulgate it as a law, or shall dissolve the Seimas.

If a newly elected Seimas in its first session, upon a proposal agreed upon by at least one-fourth of the Members of the Seimas, discusses the same unchanged draft law, and if the Seimas passes it unchanged by a majority of the Members of the Seimas, the President of the Republic shall promulgate it as a law.

Article 110

The President of the Republic shall pass laws when there is no Seimas, or when the Seimas is not in session.

Article 111

The procedure for promulgating laws and their entry into effect shall be determined by law.

Article 112

The President of the Republic shall authorise the concluding of international treaties and shall ratify them.

When the Seimas is in session, the Council of Ministers shall recommend to the Seimas for its consent to the ratification of such treaties that amend the laws or require the passing of a new law.

CHAPTER XIV The State Budget

Article 113

The fiscal year shall begin on January 1 and shall end on December 31.

The budget shall be established for every fiscal year.

The Council of Ministers shall prepare a draft budget.

Article 114

Prior to November 1, the Council of Ministers shall submit to the Seimas the draft budget for consideration.

When considering the draft budget, the Seimas may increase the expenditure, determining by law the new revenue required to defray such expenditure, but it must not decrease expenditure that has been determined by law or agreements.

If by decision of the Council of Ministers a plan for several years has been determined for the administration of some economic undertaking and if funds have been assigned by the budget for the beginning of the enforcement of this plan, the Seimas must not decrease the amount of funds set forth by the Council of Ministers in the budget for the enforcement of this plan.

Article 115

The draft budget adopted by the Seimas shall be submitted to the President of the Republic before the end of the autumn session of the Seimas.

The President of the Republic shall approve the budget passed by the Seimas.

Article 116

Should the Seimas not pass the draft budget before the end of the autumn session of the Seimas, and if the President of the Republic does not call an extraordinary session for the consideration of the draft budget, the Council of Ministers shall submit the draft budget to the President of the Republic for approval.

Article 117

In the event that there is no Seimas, the Council of Ministers shall submit the draft budget to the President of the Republic for approval.

Article 118

The approved draft budget shall be promulgated by the President of the Republic as the budget.

If the budget is not promulgated before the beginning of the fiscal year, expenditure may be made in the manner stipulated by the Budget Law.

Article 119

The budget may be changed.

The manner applied for the changing of the budget is the manner set forth for the preparing, passing, and approving the budget. Nevertheless, in the absence of the Seimas, or when the Seimas is not in session, the Council of Ministers may present to the President of the Republic a draft amendment to the budget for approval.

CHAPTER XV Inquiries and Interpellations

Article 120

A Member of the Seimas may put a question to the Prime Minister or a Minister.

Article 121

Upon a proposal recommended by not less than one-fourth of the Members of the Seimas, the Seimas may submit an interpellation to the Prime Minister or Minister.

Article 122

After hearing the reply of the Prime Minister or the Minister to an interpellation and upon a proposal agreed upon by at least one-fourth of the Members of the Seimas, a majority of at least three-fifths of the Members of the Seimas may decide that they consider the reply unsatisfactory.

If the Seimas shall so decide regarding a reply of the Prime Minister, the Prime Minister will be dismissed or the Seimas will be dissolved.

If the Seimas shall so decide regarding a reply of a Minister, the Minister will be dismissed. If, however, the Prime Minister states, before the Seimas reaches a decision regarding the reply of the Minister concerned, that he supports the reply of the Minister, then the interpellation made to the Minister shall be considered as made to the Prime Minister.

If a newly elected Seimas, at its first session, upon proposal sponsored by at least one-fourth of the Members of the Seimas, shall decide to discuss the same interpellation for which the Seimas was dissolved, and which was addressed to the same Prime Minister to whom the dissolved Seimas had presented the interpellation, and, if by a majority of Members of the Seimas, the Seimas decides that the reply to the interpellation is unsatisfactory, the

President of the Republic shall dismiss the Prime Minister.

CHAPTER XVI

The Administrative System of the State

Article 123

For the administration of government branches there shall be Ministries.

The territory of the State shall be divided into administrative territorial divisions for the work of the Ministries at local level.

The organisation of the Ministries shall be determined by law.

Article 124

The President of the Republic shall appoint and release officials and other employees whose appointment and release are designated to him by law.

The organisation of the service system of officials and other employees shall be determined by law.

Article 125

Birth, marriage, and death records shall be kept by institutions of the State under conditions and in the manner stipulated by law.

The faithful may keep these records under the auspices of the clergy of their faith in accordance with the requirements and in the manner determined by law, and they are not obliged to repeat them elsewhere.

Article 126

For the care of local affairs, there shall be regional self-governing councils and municipalities. The right of autonomous activity may be granted to economic and crafts' branches.

The administration, jurisdiction, and conditions governing local affairs and autonomous municipalities shall be determined by law.

Article 127

Certain regions of Lithuania may be granted the right to manage autonomously certain local affairs.

The right of autonomy shall be granted, and the limits and the conditions of the autonomous management of local affairs shall be determined

by the autonomous statute of the region, which is determined by law.

Article 128

The accuracy and legality of actions of administrative institutions shall be supervised by superior institutions in the manner stipulated by law.

The manner in which the legality of actions of administrative institutions is protected shall be stipulated by law; the law shall also determine the court procedure.

CHAPTER XVII

Courts

Article 129

The court shall administer justice.

In performing its duties, the Court shall be independent.

The Court shall hand down decisions in the name of the Republic of Lithuania.

Court decisions may be altered or annulled only in the manner stipulated by law.

Article 130

The President of the Republic may grant total pardon of a sentence imposed by court decision, or any part thereof, or may commute it by a lighter penalty.

In cases determined by law, the President or the Republic shall have the right to restore rights that have been withdrawn or restricted.

Article 131

There shall be one supreme court for the whole territory of the State. This court shall be the Supreme Tribunal.

Article 132

Courts shall be instituted by law.

The organisation of courts and court proceedings shall be determined by law.

CHAPTER XVIII **The Defence of the State**

Article 133

All citizens shall defend the State.

The Army shall compose the nucleus of defence.

Article 134

Citizens shall be appropriately prepared for the defence of the State.

The national economy shall be coordinated with the requirements for the defence of the State.

Article 135

The President of the Republic shall be the Commander-in-Chief of the Armed Forces.

The composition of the Armed Forces and the organisation and competence of the command shall be determined by law.

Article 136

The President of the Republic shall appoint and release the Commander of the Armed Forces.

A court case against the Commander of the Armed Forces for service offences may be instituted only upon the consent of the President of the Republic.

Article 137

There shall be a State Defence Council headed by the President of the Republic, which shall decide upon affairs of state defence.

The composition and competence of the State Defence Council shall be determined by law.

Article 138

When the State is being defended, matters pertaining to state defence shall be governed by decrees of the President of the Republic, which have the power of a law. During this period, laws governing the defence of the State shall remain in force until they are changed by decree of the President of the Republic.

A decree of the President of the Republic shall require the signature of the Prime Minister.

Article 139

When public order or the security of the State is in danger, an extraordinary period – the intensified state protection period or the state defence period – may be proclaimed in the State or its part.

The extraordinary period shall be proclaimed and revoked by the President of the Republic upon the recommendation of the Council of Ministers.

Article 140

The law proclaiming an extraordinary period shall establish the power to restrict or suspend the rights of citizens, stipulated in the chapter regarding the duties and rights of citizens, with the exception of the provisions of Article 20 to adopt specific measures for the defence of the State and to impose particular duties upon the citizens.

During the extraordinary period, special courts may be instituted by law.

Article 141

The President of the Republic shall decide questions pertaining to mobilisation, war, and peace upon recommendation of the Council of Ministers.

When there is a Seimas, the consent of the Seimas shall be necessary for deciding upon questions pertaining to peace.

Article 142

Courts-martial shall have jurisdiction over crimes committed by servicemen on active service and over civilian accomplices in the said crimes.

Article 143

The State shall protect and provide for servicemen who lose their health in the performance of military service, and also for the families of servicemen who lose their health or life in the performance of military service.

In cases envisaged by law, the State shall make provision for citizens who lose their health while participating in the defence of the State, and for families of citizens who lose their lives while participating in the defence of the State.

CHAPTER XIX

The Office of the Auditor General

Article 144

The Auditor General shall be in charge of the Office of the Auditor General.

The President of the Republic shall appoint and release the Auditor General.

Article 145

The Auditor General shall take an oath or give a solemn promise before entering upon his duties.

The President of the Republic shall administer the oath or the solemn promise.

The text of the oath or solemn promise shall be determined by the Law on the Office of the Auditor General.

Article 146

The Auditor General shall supervise the just administration of the property of the State.

In cases envisaged by law, the Auditor General shall express his opinion regarding the expediency of agreements. Conflicts of opinion between the Auditor General and a Minister as to expediency of agreements shall be decided by the Council of Ministers.

Article 147

The Auditor General shall supervise the correct enactment of the State budget.

Complaints regarding deductions shall be decided in the manner stipulated by law.

Article 148

The Auditor General shall prepare annually the account of the enforcement of the budget and shall submit it to the Seimas for approval. In the event that there is no Seimas, the account shall be submitted to the President of the Republic.

Article 149

The Auditor General may be appointed by law to supervise in determining the just administration of property and use of funds by local or autonomous municipalities and such private institutions and enterprises in which the State Treasury participate or which receive subsidies from the State Treasury.

Article 150

Court cases may be instituted and decided against the Auditor General for service offences according to the procedure stipulated for the institution of court cases for service offences against a Minister.

Article 151

The organisation of the Office of the Auditor General shall be determined by law.

CHAPTER XX The Alteration of the Constitution

Article 152

The Council of Ministers, or at least one half of the Members of the Seimas, may propose a draft amendment to the Constitution.

The Seimas shall decide upon a proposed draft amendment to the Constitution.

Article 153

The Seimas shall adopt a draft amendment to the Constitution by a majority of at least three-fifths of the Members of the Seimas.

The draft amendment to the Constitution that has been passed by the Seimas shall be submitted to the President of the Republic.

Article 154

The President of the Republic shall either approve and promulgate as an amendment to the Constitution the draft amendment to the Constitution that has been passed by the Seimas, or shall dissolve the Seimas.

If a newly elected Seimas, at its first session, upon proposal of at least one half of the Members of the Seimas, decides to discuss the same unchanged draft amendment to the Constitution

and if the Seimas passes it unchanged by a majority of at least three-fifths of the Members of the Seimas, the President of the Republic shall promulgate it as an amendment to the Constitution.

CHAPTER XXI Concluding Provisions

Article 155

Upon the entry into force of this Constitution, the Lithuanian State Constitution (Official Gazette *Vyriausybės Žinios*, No 275, Serial No 1778) shall become null and void.

Article 156

The laws that have been in force until the entry into force of this Constitution and that are not contradictory to this Constitution and will not be amended or abrogated in the manner stipulated by this Constitution shall remain in force.

President of the Republic
Antanas Smetona

Prime Minister
Vladas Mironas

THE DECLARATION OF THE COUNCIL OF THE LITHUANIAN FREEDOM FIGHT MOVEMENT (16 FEBRUARY 1949)

The Council of the Lithuanian Freedom Fight Movement, representing all of the military public formations present within the territory of Lithuania and headed by a united leadership, namely:

- (a) the South Lithuanian Region including the Dainava District and the Tauras District,
- (b) the East Lithuanian Region including the Algimantas District, the Didžioji Kova District, the Vytis District and the Vytautas District,
- (c) the West Lithuanian Region including the Kęstutis District, the Prisikėlimas District and

the Žemaičių District, that is to say, expressing the will of the Lithuanian Nation, reiterating the fundamental principles of the 10 June 1946 Declaration of the Supreme Committee for the Restoration of Lithuania, the 28 May 1947 UDRM³ decisions and the UDRM Declaration No 2, and supplementing them by the decisions adopted on 10 February 1949 at the joint meeting of the UDRM Presidium and at the UDRM Military Council, declares:

1. Relying on the 10 February 1949 decisions by the UDRM Presidium and UDRM Military

³ UDRM – the United Democratic Resistance Movement.

Council joint meeting, during the occupation period, the LFFM⁴² Council shall be the supreme political body of the Nation, in charge of the political and military fight for the liberation of the Nation.

2. The headquarters of the LFFM Council and its Presidium shall be located in Lithuania.

3. The State system of Lithuania shall be a democratic republic.

4. The sovereign authority of Lithuania shall belong to the Nation.

5. The governance of Lithuania shall be exercised by the Seimas elected through free, democratic, universal, and equal elections by secret ballot and by the formed Government.

6. The Provisional National Council shall have the legislative power during the period from the end of the occupation until the democratic Seimas of Lithuania is convened.

7. Observing the principle of proportional representation, the Provisional National Council shall consist of the representatives of all the regions, districts, groups, high schools, cultural and religious organisations and movements and political parties having national support, under a united leadership fighting in Lithuania and abroad.

8. Upon the restoration of Lithuania's independence until the Seimas is convened, the Chairman of the LFFM Council Presidium shall hold the office of the President of the Republic.

9. The Provisional Government of Lithuania shall be formed upon the assignment of the Chairman of the LFFM Council Presidium. The Government shall be accountable to the Provisional National Council.

10. For the coordination of the activities by the Lithuanians abroad and the restoration of Lithuania, the LFFM Council Presidium shall maintain the LFFM Delegation Abroad that, in co-operation with the representatives of Lithuania accredited to the Western States, shall establish commissions and delegations to defend and represent Lithuania's interests before the United Nations Organisation, at various conferences and other international institutions.

11. Members of the LFFM Delegation Abroad shall elect of their number the Chairman of the

LFFM Delegation Abroad, who shall be considered the Deputy Chairman of the LFFM Council Presidium.

12. Members of the LFFM Delegation Abroad shall be considered full and equal members of the LFFM Council.

13. To implement this Declaration the LFFM Council shall issue regulations.

14. Prior to the Seimas adopts and promulgates the State Constitution complying with human freedom and democracy aspirations, the restoration of the State of Lithuania shall be implemented in accordance with the provisions declared by this Declaration and in the spirit of the 1922 Constitution of Lithuania.

15. The restored State of Lithuania shall guarantee equal rights for all of Lithuania's nationals who have not committed any crimes against Lithuanian national interests.

16. As dictatorial and in essence contrary to the principal aspiration of the Lithuanian Nation and the cornerstone of the Constitution, that is Lithuania's independence, the Communist Party shall not be considered a legal party.

17. Persons who have betrayed their Homeland during the Bolshevik or German occupation by collaborating with the enemy, having by their actions or influence undermined the Nation's fight for liberation and have been stained by treason or blood, shall be held responsible before the Court of Lithuania.

18. The positive influence of religion in developing the Nation's morality and sustaining its strength during the most difficult period of the freedom fights is underlined.

19. Social care is not a matter of individual citizens or organisations alone, but it is rather one of the priority tasks of the State. Particular care shall be provided by the State to the victims of the liberation fight and their families.

20. A rational settlement of the social problems and the reconstruction of the State economy are linked to the reform of agriculture, municipalities and industry, which shall be implemented at the very outset of independent existence.

21. In close union with the fighting Nation, the LFFM Council invites all the Lithuanians of good will, residing within the Homeland and outside its

⁴ LFFM – the Lithuanian Freedom Fight Movement.

borders, to forget the differences in their views and to join the activities of national liberation.

22. Contributing to the efforts of other nations to establish the world over a constant peace founded on justice and freedom and based on a full implementation of the principles of real democracy following from an understanding of Christian morality and declared in the Atlantic Charter, Four Freedoms, President Truman's 12 Points, the Declaration of Human Rights and other declarations of justice and freedom, the LFFM Council appeals to all of the democratic world for assistance in implementing its goals.

Occupied Lithuania
16 February 1949

Chairman of the LFFM Council Presidium
Vytautas

Members of the LFFM Council:
Faustas
Kardas
Merainis
Naktis
Užpalis
Vanagas
Žadgaila

LIST OF THE SIGNATORIES OF THE DECLARATION OF THE COUNCIL OF THE LITHUANIAN FREEDOM FIGHT MOVEMENT

The Declaration was signed by:⁵

Chairman of the Presidium of the Council of the Lithuanian Freedom Fight Movement: Jonas ŽEMAITIS-VYTAUTAS;

Commander of the Tauras District: Aleksandras GRYBINAS-FAUSTAS;

Chief of the West Lithuanian Regional Headquarters: Vytautas GUŽAS-KARDAS;

Chief of the Didžioji Kova District Headquarters and the Authorised Representative of the Algimantas District and the Vytautas District: Juozas ŠIBAILA-MERAINIS;

Chief of the Prisikėlimas District Headquarters: Bronius LIESYS-NAKTIS;

Commander of the Prisikėlimas District: Leonardas GRIGONIS-UŽPALIS;

Acting Commander of the South Lithuanian Region, Commander of the Dainava District: Adolfas RAMANAUSKAS-VANAGAS;

Secretary of the Presidium of the Council of the Lithuanian Freedom Fight Movement: Petras BARTKUS-ŽADGAILA.

⁵ Italics mark a *nom de guerre* (a partisan code name) of each of the signatories of the Declaration.

THE ACT ON THE RE-ESTABLISHMENT OF THE INDEPENDENT STATE OF LITHUANIA (11 MARCH 1990)

The Supreme Council of the Republic of Lithuania, expressing the will of the nation, decrees and solemnly proclaims that the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940 is re-established, and henceforth Lithuania is again an independent state.

The Act of Independence of 16 February 1918 of the Council of Lithuania and the Resolution of 15 May 1920 of the Constituent Assembly (Seimas) on the re-established democratic State of Lithuania never lost their legal effect and comprise the constitutional foundation of the State of Lithuania.

The territory of Lithuania is whole and indivisible, and the constitution of no other State is valid on it.

The State of Lithuania stresses its adherence to universally recognised principles of international law, recognises the principle of inviolability

of borders as formulated in the Helsinki Final Act adopted at the Conference on Security and Co-operation in Europe, held in Helsinki in 1975, and guarantees human, civil, and ethnic community rights.

The Supreme Council of the Republic of Lithuania, expressing sovereign power, by this Act begins to realise the complete sovereignty of the state.

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Secretary of the Supreme Council of
the Republic of Lithuania
Liudvikas Sabutis

Vilnius, 11 March 1990

THE PROVISIONAL BASIC LAW OF THE REPUBLIC OF LITHUANIA (11 MARCH 1990)⁶

Text with the Amendments made until 28 February 1991

CHAPTER 1 GENERAL PROVISIONS

Article 1

The Republic of Lithuania shall be a sovereign democratic state expressing the general will and interests of the people of Lithuania.

Article 2

The sovereign state power shall belong to the people of Lithuania. The people shall express their sovereign power through the exercise of legislative initiative, the election of deputies, votes on constitutional matters, and democratic referenda.

No one shall have the right to restrict this power or to arrogate it to himself.

The citizens of the Republic of Lithuania have the right to oppose all attempts to forcefully undermine the sovereignty and integrity of the State of Lithuania. (*Amended 28 February 1991*)

The Supreme Council of the Republic of Lithuania, the Government of the Republic of Lithuania, and the Judiciary shall exercise state power in Lithuania.

Article 3

The most significant questions of the state and public life of Lithuania shall be presented for

⁶ The translation of the document is available on the official website of the Seimas of the Republic of Lithuania, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21108?jfwid=7r9vcx1ne>.

public discussion and shall be decided by means of referenda. (*Amended 23 October 1990*)

A referendum shall be called by the Supreme Council of the Republic of Lithuania on its own initiative or whenever it is called for by three hundred thousand (300 000) citizens of Lithuania eligible to vote.

The procedure for presenting the most significant questions of state life for public discussion and for conducting referenda shall be established by law. (*Amended 23 October 1990*)

Article 4

The territory of the Republic of Lithuania shall be integral and indivisible; its borders may be changed only on the basis of an international treaty upon ratification by four-fifths vote of all deputies of the Supreme Council of Lithuania.

Article 5

Parties, public organisations, and public movements shall be created according to the procedure established by law and shall function within the limits of the Provisional Basic Law and other laws of the Republic of Lithuania.

Article 6

Political, professional, cooperative, public organisations and movements, associations for the creative arts and scientific associations, in accordance with the objectives and bylaws of their own programmes, shall participate in the management of state and public affairs and in the solving of political, economic, and social issues.

Article 7

The Lithuanian language shall be the state language of the Republic of Lithuania.

The Republic of Lithuania shall ensure the use of the Lithuanian language in the activities of state and public bodies, educational, cultural, scientific, industrial and other institutions, enterprises and organisations, as well as ensure the state's commitment to the comprehensive development and teaching of the Lithuanian language. Conditions shall be created for the use and development of the languages of ethnic minorities.

Article 8

The defence of the country shall be regulated by law. War propaganda shall be prohibited in the Republic of Lithuania.

Article 9

The state coat of arms of the Republic of Lithuania shall be a white Vytis on a red field.

Article 10

The state flag of the Republic of Lithuania shall be its national flag, which consists of three horizontal stripes: the upper stripe being yellow, the middle being green, the bottom being red. The ratio of the width and length of the flag is 1 to 2.

Article 11

The national anthem of the Republic of Lithuania shall be "Tautiška giesmė" by Vincas Kudirka.

Article 12

The capital of the Republic of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania.

CHAPTER 2

LITHUANIAN CITIZENSHIP

Article 13

The attributes of Lithuanian citizenship, as well as the conditions and procedures for receiving and losing it, shall be defined by the Law on Lithuanian Citizenship.

As a rule, a citizen of Lithuania may not be concurrently a citizen of another state.

Lithuanian citizens abroad shall be defended and protected by the State of Lithuania.

Immigration to the Republic of Lithuania shall be regulated by law.

Article 14

Citizens of Lithuania shall be equal before the law irrespective of race, sex, social origin, economic or material status, social views, religion, or nationality.

The equality of Lithuanian citizens shall be protected in all spheres of economic, political, social, and cultural life.

Article 15

Women and men shall enjoy equal rights in Lithuania.

The realisation of these rights shall be ensured by the granting of equal rights to women, opportunities in obtaining education, professional training, employment, remuneration and promotion in work, participation in public, political and cultural activities, as well as by special safety and health measures in the workplace.

Motherhood and family shall be given special protection by the state. Laws shall provide for the protection of the rights of mothers and children, material and moral support, including paid holidays, concessions to pregnant women and to families and mothers with many children, benefits at the baby's birth, shorter working hours for working mothers with young children.

The work of mothers raising two or more children at home shall be recognised to be a socially significant activity and shall be remunerated according to law.

Article 16

Citizens of Lithuania of different races and nationalities shall have equal rights. Any direct or indirect restriction of the rights of Lithuanian citizens, any direct or indirect establishment of privileges on the basis of social origin, public views, beliefs or nationality, the humiliation of a citizen on the basis of these characteristics, as well as all kinds of propaganda of racial or national exclusiveness, discord, or disdain shall be prosecuted by law.

Article 17

In the Republic of Lithuania, foreign citizens and individuals without citizenship shall be guaranteed rights and freedoms provided by law, including the right of access to courts or other state bodies to defend their personal, property, family, and other rights.

On the territory of Lithuania, foreign citizens and persons without citizenship must observe the Provisional Basic Law of Lithuania and other laws of the Republic of Lithuania.

CHAPTER 3 THE FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES OF LITHUANIAN CITIZENS

Article 18

Citizens of Lithuania shall have the right to work paid on the basis of its amount and quality; remuneration shall not be less than the minimum set by the state; citizens shall also have the right to choose profession, vocation, or work according to their own inclination, abilities, professional training, education, and in accordance with the requirements of society.

Article 19

Citizens of Lithuania shall have the right to rest and recreation. This right shall be ensured by a working week of no more than 40 hours, yearly paid holidays, free days every week, as well as the expansion of the network of educational and health institutions, the development of mass sports, physical culture and tourism, the creation of favourable conditions for rest and recreation where one resides, and other conditions for the rational use of one's free time. (*Amended 11 September 1990*)

The working hours and the number of free days for collective farmers shall be regulated by the collective farm.

Article 20

Citizens of Lithuania shall have the right to health care. This right shall be ensured by free qualified medical care administered by state health institutions, the expansion of the network of health care institutions, the development and improvement of technology for ensuring safety and sanitary conditions in industry, the wide implementation of preventive measures, special commitment to the health of the growing generation including prohibition of child labour not connected to education, the promotion of research aimed at the prevention of disease, decreasing mortality, guaranteeing long and active life expectancy of citizens.

Every citizen of Lithuania shall have the right to a healthy and habitable environment.

Article 21

Citizens of Lithuania shall have the right to material provision in old age, in case of illness, partial or total loss of ability to work, as well as the loss of the family's main source of income. This right shall be ensured by social security for workers, state employees and collective farmers; temporary disability benefits; by old age, disability and pensions to cover the loss of a family's main source of income, paid from the state and collective farm funds; by employment of partially disabled citizens; care of the elderly and invalids; and other forms of social security.

Article 22

Citizens of Lithuania shall have the right to housing.

This right shall be ensured by the development and preservation of state and public housing, support for the cooperative and individual construction of residential housing, the fair and publicly-regulated distribution of housing granted through the construction programmes of well-equipped dwellings, as well as through reasonable rents and housing rates. Citizens of Lithuania must keep the housing provided them in good repair.

Article 23

Citizens of Lithuania shall have the right to education.

This right shall be ensured by free education of all kinds, the implementation of universal secondary education, widely developed technical-vocational, specialised secondary and higher education; state grants and concessions for students; free secondary school textbooks; the possibility to receive instruction at school in one's native language; the creation of conditions for self-education.

The laws of the Republic shall provide for cases when institutions of higher education work on the basis of academic autonomy.

Article 24

Citizens of Lithuania shall have the right to avail themselves of cultural achievements.

This right shall be ensured by the fact that the assets of Lithuanian and world culture contained in the state and public funds are available to all; the development of institutions of cultural education and their equal distribution on the territory of

Lithuania; the development of television and radio communications; the development of printed and periodical press publications; free libraries; and the expansion of cultural exchanges with foreign countries.

Cultural depositories, institutions and funds, supported through state donations, fulfilling the interests and independent activities of the public, groups, and subgroups, shall be the nation's treasure. (*Amended 23 October 1990*)

Article 25

Citizens of Lithuania shall be guaranteed the freedom of scientific, technological and artistic creativity. This shall be ensured by the development of research, invention, innovation, literature, and art. The state shall create material conditions necessary for this and shall support creative unions.

The rights of authors, inventors and innovators shall be protected by the state.

Article 26

Citizens of Lithuania shall have the right to participate in managing state and public affairs, in the discussion and adoption of state laws and local decisions.

This right shall be ensured by the opportunity to elect and to be elected to Councils of People's Deputies and other elected state bodies, to take part in public discussions and voting, in the work of supervisory and state bodies, social organisations and independent public bodies, in the meetings of work collectives and meetings in the one's place of residence. (*Amended 23 October 1990*)

Article 27

Every citizen of Lithuania shall have the right to make proposals to state bodies and social organisations to improve their work, or to criticise their shortcomings.

Citizens of Lithuania shall also have the right to petition, i.e. to demand that state executive bodies resolve their socially significant issues by legislative or other means.

Officials shall be required to consider the proposals, applications, and petitions of citizens, to answer them, and to take appropriate measures within the period of time established for such matters.

Persecution for criticism shall be prohibited. Persons undertaking such acts of persecution shall be subject to legal accountability.

Article 28

Citizens of Lithuania shall be guaranteed the right to collect and disseminate information on all issues, with the exception of issues related to state secrets, as well as issues impairing the dignity and honour of the individual.

Article 29

Citizens of Lithuania shall be guaranteed freedom of speech, press, assembly, mass meetings and demonstrations.

The realisation of these political freedoms shall be guaranteed by providing the citizenry and their organisations access to public buildings, streets, and squares, by providing for the broad dissemination of information, and by providing access to the press, television, and radio. (*Amended 23 October 1990*)

These political freedoms may not be used to promote racial and national enmity and antihumanitarian views.

Article 30

Citizens of Lithuania shall have the right to organise and join political parties and social organisations to realise their political, economic, ecological, scientific, cultural, religious, and other interests if they do not conflict with existing laws.

Organisations shall be guaranteed conditions for the realisation of their stated objectives.

The procedure for the creation, registration, and dissolution of political parties and social organisations shall be defined by law.

Article 31

In the Republic of Lithuania, the freedom of thought, conscience, and religious faith or lack of religious faith, equal rights to profess convictions and views, singly or in groups, to express or disseminate them by peaceful means shall be guaranteed by law.

No one shall compel another person or himself be compelled to speak out, conduct himself, or act against one's own conscience or convictions.

State institutions, educational and preparatory establishments shall be secular in nature.

According to the procedure established by law these institutions and establishments shall maintain contact with the Church and other religious organisations in promoting morality.

The Church and other religious organisations shall have independent legal status and they shall be guaranteed the right to independently conduct their internal affairs.

Article 32

The family shall be protected by the state.

Marriage shall be based on mutual consent of women and men: the spouses shall be absolutely equal in family relations.

Article 33

Citizens of Lithuania shall be guaranteed inviolability and privacy.

Proceeding on the basis of the presumption of innocence, no one shall be prosecuted as a criminal unless a basis for such prosecution is provided for by law and such prosecution is conducted according to established procedure. No one shall be subject to detention except where there is a legal basis for such detention and such basis is supported by the court or a prosecutor.

Every citizen shall be guaranteed access to legal counsel from the moment of his detention.

Article 34

Citizens of Lithuania shall be guaranteed the inviolability of their place of residence. No one shall have the right, without legal basis, to enter a place of residence against the will of the people residing there.

Article 35

The privacy of citizens' private life, correspondence, telephone conversations and telegraph messages shall be protected by law.

Article 36

It shall be the duty of all state bodies, social organisations, and officials to respect the individual and to protect citizens' rights and freedoms.

A citizen of Lithuania shall have the right to redress in court infringements upon his honour and dignity, life and health, personal freedom and property.

Article 37

Citizens of Lithuania shall have the right to lodge complaints concerning the actions of officials and state and social organisations. Complaints must be processed according to procedures established by law and within the period of time established for such matters.

The actions of officials that violate the law or exceed their powers and restrict the rights of citizens may be appealed against before a court according to procedure established by law.

Citizens of Lithuania shall have the right to receive compensation for damages inflicted upon them by state and social organisations, as well as for damage inflicted by officials in discharging their official duties.

Article 38

The fulfilment of a citizen's rights and freedoms shall be inseparable from the fulfilment of his duties.

A citizen of Lithuania must observe the Provisional Basic Law of Lithuania and other laws of the Republic of Lithuania.

Article 39

A citizen of Lithuania must protect the interests of the State of Lithuania and defend it.

Military service in the army of the Republic of Lithuania shall be an honourable duty of all citizens of Lithuania.

Article 40

It shall be the duty of every citizen of Lithuania to respect the dignity and honour of other persons.

Article 41

Citizens of Lithuania must be responsible for the education of their children and their preparation for socially beneficial employment. Children must care for their parents and support them.

Article 42

Citizens of Lithuania must protect, preserve, and contribute to a habitable environment.

Article 43

It shall be the duty and obligation of citizens of Lithuania to seek to preserve historical monuments and other cultural assets.

CHAPTER 4 THE ECONOMIC SYSTEM

Article 44

The economy of Lithuania shall be based on the property of the Republic of Lithuania, which shall consist of the private property of its citizens, the property of groups of citizens, and state property.

Ownership relations shall be regulated by laws of Lithuania and shall be based on agreements between appropriate parties.

Conditions for the existence of relations of property belonging to international organisations, to citizens and groups (collectives) of citizens of other countries, on the territory of the Republic of Lithuania, shall be defined by laws of Lithuania and interstate treaties.

The Republic of Lithuania shall guarantee to all holders of property the possibility of independent management of objects that belong to them according to the law on property, as well as the use and disposal of such property according to the laws of Lithuania. To realise their rights, property owners shall have the legal right to hire other individuals according to the laws of Lithuania.

Uniform rights for the defence of one's property rights shall be established for all owners of property.

The Republic of Lithuania shall defend the rights of property owners in other countries.

Article 45

The land, the subsurface, inland and territorial waters, forests, plants and wildlife, and other natural resources shall be the national wealth of Lithuania and the exclusive property of the Republic of Lithuania. The subsurface shall be the exclusive property of the State of Lithuania. Other property belonging exclusively to the Republic of Lithuania may be owned by citizens of Lithuania and their groups (collectives).

The Republic of Lithuania shall have the exclusive right to the air space over its territory, its continental shelf, and the economic zone in the Baltic Sea.

Article 46

Property of the Republic of Lithuania that is state property may, with or without compensation,

become private property of citizens or their groups according to procedures established by law.

In exceptional cases, when it is necessary to safeguard the interests of Lithuania, the property of citizens, groups of citizens, as well as other states, their citizens or groups of citizens may be nationalised, with compensation, through the passage of a special law.

CHAPTER 5 THE BUDGETARY SYSTEM

Article 47

The budgetary system of the Republic of Lithuania shall be composed of separate independent state and local budgets.

The State Budget of Lithuania shall consist of that part of the national revenue which is allocated for education, science, health care and social benefits, economic development and its infrastructure, the support of state power and executive bodies, and national expenditure connected with defence. Financial resources to meet the needs of local administrative bodies shall also be allocated through the State Budget.

Article 48

The draft budget of the Republic of Lithuania shall be prepared by the Government of the Republic of Lithuania on the basis of current and planned state projects and existing laws of the Republic of Lithuania, and shall be presented to the Supreme Council for approval. (*Amended 23 October 1990*)

Article 49

The budget of the Republic of Lithuania shall be debated, approved and amended by the Supreme Council of the Republic of Lithuania on the basis of a report of the Government of the Republic of Lithuania and the conclusions of standing commissions.

During debate, the deputies of the Supreme Council of the Republic of Lithuania may propose increases in the draft budget, provided they are able to point to sources through which such expenditure will be reimbursed. (*Amended 23 October 1990*)

The general figures of the approved budget shall be made public.

Article 50

The execution of the State Budget of the Republic of Lithuania shall be organised by the Government of the Republic of Lithuania. (*Amended 23 October 1990*)

Article 51

Accounting of the expenditure of the Lithuanian State Budget shall be prepared by the Government to be later considered and approved by the Supreme Council. The general figures pertaining to the expenditure in the Budget shall be made public. (*Amended 23 October 1990*)

Article 52

Every local government shall have its own separate budget. It shall have funds to finance social, economic, and other local programmes and to support local government offices.

Article 53

The revenue and expenditure of the Budget of the Republic of Lithuania shall be allocated among the constituent parts of the budget system according to the Law on Budgeting and other legal acts of the Republic of Lithuania.

CHAPTER 6 SOCIAL DEVELOPMENT AND CULTURE

Article 54

The state shall give financial aid to all students, the disabled, and citizens who are temporary unemployed.

Article 55

Ethnic minorities comprising a significant proportion of the citizenry shall have the right to independently manage the affairs of their ethnic culture, education, charity and mutual assistance. The state shall provide them with support. (*Amended 23 October 1990*)

Article 56

The Republic of Lithuania shall provide for the health of its citizens and shall develop social welfare systems.

Article 57

The national educational system of the Republic of Lithuania shall be adapted to the historical and cultural traditions of the country and its economic trends. The educational system shall provide the population with professional training and general education that is necessary for the education of conscientious and socially committed citizens.

Possibilities shall be created for citizens of other nationalities residing in Lithuania to have preschool educational institutions, in which their children shall be taught in their native language, as well as training their teachers in their native language, to develop their national culture, to learn the Lithuanian language, and to study Lithuanian culture and history.

The organisation of the educational system shall be defined in the Law on Education of the Republic of Lithuania. *(Amended 23 October 1990)*

Article 58

The state shall be committed to the development of science and national culture, the enhancement of spiritual values, the preservation of the country's cultural heritage – historical, architectural, artistic and other cultural monuments – and the wide use thereof to elevate morality and the aesthetic education of people and to develop culture.

Professional and folk art of all types shall be encouraged in Lithuania.

Article 59

The Republic of Lithuania shall care for the national, cultural and educational needs of Lithuanians residing abroad.

CHAPTER 7

THE SYSTEM OF THE COUNCILS OF PEOPLE'S DEPUTIES AND THE PRINCIPLES GUIDING THEIR ACTIVITY

Article 60

Councils of People's Deputies shall be comprised of the Supreme Council of the Republic of Lithuania, regional, municipal, township, and rural district councils of people's deputies, and form a unified system of the representative state power bodies of Lithuania.

Within their own territory, councils of people's deputies shall be lawfully empowered to execute the will of the people, acting on the basis of democracy and in accordance with the law.

Article 61

The term of office for the councils shall be five years.

The date of the elections of the deputies to the Supreme Council of the Republic of Lithuania and to the local councils shall be announced no later than three months prior to the expiry of their term of office. *(Amended 11 September 1990)*

The Supreme Council of the Republic of Lithuania may surrender its powers before the expiry of its term of office. This decision must be adopted by a majority vote of two-thirds of the total number of the deputies. In this case, an early election shall be announced, and the Supreme Council shall discharge its functions of state government until the new Supreme Council is elected. *(Amended 11 September 1990)*

Article 62

Questions of supreme state and local importance shall be considered and resolved at the sessions of the Supreme Council of the Republic of Lithuania and local councils of people's deputies.

Councils of people's deputies may form standing commissions, they shall also form executive and other bodies accountable to them. *(Amended 23 October 1990)*

Officials elected or appointed by councils of people's deputies may not remain in office for more than two consecutive terms. *(Amended 23 October 1990)*

Any official may be dismissed from his post before his term of office expires if he does not properly fulfil his duties.

Article 63

On their respective territories, councils of people's deputies, directly and through their institutions, shall concern themselves with state, economic, social, and cultural affairs, as well as make decisions and exercise control over their implementation.

Article 64

The activity of councils of people's deputies shall be based on collective, free, and business-like discussion and resolution of all questions, on openness, on regular accounts of the executive bodies to the councils and the people, and on the broad involvement of the citizenry in their work.

In their activity, councils of people's deputies and their institutions shall take public opinion into consideration, bring before the citizens the most important state and local matters for their consideration, and inform the public regularly about their work and decisions.

CHAPTER 8 THE ELECTORAL SYSTEM

Article 65

Lithuanian citizens shall be elected deputies to all Councils of Deputies on the basis of universal, equal, and direct suffrage by secret ballot.

Article 66

Elections of deputies shall be universal: upon reaching the age of 18, all citizens of Lithuania shall be eligible to take part in these elections.

A citizen of Lithuania shall be eligible to be elected a deputy of a Council of people's deputies upon reaching the age of 18, and may be elected deputy of the Supreme Council upon reaching the age of 21.

A deputy of the Supreme Council of the Republic of Lithuania may not be concurrently a deputy of any other Council.

Members of the Government and the executive bodies formed by Local Councils of People's Deputies, as well as the heads of ministries, state committees and agencies, judges, prosecutors, state arbiters, and other officials may not, at the same time, be deputies of the council that elects, appoints, or confirms them.

Article 67

Elections of deputies in electoral districts shall be equal: every voter shall have one vote and voters shall participate in elections on an equal basis.

Article 68

Elections of deputies shall be direct: deputies shall be elected directly by citizens.

Article 69

Voting in elections shall be individual and secret; control over the decision how to exercise one's vote shall be prohibited.

All voters shall be guaranteed the same voting conditions.

Article 70

Political parties, social organisations, social movements, and groups of voters shall have the right to nominate candidates for the post of a deputy at their place of employment or residence.

The number of nominees for the post of a deputy shall not be restricted. Every participant in a pre-electoral meeting shall have the right to nominate and consider the candidacy of any citizen of Lithuania, including his own.

Any number of the candidates may be entered on the ballot.

Expenditure for the preparation and organisation of the elections of deputies shall be paid for by the state.

Article 71

Preparation for the election of deputies shall be open and public.

Elections shall be organised by electoral commissions formed from the representatives of political parties, social organisations, social movements, work collectives, and meetings at places of residence.

Citizens of Lithuania, work collectives, political parties, social organisations, and social movements shall be guaranteed the opportunity to freely and fully consider the political, professional and personal characteristics of the candidates nominated to the post of a deputy, as well as the right to lobby for or against a candidate in meetings, in the press, on television and radio.

The procedure for organising the election of deputies shall be defined by the laws of Lithuania.

Complaints concerning violations of the election law shall be reviewed by electoral commissions and the courts of Lithuania according to the procedure established by law.

Article 72

Electoral councils of people's deputies shall review the mandates given them by their electorate, taking them into account when drawing

up the budget and preparing decisions on other issues; they shall organise the implementation of these mandates and shall inform the citizenry concerning their implementation.

CHAPTER 9 DEPUTIES

Article 73

Deputies shall be the authorised representatives of the people in the Councils of People's Deputies.

By participating in the activity of the Councils, deputies shall solve questions pertaining to the state, economic, social, and cultural work, shall organise the implementation of the decisions of the Council, shall exercise control over the functioning of state organs, enterprises, institutions, and organisations.

In his activities, a deputy shall be guided by the interests of the state, shall take into consideration the needs of the people of his constituency, shall seek to effect the implementation of his constituents' mandate.

Article 74

With the consent of the Supreme Council, a deputy of the Supreme Council of the Republic of Lithuania may exercise powers and retain primary employment. For work at the Supreme Council a deputy shall receive remuneration established by law.

As a rule, a deputy of a Local Council of People's Deputies shall exercise his duties without interrupting his work at an enterprise or office.

During periods when the Local Councils of People's Deputies are in session, as well as at the times when a deputy must exercise his duties as provided for by law, the deputy shall be relieved from work at an enterprise or an office; the expenses connected with activities as a deputy, as well as a compensation for wages, shall be covered from the revenue of the local budget.

Article 75

A deputy shall have the right to submit an inquiry to the appropriate state organs and officials who shall make a reply to the inquiry at a session of the Supreme Council or Local Council of People's Deputies.

A deputy shall have the right to approach all state and public bodies, enterprises, offices, and organisations on issues pertaining to his activities as a deputy, to obtain the necessary information from them and to attend discussions on the issues which have been raised. Heads of the appropriate state and public bodies, enterprises, institutions, and organisations shall without delay receive the deputy and consider proposals within the time frame established by law.

Article 76

A deputy shall be guaranteed conditions necessary for discharging his rights and duties effectively and without interference.

The deputy's right of immunity, as well as other guarantees relating to the deputy's activities, shall be established by law.

Article 77

A deputy shall give an account of his activities as well as those of the Council to constituents, collectives, political parties, public organisations and movements which nominated the candidate to the post of deputy.

A deputy who has not justified the trust of his or constituents may be recalled at any time by a decision of the majority of voters according to the procedure established by law.

When a deputy of the Supreme Council of the Republic of Lithuania is appointed or elected to the state bodies formed by the Supreme Council, the powers of the deputy shall be limited as provided for by law for the period the deputy holds the said office. (*Amended 17 March 1990*)

A deputy of the local council of people's deputies who gives consent and is appointed or elected to the state bodies formed by the same council, forfeits the powers of a deputy, and a new election is held in the vacant electoral district. (*Amended 17 March 1990*)

CHAPTER 10 THE SUPREME COUNCIL OF THE REPUBLIC OF LITHUANIA

Article 78

The Supreme Council of the Republic of Lithuania shall be the highest body of state power in the Republic of Lithuania. The Supreme

Council of the Republic of Lithuania shall have the following powers:

(1) to adopt the Constitution of the Republic of Lithuania and amend it;

(2) to call for elections for deputies throughout the Republic of Lithuania and to confirm the composition of the Electoral Commission of the Republic; (*Amended 23 October 1990*)

(3) to approve draft basic programmes of economic and social development of the Republic of Lithuania; to approve the State Budget of Lithuania; to exercise control over the implementation of the programmes and of the budget; to approve the reports on their implementation; and, when necessary, to introduce changes in the budget;

(4) to regulate property relations by legislative means; to organise the management of the economy, the social and cultural sphere, questions relating to the budgetary-financial system, remuneration for work, pricing and taxes, to employ resources so as to preserve nature and the environment, as well as to organise the citizenry's constitutional rights, freedoms, and duties, as well as other relations; (*Amended 23 October 1990*)

(5) to interpret the laws of the Republic of Lithuania;

(6) to form state bodies accountable to the Supreme Council of the Republic of Lithuania; to establish the procedure for creating supreme and local bodies of state power of the Republic of Lithuania and the conduct of their activities; (*Amended 29 March 1990*)

(7) to establish the systems of the Prosecution Service, as well as the Courts and other bodies of justice of the Republic of Lithuania, and to establish their powers and the procedure for conduct of their activities through legislative means;

(8) to elect the Chairman of the Supreme Council of the Republic of Lithuania;

(9) to elect Vice Chairmen and the Secretary of the Supreme Council of the Republic of Lithuania;

(10) to appoint the Prime Minister of the Republic of Lithuania and other members of the Government, to make changes within the Government, and, on the recommendation of the Government, to establish and dissolve the Ministries of the Republic of Lithuania; (*Amended 11 September 1990*)

(11) to appoint the Supreme Court of Lithuania and judges of regional and city courts, to appoint

the Prosecutor General of the Republic of Lithuania and his Deputies, to appoint chief officers of state bodies accountable to the Supreme Council; to approve the panels of the Prosecution Service of the Republic of Lithuania, as well as the panels of other state bodies accountable to the Supreme Council of the Republic of Lithuania; (*Amended 27 July 1990*)

(12) to hold regular hearings, to receive reports by institutions established or elected by the Supreme Council, with the exception of the Supreme Court of Lithuania, as well as reports by officials appointed by the Supreme Council; when necessary, to issue no confidence votes by secret ballot regarding the Government of the Republic of Lithuania and other institutions formed by the Supreme Council or regarding any of their members, with the exception of the Supreme Court of Lithuania; (*Amended 23 October 1990*)

(13) to establish appropriate measures to guarantee state security and public order; to consider, when necessary, issues concerning ethnic and inter-ethnic relations;

(14) to reapportion the administrative-territorial structure of the Republic of Lithuania and to establish the procedure for resolving these matters; (*Amended 23 October 1990*)

(15) to change the names of administrative-territorial units and to change their status; to resolve other matters relating to the administrative-territorial structure; (*Amended 23 October 1990*)

(16) to consider matters relating to the foreign policy of the Republic of Lithuania; to establish the basic principles of foreign policy of the Republic of Lithuania; (*Amended 23 October 1990*)

(17) to ratify and renounce international treaties of the Republic of Lithuania;

(18) to establish state awards of the Republic of Lithuania;

(19) to adopt a decision to hold referenda on its own initiative or on the demand of at least three hundred thousand (300 000) citizens of the Republic of Lithuania; (*Amended 23 October 1990*)

(20) to issue acts of amnesty;

(21) to repeal directives and decrees of the Government, as well as decisions of regional councils and municipal councils of the Republic if they conflict with existing legislation; (*Amended 23 October 1990*)

(22) to resolve other significant issues of state.

The Supreme Council of the Republic of Lithuania shall adopt the laws and resolutions of the Republic of Lithuania.

Laws of the Republic of Lithuania may also be adopted by referendum. (*Amended 23 October 1990*)

Article 79

The Supreme Council of the Republic of Lithuania shall be composed of 141 deputies elected in voting districts having an equal number of voters.

The Supreme Council, on receiving the report of its Mandates Committee, shall affirm the powers of the deputies. In the event of a violation of the election law in any of the voting districts that has a decisive effect upon the returns of the election, the election of a deputy in this voting district shall be considered invalid.

Article 80

The Supreme Council of the Republic of Lithuania shall meet on an annual basis for its regular spring and autumn sessions. The spring session shall open on March 10 and close on June 30; the autumn session shall open on September 10 and end on December 23. The Supreme Council may on its own decision extend the period of the session. (*Amended 11 September 1990*)

Special sessions shall be called by the Presidium of the Supreme Council either on its initiative or at the request of no less than one-third of the Supreme Council deputies.

A session of the Supreme Council of the Republic of Lithuania shall consist of the sittings of the Supreme Council, as well as of the sittings of the standing committees that shall be held in the period between them. The session shall open and close at the sittings of the Supreme Council.

The sittings of the Supreme Council shall be presided over by the Chairman of the Supreme Council or his Deputy. On the instruction of the Chairman of the Supreme Council, the sittings of the Supreme Council may be presided over by the Assistant to the Presiding Chairman of Plenary Sittings or his deputies elected by the Supreme Council. (*Amended 29 March 1990*)

The first session of the newly-elected Supreme Council shall be convened upon the expiry of the term of office of the previous Supreme

Council, providing no less than two-thirds of the total number of the deputies have been elected. (*Amended 11 September 1990*)

The first sitting of the Supreme Council following the election shall be opened by the Chairman of the Electoral Commissions, and, thereafter, presided over by the Chairman of the Supreme Council or his Deputy.

A session of the Supreme Council shall be valid if it is attended by no less than two-thirds of all the deputies of the Supreme Council.

Article 81

The right of legislative initiative at the Supreme Council shall reside with the deputies of the Supreme Council of the Republic of Lithuania, the Supreme Council Presidium, the Chairman of the Supreme Council, the standing committees of the Supreme Council, the Government, the Supreme Court, and the Prosecutor General of the Republic of Lithuania. (*Amended 23 October 1990; 27 July 1990*)

The right of legislative initiative shall also reside with national institutions of political parties and social public organisations.

Article 82

Draft laws and other issues submitted to the Supreme Council for consideration shall be given a preliminary review at its sittings; thereafter they shall be reviewed in more depth by one or several committees of the Supreme Council.

The discussion of these draft laws and other matters shall continue at the sittings of the Supreme Council after hearing the conclusions and recommendations of the corresponding committees.

Laws, decisions, or any other acts of the Republic of Lithuania shall be adopted by a majority of the deputies present and voting at the session of the Supreme Council.

Draft laws and other major issues of state and public life in the Republic may be, upon the decision of the Supreme Council, submitted for public discussion. (*Amended 11 September 1990*)

Article 83

Laws of the Republic of Lithuania, resolutions, and other acts of the Supreme Council shall be published after they are signed by the Chairman of the Supreme Council.

Article 84

The Presidium of the Supreme Council of the Republic of Lithuania shall be a body accountable to the Supreme Council, guaranteeing the organisation of work for the Supreme Council and performing other powers within the limits of the Provisional

Basic Law of Lithuania and other laws.

The Presidium of the Supreme Council shall consist of the following: the Chairman of the Supreme Council, Vice Chairmen of the Supreme Council, the Secretary of the Supreme Council, and chairmen of the standing committees of the Supreme Council.

The Supreme Council may decide to include other members to the Presidium who shall be chosen from among the other deputies of the Supreme Council.

The Presidium of the Supreme Council of the Republic of Lithuania shall be chaired by the Chairman of the Supreme Council, or in his absence, by his Deputy. (*Amended 29 March 1990*)

Article 85

The Presidium of the Supreme Council of the Republic of Lithuania shall:

(1) call the first session of the new Supreme Council; (*Amended 11 September 1990*)

(2) organise preparations for Supreme Council sessions;

(3) coordinate the activities of the standing committees of the Supreme Council;

(4) help, as necessary, the deputies of the Supreme Council to carry out their powers;

(5) solve problems of rendering procedural assistance to Local Councils of People's Deputies;

(6) assist in organising and conducting referenda and public discussions of draft laws of the Republic of Lithuania and other major concerns of state and public life of the Republic; (*Amended 23 October 1990*)

(7) grant citizenship of the Republic of Lithuania; decide on the issues of the loss of citizenship of Lithuania and the granting of asylum;

(8) grant awards and confer honorary titles of the Republic of Lithuania;

(9) grant pardons to persons who have been sentenced by courts of Lithuania;

(9a) submit candidates for the Supreme Court and its court assessors to the Supreme Council; (*Amended 23 October 1990*)

(10) appoint and recall Lithuanian diplomatic representatives in foreign countries and at international organisations;

(11) accept the letters of credence and recall of the diplomatic representatives of foreign countries;

(11a) confer and remove the highest diplomatic ranks of the Republic of Lithuania; (*Amended 23 October 1990*)

(12) carry out other instructions of the Supreme Council.

The Presidium of the Supreme Council shall issue nonbinding decrees and adopt resolutions.

Upon the expiry of the term of the Supreme Council, the Presidium of the Supreme Council shall retain its powers until the newly elected Supreme Council convenes for its first session and forms a new Presidium.

Article 86

The Chairman of the Supreme Council of the Republic of Lithuania shall be the highest official representative of the Republic of Lithuania and shall represent the Republic in international relations.

The Chairman of the Presidium of the Supreme Council shall be elected by the Supreme Council from among the deputies of the Supreme Council by secret ballot for a term of five years and for no longer than two terms in succession. The Chairman may be recalled by secret ballot of the Supreme Council.

The Chairman of the Supreme Council shall be accountable to the Supreme Council.

Article 87

The Chairman of the Supreme Council shall:

(1) preside over the preparation of questions be discussed by the Supreme Council; sign the laws of the Republic of Lithuania and other acts passed by the Supreme Council and the Presidium of the Supreme Council;

(2) present to the Supreme Council reports on the situation of the Republic and on important questions of domestic and foreign policy of Lithuania;

(3) recommend, for the consideration of the Supreme Council, candidates for the posts of Vice Chairman and Secretary of the Supreme Council;

(4) recommend, for the consideration of the Supreme Council, candidates for the appointment or election to the posts of the Prime Minister of Lithuania, the Chairman of the Supreme Court of Lithuania, the Prosecutor General of the Republic of Lithuania, the heads of other state institutions accountable to the Supreme Council; *(Amended 27 July 1990)*

(5) hold talks and sign international treaties of Lithuania, submitting them for ratification to the Supreme Council.

The Chairman of the Supreme Council shall issue directives.

The Vice Chairmen of the Supreme Council shall exercise, as assigned by the Chairman, a portion of the Chairman's functions and act for him in his absence or when he is unable to perform his duties.

Article 88

The Supreme Council of the Republic of Lithuania shall elect from the deputies of the Supreme Council standing committees for drafting laws, for preliminary consideration and preparation of issues within the Supreme Council's competence, for facilitating the implementation of laws of the Republic of Lithuania and resolutions of the Supreme Council, and for supervising the activities of state organisations. *(Amended 23 October 1990)*

The Supreme Council shall establish, when necessary, investigative, auditing and other committees on any questions.

Article 89

Officials who are members of the Government of the Republic of Lithuania, heads of other state institutions established by the Supreme Council, judges of the Supreme Court of Lithuania, as well as the members of the panel of the Prosecution Service of the Republic of Lithuania and those of the panel of State Arbitration Board of Lithuania, shall be elected and appointed based on the recommendations of the appropriate standing committees of the Supreme Council. *(Amended 23 October 1990)*

The newly elected Supreme Council of the Republic of Lithuania may appoint the Prime Minister and Deputy Prime Ministers before the standing committees of the Supreme Council are established. *(Amended 23 October 1990)*

All state and public bodies, organisations, and officials shall carry out the instructions of the Supreme Council Committees, submitting all necessary information and documents to them.

Recommendations of the Committees shall be discussed by state and public institutions and organisations. The latter shall inform the Committees within the time period specified by them of the results of the discussions and the measures that have been adopted.

Article 90

A deputy of the Supreme Council shall have the right during sessions to submit an inquiry to the Government of the Republic of Lithuania, its members, and to the heads of other institutions established or elected by the Supreme Council. The institution or official, upon receipt of an inquiry, shall make an oral or written reply at the same session of the Supreme Council no later than within three days or according to other procedures established by the Supreme Council. *(Amended 11 September 1990)*

A deputy of the Supreme Council of the Republic of Lithuania shall not be found criminally responsible, detained, fined in an administrative order without the consent of the Supreme Council and during the period between sessions, without the consent of the Presidium of the Supreme Council.

Article 91

The procedure for the activities of the Supreme Council and its institutions shall be established by the rules of procedure of the Supreme Council and by other laws of the Republic of Lithuania on the basis of the Provisional Basic Law of the Republic of Lithuania.

Article 92

The Supreme Council of the Republic of Lithuania shall exercise control over the activities of all state institutions accountable to it.

For exercising the functions of state control, the Supreme Council shall establish control

institutions. The procedure for their organisation and activities shall be defined by law.

CHAPTER 11 THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

Article 93

Executive power of the Republic of Lithuania shall be vested in the Government. The Government of the Republic of Lithuania shall consist of the Prime Minister, Deputy Prime Ministers, and ministers. *(Amended 23 October 1990)*

Article 94

The Prime Minister shall head and represent the Government.

The Prime Minister shall be approved by the Supreme Council on the recommendation of the Chairman of the Supreme Council. Deputy Prime Ministers and Ministers shall be approved on the recommendation of the Prime Minister. The procedure for the formation of the Government shall be established by the Law on the Government and the Rules of Procedure of the Supreme Council. *(Amended 11 September 1990)*

Article 95

The Government of the Republic of Lithuania shall be responsible to the Supreme Council of the Republic of Lithuania and shall be accountable to it; and during the period between the sessions of the Supreme Council, it shall be responsible and accountable to the Presidium of the Supreme Council. *(Amended 23 October 1990)*

The Government shall make regular reports on its work to the Supreme Council and must have its confidence. If the Supreme Council by a majority of the total number of the deputies by a secret ballot expresses no confidence in the Government or an individual minister, the entire Government or that minister must resign. *(Amended 23 October 1990; 8 January 1991)*

Article 96

When the Prime Minister is unable to exercise his duties or when the Prime Minister designates a Deputy Prime Minister to act for him, the latter shall act in his stead.

Article 97

The Government of the Republic of Lithuania, on the basis of the legal acts of Lithuania and through their execution, shall adopt decisions and issue directives, and shall organise and supervise their enforcement. *(Amended 23 October 1990)*

Decisions and directives of the Government shall be enforceable throughout the Republic. *(Amended 23 October 1990)*

Article 98

Within the limits of its competence, the Government of the Republic of Lithuania shall have the right to repeal the acts of ministries and other institutions subordinate to it. The Government shall have the right to object, at the Supreme Council, to the decisions of a higher level local council if these decisions contradict the laws of Lithuania. *(Amended 23 October 1990)*

In cases provided for by the laws of Lithuania, the Government may suspend, and object to, the decisions of the local governing institutions in this council. In the event of a dispute, the Supreme Council adopts a final decision. *(Amended 23 October 1990)*

Article 99

The Government shall hand over its mandate to the newly elected Supreme Council at its first session. *(Amended 23 October 1990)*

Article 100

The composition of the Government, its powers, and the principles of its activity shall be described in the Law on the Government.

CHAPTER 12 THE LOCAL COUNCILS OF PEOPLE'S DEPUTIES

Article 101

The Republic of Lithuania shall establish its administrative-territorial division.

The Republic of Lithuania shall be divided into the following territorial units:

The Districts of: Akmenė, Alytus, Anykščiai, Biržai, Ignalina, Jonava, Joniškis, Jurbarkas, Kaišiadorys, Kaunas, Kėdainiai, Kelmė, Klaipėda, Kretinga, Kupiškis, Lazdijai, Marijampolė,

Mažeikiai, Molėtai, Pakruojis, Pasvalys, Panevėžys, Plungė, Prienai, Radviliškis, Raseiniai, Rokiškis, Skuodas, Šakiai, Šalčininkai, Šiauliai, Šilalė, Šilutė, Širvintos, Švenčionys, Tauragė, Telšiai, Trakai, Ukmergė, Utena, Varėna, Vilkaviškis, Vilnius, Zarasai;

Towns under the Republic's jurisdiction: Vilnius, Alytus, Birštonas, Druskininkai, Marijampolė, Kaunas, Klaipėda, Neringa, Palanga, Panevėžys, Šiauliai. (*Amended 23 October 1990*)

Article 102

The Councils of People's Deputies shall be the institutions of state power in the regions, municipalities, townships, and rural territorial units.

Article 103

The Local Councils of People's Deputies, guided by the state interests, the interests of the citizens residing on the territory of the Council, and by the principles of self-government, shall resolve all local issues, implement the decisions of the higher state institutions, consider the issues of state importance and offer their proposals on these issues.

The Local Councils of People's Deputies shall preside over the state, economic, social and cultural activities on their territory, approve the local budget and the report on its implementation; shall direct their subordinate institutions, enterprises, and organisations, exercise control over the institutions, enterprises, and organisations on their territory, ensure that the Provisional Basic Law and other laws are observed, and ensure state and public order, as well as the protection of citizens' rights.

Article 104

Within the limits of their powers, the Local Councils of People's Deputies shall ensure coordinated economic and cultural development on their territory, assume responsibility over the observance of the laws by the enterprises, institutions, and organisations under the jurisdiction of higher institutions on their territory. They shall coordinate and control their work in the spheres of the use of land and its natural wealth, the protection of the environment, construction, the use of labour resources, the

protection of historical and cultural monuments, the production of consumer goods, of social, cultural, domestic, and other services.

Article 105

The Local Councils of People's Deputies shall adopt resolutions within the limits of their powers granted to them by the laws of Lithuania. The resolutions of the Local Councils shall be observed by all the enterprises, institutions, and organisations on their territory, as well as by officials and citizens.

Article 106

The Local Councils of People's Deputies shall have the right to consider and resolve at their sessions any issues assigned to them by law. Those questions that must be submitted for discussion and decided exclusively at the sessions of these Councils shall be defined by law.

Article 107

The Local Councils of the People's Deputies shall elect, from among the deputies, standing committees for preliminary consideration and preparation of issues which are within the competence of the Local Councils, as well as for the coordination of the implementation of the decisions of the Councils, and the control of the activity of state institutions, enterprises, institutions, and organisations.

The recommendations of the standing committees of the Local Councils must be reviewed by the appropriate state and social institutions, enterprises, and organisations. The results of such a review or adopted measures taken must be communicated to the committees within the specified time frame.

Article 108

Lower level Councils of People's Deputies of local government shall have the right to protest to the Supreme Council the decisions adopted by higher level local governments regarding issues within the exclusive competence of the lower level local government.

The higher level Council of People's Deputies shall have the right to suspend the decisions of the lower level local government institutions if they contradict the laws of Lithuania. In the event of

a dispute, the Supreme Council shall resolve the issue.

Article 109

The Local Councils of People's Deputies shall work in close cooperation with public organisations and work collectives, shall submit significant issues for general public discussion, include them in the activities of the standing committees, of other institutions accountable to the councils, direct the work of the local voluntary associations and promote social initiatives of the people.

CHAPTER 13 THE GOVERNANCE BODIES OF LOCAL GOVERNMENTS

Article 110

To fulfil the Laws of Lithuania, as well as the decisions of the Local Councils of People's Deputies, the Local Councils shall form governance bodies subordinate to them.

Article 111

After the expiry of the term of the Local Councils, the governance bodies shall retain their powers until the formation of governance bodies by newly elected Local Councils.

Article 112

The procedure for establishing the governance bodies of local governments shall be provided for by Lithuania's laws on local self-government.

CHAPTER 14 COURTS AND ARBITRATION

Article 113

Justice in the Republic of Lithuania shall be administered solely by courts. Courts with extraordinary powers may not be established in Lithuania.

The courts of the Republic of Lithuania shall be the Supreme Court of Lithuania and district (town) courts.

The procedures for the organisation and functioning of the courts of Lithuania shall be established by law.

Article 114

The courts of Lithuania shall be composed of elected judges and court assessors.

The judges of the district (town) courts and of the Supreme Court of Lithuania shall be appointed by the Supreme Council of the Republic of Lithuania.

The assessors of the district (town) courts shall be elected by the Local Councils of People's Deputies, and the assessors of the Supreme Court of Lithuania shall be elected by the Supreme Council.

The judges of the courts shall be elected for a term of ten years and the assessors of the courts shall be elected for a term of five years.

The judges and assessors of the court shall be accountable to the institutions of power that elected them and may be recalled according to the procedure established by law.

Article 115

The Supreme Court of Lithuania shall be the highest judicial power in the Republic of Lithuania, administering justice and supervising the activities of the courts in Lithuania in the procedure established by the laws of Lithuania.

The Supreme Court of Lithuania shall be composed of a Chairman, deputy chairmen, judges, and court assessors.

Article 116

Civilian and criminal cases shall be tried in courts together, excluding such cases as are established by law.

In administering justice, the court assessors shall have all the rights of a judge.

Article 117

The judges and court assessors shall be independent and obey only the law.

The judges and court assessors shall be guaranteed conditions for the unobstructed and effective exercise of their rights and duties.

Interference by state and management institutions, by political parties, public organisations, public movements, persons in official positions, and other citizens into the activities of the judges and court assessors when they are administering justice, shall be prohibited

and shall be subject to criminal liability in the manner established by law.

The inviolability of the judges and court assessors as well as other guarantees of their immunity shall be established by the Law on the Lithuanian Court System and the Status of Judges, as well as by other legal acts of Lithuania.

Article 118

All citizens of Lithuania shall be equal before the law and the court.

Article 119

All courts shall hold public hearings of cases. A closed hearing of a case in a court shall be permitted for instances provided for by law if all the rules of procedure are observed.

Article 120

A person against whom a legal action has been taken shall be guaranteed the right to legal defence from the moment of arrest. (*Amended 23 October 1990*)

Article 121

A court hearing in the Republic of Lithuania shall be conducted in the Lithuanian language. Persons participating in the case, unfamiliar with the Lithuanian language, shall be given the right to obtain full information on the materials of the case, to participate in the court proceedings via an interpreter and the right to use his native language in court.

Article 122

A person shall be presumed innocent unless his guilt is proven through procedure established by law and recognised as established by a court sentence. Court sentences shall be passed in the name of the Republic of Lithuania.

Article 123

Legal aid to citizens and organisations shall be provided by the Council of Lawyers of the Republic of Lithuania. In cases specified by law, legal aid to the citizenry shall be provided free of charge. (*Amended 23 October 1990*)

The rules for the organisation and activity of the Council of Lawyers shall be governed by the

Law on Legal Defence of the Republic of Lithuania. (*Amended 23 October 1990*)

Article 124

Economic disputes between enterprises, institutions, and organisations shall be resolved by state arbitration institutions in accordance with the laws of the Republic of Lithuania. (*Amended 23 October 1990*)

CHAPTER 15 THE PROSECUTION SERVICE

Article 125

The supervision over the observance of the law by all ministries, departments, enterprises, institutions and organisations, the executive institutions of the Local Councils of People's Deputies, collective farms, cooperative and other public organisations, officials, and citizens on the territory of Lithuania shall be exercised by the Prosecutor General of the Republic of Lithuania and lower prosecutors subordinate to him. (*Amended 27 July 1990*)

Article 126

On the recommendation of the Chairman of the Supreme Council of the Republic of Lithuania, the Prosecutor General of the Republic of Lithuania shall be appointed by the Supreme Council to which he shall be responsible and accountable. (*Amended 27 July 1990*)

Article 127

The Deputies to the Prosecutor General of the Republic of Lithuania shall be appointed by the Supreme Council on the recommendation of the Prosecutor General. (*Amended 27 July 1990*)

The prosecutors of the districts and towns shall be appointed by the Prosecutor General of the Republic of Lithuania. (*Amended 27 July 1990*)

Article 128

The term of office of the Prosecutor General of the Republic of Lithuania, his deputies and of all lower prosecutors shall be five years. (*Amended 27 July 1990*)

Article 129

The institutions of the Prosecution Service of Lithuania shall exercise their powers independently of the institutions of state executive power and local institutions of power; they shall be accountable only to the Prosecutor General of the Republic of Lithuania. (*Amended 27 July 1990*)

The mechanism of organisation and functioning of the Prosecution Service shall be established by the Law on the Prosecution Service of the Republic of Lithuania. (*Amended 27 July 1990*)

CHAPTER 16 CONCLUDING PROVISIONS

Article 130

All laws of Lithuania and other acts of state institutions shall be issued on the basis of this Provisional Basic Law and in accordance with it.

Article 131

The Provisional Basic Law of the Republic of Lithuania shall be altered on the decision of the Supreme Council of the Republic of Lithuania, adopted by no less than a two-thirds majority of the entire number of the deputies of the Supreme Council or by referendum.

Article 132

The proposal to alter or supplement the Provisional Basic Law shall be considered by the Supreme Council of the Republic of Lithuania when it is presented by a standing committee or by no less than one-fifteenth of the deputies of the Supreme Council, or by the Government. (*Amended 11 September 1990*)

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Vilnius, 11 March 1990

THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992

THE LITHUANIAN NATION

- having created the State of Lithuania many centuries ago,
 - having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania,
 - having for centuries staunchly defended its freedom and independence,
 - having preserved its spirit, native language, writing, and customs,
 - embodying the innate right of the human being and the Nation to live and create freely in the land of their fathers and forefathers – in the independent State of Lithuania,
 - fostering national concord in the land of Lithuania,
 - striving for an open, just, and harmonious civil society and a State under the rule of law,
- by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this

CONSTITUTION

CHAPTER I THE STATE OF LITHUANIA

Article 1

The State of Lithuania shall be an independent democratic republic.

Article 2

The State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation.

Article 3

No one may restrict or limit the sovereignty of the Nation or arrogate to himself the sovereign powers belonging to the entire Nation.

The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

Article 4

The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives.

Article 5

In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary.

The scope of power shall be limited by the Constitution.

State institutions shall serve the people.

Article 6

The Constitution shall be an integral and directly applicable act.

Everyone may defend his rights by invoking the Constitution.

Article 7

Any law or other act that contradicts the Constitution shall be invalid.

Only laws that are published shall be valid.

Ignorance of the law shall exempt no one from liability.

Article 8

The seizure of state power or state institutions by force shall be considered anti-constitutional actions, which are unlawful and invalid.

Article 9

The most significant issues concerning the life of the State and the Nation shall be decided by referendum.

In cases established by law, the Seimas shall call a referendum.

A referendum shall also be called if not less than 300 000 citizens with the electoral right so request.

The procedure for calling and conducting referendums shall be established by law.

Article 10

The territory of the State of Lithuania shall be integral and shall not be divided into any state-like formations.

The boundaries of the State may be altered only by an international treaty of the Republic of Lithuania after it is ratified by 4/5 of all the Members of the Seimas.

Article 11

The territorial administrative units of the State of Lithuania and their boundaries shall be established by law.

Article 12

Citizenship of the Republic of Lithuania shall be acquired by birth or on other grounds established by law.

With the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.

The procedure for the acquisition and loss of citizenship shall be established by law.

Article 13

The State of Lithuania shall protect its citizens abroad.

It shall be prohibited to extradite a citizen of the Republic of Lithuania to another state unless an international treaty of the Republic of Lithuania establishes otherwise.

Article 14

Lithuanian shall be the state language.

Article 15

The colours of the flag of the State shall be yellow, green, and red.

The coat of arms of the State shall be a white Vytis on a red field.

The coat of arms and flag of the State, as well as their use, shall be established by law.

Article 16

The anthem of the State shall be “Tautiška giesmė” by Vincas Kudirka.

Article 17

The capital of the State of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania.

CHAPTER II THE HUMAN BEING AND THE STATE

Article 18

Human rights and freedoms shall be innate.

Article 19

The right to life of a human being shall be protected by law.

Article 20

Human liberty shall be inviolable.

No one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law.

A person apprehended *in flagrante delicto* must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of this person, on the validity of the apprehension. If the court does not adopt a decision to detain the person, the apprehended person shall be released immediately.

Article 21

The human person shall be inviolable.

Human dignity shall be protected by law.

It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments.

No one may be subjected to scientific or medical experimentation without his knowledge and free consent.

Article 22

Private life shall be inviolable.

Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

Information concerning the private life of a person may be collected only upon a justified court decision and only according to the law.

The law and courts shall protect everyone from arbitrary or unlawful interference with his private and family life, as well as from encroachment upon his honour and dignity.

Article 23

Property shall be inviolable.

The rights of ownership shall be protected by law.

Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for.

Article 24

The home of a human being shall be inviolable.

Without the consent of the resident, it shall not be permitted to enter his home otherwise than by a court decision or according to the procedure established by law when this is necessary to guarantee public order, apprehend a criminal, or save the life, health, or property of a human being.

Article 25

Everyone shall have the right to have his own convictions and freely express them.

No one must be hindered from seeking, receiving, or imparting information and ideas.

The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order.

The freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation.

Citizens shall have the right to receive, according to the procedure established by law, any information held about them by state institutions.

Article 26

Freedom of thought, conscience, and religion shall not be restricted.

Everyone shall have the right to freely choose any religion or belief and, either alone or with others, in private or in public, to profess his religion, to perform religious ceremonies, as well as to practise and teach his belief.

No one may compel another person or be compelled to choose or profess any religion or belief.

The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or

morals of people, or other basic rights or freedoms of the person.

Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.

Article 27

Convictions, practised religion, or belief may not serve as a justification for a crime or failure to observe laws.

Article 28

While implementing his rights and exercising his freedoms, everyone must observe the Constitution and laws of the Republic of Lithuania and must not restrict the rights and freedoms of other people.

Article 29

All persons shall be equal before the law, courts, and other state institutions and officials.

Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views.

Article 30

A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage inflicted upon a person shall be established by law.

Article 31

A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment.

A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.

It shall be prohibited to compel anyone to give evidence against himself, or his family members or close relatives.

Punishment may be imposed or applied only on the grounds established by law.

No one may be punished twice for the same offence.

A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate.

Article 32

Citizens may move and choose their place of residence in Lithuania freely and may leave Lithuania freely.

These rights may not be restricted otherwise than by law when this is necessary for the protection of the security of the State or the health of people, or for the administration of justice.

Citizens may not be prohibited from returning to Lithuania.

Everyone who is Lithuanian may settle in Lithuania.

Article 33

Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives, as well as the right to enter on equal terms the State Service of the Republic of Lithuania.

Citizens shall be guaranteed the right to criticise the work of state institutions or their officials and to appeal against their decisions. Persecution for criticism shall be prohibited.

Citizens shall be guaranteed the right of petition; the procedure for the implementation of this right shall be established by law.

Article 34

Citizens who, on the day of the election, have reached 18 years of age shall have the electoral right.

The right to stand for election shall be established by the Constitution of the Republic of Lithuania and by the election laws.

Citizens who are declared by a court to be legally incapacitated shall not participate in elections.

Article 35

Citizens shall be guaranteed the right to freely form societies, political parties, and associations provided that the aims and activities thereof are not contrary to the Constitution and laws.

No one may be compelled to belong to any society, political party, or association.

The founding and activities of political parties and other political and public organisations shall be regulated by law.

Article 36

Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings.

This right may not be limited otherwise than by law and only when this is necessary to protect the security of the State or society, public order, the health or morals of people, or the rights or freedoms of other persons.

Article 37

Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.

CHAPTER III SOCIETY AND THE STATE

Article 38

The family shall be the basis of society and the State.

Family, motherhood, fatherhood, and childhood shall be under the protection and care of the State.

Marriage shall be concluded upon the free mutual consent of man and woman.

The State shall register marriages, births, and deaths. The State shall also recognise the church registration of marriages.

In the family, the rights of spouses shall be equal.

The right and duty of parents shall be to bring up their children to be honest people and faithful citizens, and to support them until they reach the age of majority.

The duty of children shall be to respect their parents, to take care of them in their old age, and to preserve their heritage.

Article 39

The State shall take care of families raising and bringing up children at home, and shall render them support according to the procedure established by law.

The law shall make a provision for working mothers to be granted paid leave before and

after childbirth, as well as favourable working conditions and other concessions.

Under-age children shall be protected by law.

Article 40

State and municipal establishments of teaching and education shall be secular. At the request of parents, they shall provide religious instruction.

Non-state establishments of teaching and education may be founded according to the procedure established by law.

Schools of higher education shall be granted autonomy.

The State shall supervise the activities of establishments of teaching and education.

Article 41

Education shall be compulsory for persons under the age of 16.

Education at state and municipal schools of general education, vocational schools, and schools of further education shall be free of charge.

Higher education shall be accessible to everyone according to individual abilities. Citizens who are good at their studies shall be guaranteed education at state schools of higher education free of charge.

Article 42

Culture, science and research, and teaching shall be free.

The State shall support culture and science, and shall take care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects.

The law shall protect and defend the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.

Article 43

The State shall recognise the churches and religious organisations that are traditional in Lithuania; other churches and religious organisations shall be recognised provided that they have support in society, and their teaching and practices are not in conflict with the law and public morals.

Churches and religious organisations recognised by the State shall have the rights of a legal person.

Churches and religious organisations shall be free to proclaim their teaching, perform their

ceremonies, and have houses of prayer, charity establishments, and schools for the training of priests.

Churches and religious organisations shall conduct their affairs freely according to their canons and statutes.

The status of churches and other religious organisations in the State shall be established by agreement or by law.

The teaching proclaimed by churches and religious organisations, other religious activities, and houses of prayer may not be used for purposes that are in conflict with the Constitution and laws.

There shall be no state religion in Lithuania.

Article 44

Censorship of mass information shall be prohibited.

The State, political parties, political or public organisations, or other institutions or persons may not monopolise the mass media.

Article 45

Ethnic communities of citizens shall independently manage the affairs of their ethnic culture, education, charity, and mutual assistance.

Ethnic communities shall be provided support by the State.

CHAPTER IV THE NATIONAL ECONOMY AND LABOUR

Article 46

The economy of Lithuania shall be based on the right of private ownership, freedom of individual economic activity, and economic initiative.

The State shall support economic efforts and initiative that are useful to society.

The State shall regulate economic activity so that it serves the general welfare of the Nation.

The law shall prohibit the monopolisation of production and the market, and shall protect freedom of fair competition.

The State shall defend the interests of the consumer.

Article 47

The subsurface, as well as the internal waters, forests, parks, roads, and historical, archaeological,

and cultural objects of state importance, shall belong by right of exclusive ownership to the Republic of Lithuania.

The Republic of Lithuania shall have the exclusive rights to the airspace over its territory, its continental shelf, and the economic zone in the Baltic Sea.

In the Republic of Lithuania, foreign entities may acquire the ownership of land, internal waters, and forests according to a constitutional law.

Plots of land may belong to a foreign state by right of ownership for the establishment of its diplomatic missions and consular posts according to the procedure and conditions established by law. (*Amended 20 June 1996; 23 January 2003*)

Article 48

Everyone may freely choose a job or business, and shall have the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment.

The work of foreigners in the Republic of Lithuania shall be regulated by law.

Forced labour shall be prohibited.

Military service or alternative service performed instead of military service, as well as work performed by citizens in time of war, natural disaster, epidemics, or other extreme cases, shall not be considered forced labour.

In cases where persons convicted by a court perform work regulated by law, such work shall not be considered forced labour, either.

Article 49

Every working person shall have the right to rest and leisure, as well as to annual paid leave.

The length of working time shall be established by law.

Article 50

Trade unions shall be established freely and shall function independently. They shall defend the professional, economic, and social rights and interests of employees.

All trade unions shall have equal rights.

Article 51

While defending their economic and social interests, employees shall have the right to strike.

Limitations on this right and the conditions and procedure for its implementation shall be established by law.

Article 52

The State shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, the loss of the breadwinner, and in other cases provided for by law.

Article 53

The State shall take care of the health of people and shall guarantee medical aid and services for a person in the event of sickness. The procedure for providing medical aid to citizens free of charge at state medical establishments shall be established by law.

The State shall promote the physical culture of society and shall support sport.

The State and each person must protect the environment from harmful influences.

Article 54

The State shall take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and shall supervise the sustainable use of natural resources, as well as their restoration and increase.

The destruction of land and subsurface, the pollution of water and air, radioactive impact on the environment, as well as the depletion of wildlife and plants, shall be prohibited by law.

CHAPTER V THE SEIMAS

Article 55

The Seimas shall consist of representatives of the Nation – 141 Members of the Seimas, who shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot.

The Seimas shall be deemed elected when not less than 3/5 of the Members of the Seimas are elected.

The procedure for the election of the Members of the Seimas shall be established by law.

Article 56

Any citizen of the Republic of Lithuania who is not bound by an oath or a pledge to a foreign state, and who, on the election day, is not younger than 25 years of age and permanently resides in Lithuania, may stand for election as a Member of the Seimas.

Persons who have not served punishment imposed by a court judgment, as well as persons declared by a court to be legally incapacitated, may not stand for election as a Member of the Seimas.

Article 57

A regular election to the Seimas shall be held in the year of the expiry of the powers of the Members of the Seimas on the second Sunday of October.

A regular election to the Seimas following an early election to the Seimas shall be held at the time specified in the first paragraph of this Article. *(Amended 13 July 2004)*

Article 58

An early election to the Seimas may be held upon the decision of the Seimas adopted by not less than a 3/5 majority vote of the Members of the Seimas.

An early election to the Seimas may also be called by the President of the Republic:

(1) if the Seimas fails to adopt a decision on the new programme of the Government within 30 days of its presentation, or if the Seimas twice in succession gives no assent to the programme of the Government within 60 days of its first presentation;

(2) upon the proposal of the Government, if the Seimas expresses direct no confidence in the Government.

The President of the Republic may not call an early election to the Seimas if the term of office of the President of the Republic expires in less than 6 months, or if 6 months have not passed since the early election to the Seimas.

The day of election to the new Seimas shall be specified in the resolution of the Seimas or in the act of the President of the Republic on the early election to the Seimas. The election to the new Seimas must be held within 3 months of the adoption of the decision on the early election.

Article 59

The term of powers of the Members of the Seimas shall begin to be counted from the day on which the newly elected Seimas convenes for the first sitting. The term of powers of the previously elected Members of the Seimas shall expire at the beginning of this sitting.

An elected Member of the Seimas shall acquire all the rights of a representative of the Nation only after taking an oath at the Seimas to be faithful to the Republic of Lithuania.

A Member of the Seimas who either does not take the oath according to the procedure established by law or takes a conditional oath shall lose the mandate of a Member of the Seimas. The Seimas shall adopt a corresponding resolution thereon.

While in office, the Members of the Seimas shall follow the Constitution of the Republic of Lithuania, the interests of the State, as well as their own consciences, and may not be restricted by any mandates.

Article 60

The duties of the Members of the Seimas, with the exception of their duties at the Seimas, shall be incompatible with any other duties at state institutions or organisations, or with work in business, commercial, or other private establishments or enterprises. During their term of office, the Members of the Seimas shall be exempt from the duty to perform national defence service.

A Member of the Seimas may be appointed only either as the Prime Minister or a Minister.

The work of the Members of the Seimas, as well as all expenses relating to their parliamentary activities, shall be remunerated from the State Budget. A Member of the Seimas may not receive any other remuneration, with the exception of remuneration for creative activities.

The duties, rights, and guarantees of the activities of a Member of the Seimas shall be established by law.

Article 61

A Member of the Seimas shall have the right to submit an inquiry to the Prime Minister, the Ministers, and the heads of other state institutions formed or elected by the Seimas. The said persons must respond orally or in writing during the

session of the Seimas according to the procedure established by the Seimas.

During a session of the Seimas, a group of not less than 1/5 of the Members of the Seimas may interpellate the Prime Minister or a Minister.

Upon considering the response of the Prime Minister or the Minister to the interpellation, the Seimas may decide that the response is not satisfactory, and, by a majority vote of half of all the Members of the Seimas, may express no confidence in the Prime Minister or the Minister.

The voting procedure shall be established by law.

Article 62

The person of a Member of the Seimas shall be inviolable.

The Members of the Seimas may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas.

The Members of the Seimas may not be persecuted for their votes or speeches at the Seimas. However, they may be held liable according to the general procedure for personal insult or defamation.

Article 63

The powers of a Member of the Seimas shall cease:

(1) upon the expiry of the term of powers, or when the Seimas elected in an early election convenes for the first sitting;

(2) upon his death;

(3) upon his resignation;

(4) when he is declared by a court to be legally incapacitated;

(5) when the Seimas revokes his mandate according to the procedure for impeachment proceedings;

(6) when the election is declared invalid, or the law on election is grossly violated;

(7) when he takes up or does not give up employment that is incompatible with the duties of a Member of the Seimas;

(8) when he loses his citizenship of the Republic of Lithuania.

Article 64

Every year, the Seimas shall convene for two regular sessions – in spring and autumn.

The spring session shall commence on the 10th of March and shall end on the 30th of June. The autumn session shall commence on the 10th of September and shall end on the 23rd of December. The Seimas may decide to prolong a session.

Extraordinary sessions shall be convened by the Speaker of the Seimas upon the proposal of not less than one-third of all the Members of the Seimas, or by the President of the Republic in cases provided for in the Constitution.

Article 65

The President of the Republic shall convene the first sitting of the newly elected Seimas, which must be held within 15 days of the election of the Seimas. If the President of the Republic fails to convene the Seimas, the Members of the Seimas shall assemble by themselves on the day following the expiry of the 15-day period.

Article 66

Sittings of the Seimas shall be presided over by the Speaker of the Seimas, or his Deputy.

The first sitting of the Seimas after its election shall be opened by the eldest Member of the Seimas.

Article 67

The Seimas:

(1) shall consider and adopt amendments to the Constitution;

(2) shall pass laws;

(3) shall adopt resolutions on referendums;

(4) shall call elections for the President of the Republic of Lithuania;

(5) shall establish state institutions provided for by law, and appoint and release their heads;

(6) shall or shall not give its assent to the candidate proposed by the President of the Republic for the post of the Prime Minister;

(7) shall consider the programme of the Government, presented by the Prime Minister, and decide whether to give its assent to it;

(8) shall, upon the proposal of the Government, establish and abolish the ministries of the Republic of Lithuania;

(9) shall supervise the activities of the Government and may express no confidence in the Prime Minister or a Minister;

(10) shall appoint the justices and Presidents of the Constitutional Court and the Supreme Court;

(11) shall appoint and release the Auditor General and the Chairperson of the Board of the Bank of Lithuania;

(12) shall call elections to municipal councils;

(13) shall form the Central Electoral Commission and alter its composition;

(14) shall approve the State Budget and supervise its execution;

(15) shall establish state taxes and other compulsory payments;

(16) shall ratify and denounce international treaties of the Republic of Lithuania and consider other issues of foreign policy;

(17) shall establish the administrative division of the Republic;

(18) shall establish the state awards of the Republic of Lithuania;

(19) shall issue acts of amnesty;

(20) shall impose direct rule and martial law, declare states of emergency, announce mobilisation, and adopt a decision to use the armed forces.

Article 68

The right of legislative initiative at the Seimas shall belong to the Members of the Seimas, the President of the Republic, and the Government.

The citizens of the Republic of Lithuania shall also have the right of legislative initiative. 50 000 citizens of the Republic of Lithuania who have the electoral right may submit a draft law to the Seimas, and the Seimas must consider it.

Article 69

Laws shall be adopted at the Seimas according to the procedure established by law.

Laws shall be deemed adopted if the majority of the Members of the Seimas participating in the sitting vote in favour thereof.

Constitutional laws of the Republic of Lithuania shall be adopted if more than half of all the Members of the Seimas vote in favour thereof, and they shall be altered by not less than a 3/5 majority vote of all the Members of the Seimas. The Seimas shall establish the list of constitutional laws by a 3/5 majority vote of the Members of the Seimas.

The provisions of laws of the Republic of Lithuania may also be adopted by referendum.

Article 70

Laws adopted by the Seimas shall come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their entry into force.

Other acts adopted by the Seimas, as well as the Statute of the Seimas, shall be signed by the Speaker of the Seimas. The said acts shall come into force on the day following their publication, unless the acts themselves establish another procedure for their entry into force.

Article 71

Within ten days of receiving a law adopted by the Seimas, the President of the Republic either shall sign and officially promulgate the law or shall, upon reasonable grounds, refer it back to the Seimas for reconsideration.

If the law adopted by the Seimas is neither referred back nor signed by the President of the Republic within the specified period, the law shall come into force after it is signed and officially promulgated by the Speaker of the Seimas.

A law or another act adopted by referendum must, within 5 days, be signed and officially promulgated by the President of the Republic.

If the President of the Republic does not sign and promulgate such a law within the specified period, the law shall come into force after it is signed and officially promulgated by the Speaker of the Seimas.

Article 72

The Seimas may consider anew and adopt a law referred back by the President of the Republic.

The law reconsidered by the Seimas shall be deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the Members of the Seimas vote for the law, or, in cases where such a law is a constitutional law – if not less than 3/5 of all the Members of the Seimas vote in favour thereof.

The President of the Republic must sign such laws within three days and promulgate them immediately.

Article 73

Complaints of citizens about the abuse of authority or bureaucratic intransigence by state and municipal officials (with the exception of judges) shall be examined by the Seimas Ombudsmen, who shall have the right to submit a proposal before a court for dismissing the guilty officials from office.

The powers of the Seimas Ombudsmen shall be established by law.

The Seimas shall also establish, when necessary, other institutions of control. Their system and powers shall be established by law.

Article 74

The President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any Members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office or have the mandate of a Member of the Seimas revoked by a 3/5 majority vote of all the Members of the Seimas. This shall be performed according to the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas.

Article 75

The officials appointed or elected by the Seimas, with the exception of the persons specified in Article 74 of the Constitution, shall be dismissed from office when the Seimas expresses no confidence in them by a majority vote of all the Members of the Seimas.

Article 76

The structure and procedure of activities of the Seimas shall be established by the Statute of the Seimas. The Statute of the Seimas shall have the force of a law.

CHAPTER VI THE PRESIDENT OF THE REPUBLIC

Article 77

The President of the Republic shall be the Head of State.

The President of the Republic shall represent the State of Lithuania and shall perform everything with which he is charged by the Constitution and laws.

Article 78

A Lithuanian citizen by descent who has lived in Lithuania for not less than the last three years, provided that he has reached the age of not less than 40 prior to the election day and may stand for election as a Member of the Seimas, may stand for election as the President of the Republic.

The President of the Republic shall be elected by the citizens of the Republic of Lithuania for a five-year term by universal, equal, and direct suffrage by secret ballot.

The same person may not be elected the President of the Republic for more than two consecutive terms.

Article 79

Any citizen of the Republic of Lithuania who meets the conditions set forth in the first paragraph of Article 78 and collects the signatures of not less than 20 000 voters shall be registered as a presidential candidate.

The number of candidates for the post of the President of the Republic shall not be limited.

Article 80

A regular election of the President of the Republic shall be held on the last Sunday two months before the expiry of the term of office of the President of the Republic.

Article 81

The candidate for the post of the President of the Republic who, during the first round of voting in which not less than half of all the voters participate, receives the votes of more than half of all the voters who participate in the election shall be deemed elected. If less than half of all the voters participate in the election, the candidate who receives the greatest number of votes, but not less than 1/3 of the votes of all the voters, shall be deemed elected.

If, during the first round of voting, no single candidate gets the requisite number of votes, the second round of voting shall be held two weeks later with the two candidates who have received

the greatest number of votes standing against each other. The candidate who receives more votes shall be deemed elected.

If no more than two candidates take part in the first round, and neither of them receives the requisite number of votes, a repeat election shall be held.

Article 82

On the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic shall take office after he, in Vilnius, in the presence of the representatives of the Nation – the Members of the Seimas, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all.

A re-elected President of the Republic shall also take the oath.

The act on taking the oath of the President of the Republic shall be signed by him and by the President of the Constitutional Court or, in the absence of the latter, by a justice of the Constitutional Court.

Article 83

The President of the Republic may not be a Member of the Seimas, may not hold any other office, and may not receive any remuneration other than the remuneration established for the President of the Republic and remuneration for creative activities.

A person elected the President of the Republic must suspend his activities in political parties and political organisations until the beginning of a new campaign for the election of the President of the Republic.

Article 84

The President of the Republic:

(1) shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy;

(2) shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification;

(3) shall, upon submission by the Government, appoint and recall the diplomatic representatives of the Republic of Lithuania to foreign states and

international organisations; shall receive the letters of credence and recall of the diplomatic representatives of foreign states; and shall confer the highest diplomatic ranks and special titles;

(4) shall, upon the assent of the Seimas, appoint the Prime Minister; shall charge the Prime Minister with forming the Government; and shall approve the composition of the formed Government;

(5) shall, upon the assent of the Seimas, release the Prime Minister from duties;

(6) shall accept the powers returned by the Government upon the election of a new Seimas and charge the Government with exercising its duties until a new Government is formed;

(7) shall accept the resignation of the Government and, when necessary, charge it with continuing to exercise its duties, or charge one of the Ministers with exercising the duties of the Prime Minister, until a new Government is formed; shall accept the resignations of Ministers and may charge them with exercising their duties until a new respective Minister is appointed;

(8) shall, upon the resignation of the Government or after it returns its powers, within 15 days, propose the candidate for the post of the Prime Minister for consideration by the Seimas;

(9) shall appoint and release Ministers upon submission by the Prime Minister;

(10) shall, according to the established procedure, appoint and release state officials provided for by law;

(11) shall propose candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, upon the appointment of all the justices of the Supreme Court, propose the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; shall appoint the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; shall appoint the judges and presidents of regional and local courts and change their places of work; in cases provided for by law, shall submit that the Seimas release judges from their duties; shall, upon the assent of the Seimas, appoint and release the Prosecutor General of the Republic of Lithuania;

(12) shall propose candidates for the posts of three justices of the Constitutional Court and,

upon the appointment of all the justices of the Constitutional Court, propose the candidate from among them for the post of the President of the Constitutional Court to be appointed by the Seimas;

(13) shall propose candidates for the posts of the Auditor General and the Chairperson of the Board of the Bank of Lithuania for consideration by the Seimas; may submit that the Seimas express no confidence in them;

(14) shall, upon the assent of the Seimas, appoint and release the Commander of the Armed Forces and the Head of the Security Service;

(15) shall confer the highest military ranks;

(16) shall, in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopt decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submit these decisions for approval at the next sitting of the Seimas;

(17) shall declare a state of emergency according to the procedure and in cases established by law and present this decision for approval at the next sitting of the Seimas;

(18) shall make annual reports at the Seimas on the situation in Lithuania and the domestic and foreign policies of the Republic of Lithuania;

(19) shall, in cases provided for in the Constitution, convene an extraordinary session of the Seimas;

(20) shall call regular elections to the Seimas and, in cases provided for in the second paragraph of Article 58 of the Constitution, call early elections to the Seimas;

(21) shall grant citizenship of the Republic of Lithuania according to the procedure established by law;

(22) shall confer state awards;

(23) shall grant pardons to convicted persons;

(24) shall sign and promulgate laws adopted by the Seimas or refer them back to the Seimas according to the procedure established in Article 71 of the Constitution. (*Amended 20 March 2003*)

Article 85

The President of the Republic, implementing the powers vested in him, shall issue acts-decrees. To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3,

15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister. Responsibility for such a decree shall lie with the Prime Minister or the Minister who signs it.

Article 86

The person of the President of the Republic shall be inviolable: while in office, he may be neither detained nor held criminally or administratively liable.

The President of the Republic may be removed from office only for a gross violation of the Constitution or a breach of the oath, or when he is found to have committed a crime. The issue of the removal of the President of the Republic from office shall be decided by the Seimas according to the procedure for impeachment proceedings.

Article 87

After, in cases provided for in the second paragraph of Article 58 of the Constitution, the President of the Republic calls an early election to the Seimas, the newly elected Seimas may, by a 3/5 majority vote of all the Members of the Seimas and within 30 days of the day of the first sitting, call an early election of the President of the Republic.

The President of the Republic wishing to participate in the election shall be immediately registered as a candidate.

The President of the Republic re-elected in such an election shall be deemed elected for the second term of office provided that more than three years of his first term of office have expired prior to the election. If less than three years of the first term of office have expired, the President of the Republic shall only be elected for the remainder of the first term of office, which shall not be considered the second term of office.

If an early election of the President of the Republic is called during his second term of office, the incumbent President of the Republic may only be elected for the remainder of the second term of office.

Article 88

The powers of the President of the Republic shall cease:

(1) upon the expiry of the period for which he is elected;

(2) after an early election of the President of the Republic takes place;

(3) upon his resignation from office;

(4) upon his death;

(5) when the Seimas removes him from office according to the procedure for impeachment proceedings;

(6) when the Seimas, taking into consideration the conclusion of the Constitutional Court, by a 3/5 majority vote of all the Members of the Seimas, adopts a resolution stating that the state of health of the President of the Republic does not allow him to hold office.

Article 89

In the event that the President of the Republic dies, resigns, or is removed from office according to the procedure for impeachment proceedings, or the Seimas decides that the state of health of the President of the Republic does not allow him to hold office, the office of the President of the Republic shall temporarily be held by the Speaker of the Seimas. In such a case, the Speaker of the Seimas shall lose his powers at the Seimas, and his office shall temporarily be held, upon commissioning by the Seimas, by his Deputy. In the enumerated cases, the Seimas must, within 10 days, call an election of the President of the Republic, which must be held within two months. If the Seimas cannot convene and call the election of the President of the Republic, the election shall be called by the Government.

The Speaker of the Seimas shall substitute for the President of the Republic when the latter is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office.

While temporarily substituting for the President of the Republic, the Speaker of the Seimas may neither call an early election to the Seimas nor appoint or release Ministers without the consent of the Seimas. During the said period, the Seimas may not consider the issue of no confidence in the Speaker of the Seimas.

With the exception of the cases specified in this Article, the powers of the President of the Republic may not be executed by any other persons or institutions.

Article 90

The President of the Republic shall have a residence. The financing of the President of the Republic and of his residence shall be established by law.

CHAPTER VII THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

Article 91

The Government of the Republic of Lithuania shall consist of the Prime Minister and Ministers.

Article 92

The Prime Minister shall, upon the assent of the Seimas, be appointed and released by the President of the Republic.

Ministers shall, upon submission by the Prime Minister, be appointed and released by the President of the Republic.

The Prime Minister, within 15 days of his appointment, shall form and present to the Seimas the Government, approved by the President of the Republic, and shall submit the programme of the formed Government for consideration by the Seimas.

The Government shall return its powers to the President of the Republic after the election of the Seimas or after the election of the President of the Republic.

A new Government shall receive the powers to act after the Seimas gives assent to its programme by a majority vote of the Members of the Seimas participating in the sitting.

Article 93

Before taking office, the Prime Minister and Ministers shall take an oath at the Seimas to be faithful to the Republic of Lithuania and to observe the Constitution and laws. The text of the oath shall be established by the Law on the Government.

Article 94

The Government of the Republic of Lithuania:

(1) shall manage national affairs, protect the territorial inviolability of the Republic of Lithuania, and guarantee state security and public order;

(2) shall execute laws, the resolutions of the Seimas on the implementation of laws, as well as the decrees of the President of the Republic;

(3) shall co-ordinate the activities of ministries and other establishments of the Government;

(4) shall prepare a draft State Budget and submit it to the Seimas; shall execute the State Budget and submit to the Seimas a report on the execution of the budget;

(5) shall prepare draft laws and present them to the Seimas for consideration;

(6) shall establish diplomatic ties and maintain relations with foreign states and international organisations;

(7) shall discharge other duties prescribed to the Government by the Constitution and other laws.

Article 95

The Government of the Republic of Lithuania shall decide the affairs of state governance at its sittings by adopting resolutions by a majority vote of all the members of the Government. The Auditor General may also participate in the sittings of the Government.

The resolutions of the Government shall be signed by the Prime Minister and the Minister of the respective area.

Article 96

The Government of the Republic of Lithuania shall be jointly and severally responsible to the Seimas for the general activities of the Government.

Ministers, in directing the areas of governance entrusted to them, shall be responsible to the Seimas and the President of the Republic, and directly subordinate to the Prime Minister.

Article 97

The Prime Minister shall represent the Government of the Republic of Lithuania and shall head its activities.

In the absence of the Prime Minister, or when he is unable to hold office, the President of the Republic, upon submission by the Prime Minister, shall assign one of the Ministers to substitute for the Prime Minister during a period not exceeding 60 days; when there is no such submission, the President of the Republic shall assign one of the Ministers to substitute for the Prime Minister.

Article 98

Ministers shall head their respective ministry, shall decide on issues belonging to the competence of their ministry, and shall also discharge other functions provided for by law.

Only another member of the Government appointed by the Prime Minister may temporarily substitute for a Minister.

Article 99

The Prime Minister and Ministers may not hold any other elective or appointive office, may not work in any business, commercial, or other private establishments or enterprises, nor may they receive any remuneration other than that established for their respective governmental duties and payment for creative activities.

Article 100

The Prime Minister and Ministers may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the prior consent of the Seimas or, in the period between the sessions of the Seimas, without the prior consent of the President of the Republic.

Article 101

At the request of the Seimas, the Government or individual Ministers must give an account of their activities to the Seimas.

When more than half of the Ministers are replaced, the Government must once again receive its powers from the Seimas. Otherwise, the Government must resign.

The Government must also resign in the following cases:

(1) when the Seimas twice in succession does not give its assent to the programme of the newly formed Government;

(2) when the Seimas, by a majority vote of all the Members of the Seimas and by secret ballot, expresses no confidence in the Government or in the Prime Minister;

(3) when the Prime Minister resigns or dies;

(4) after the election to the Seimas, when a new Government is formed.

A Minister must resign when more than half of all the Members of the Seimas, by secret ballot, express no confidence in him.

The President of the Republic shall accept the resignation of the Government or a Minister.

CHAPTER VIII THE CONSTITUTIONAL COURT

Article 102

The Constitutional Court shall decide whether the laws and other acts of the Seimas are in conflict with the Constitution, and whether the acts of the President of the Republic and the Government are in conflict with the Constitution or laws.

The status of the Constitutional Court and the procedure for the execution of its powers shall be established by the Law on the Constitutional Court of the Republic of Lithuania.

Article 103

The Constitutional Court shall consist of 9 justices, each appointed for a single nine-year term of office. Every three years, one-third of the Constitutional Court shall be reconstituted. The Seimas shall appoint three candidates for justices of the Constitutional Court from the candidates submitted by the President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court, and shall appoint them as justices.

The Seimas shall appoint the President of the Constitutional Court from among its justices upon submission by the President of the Republic.

The citizens of the Republic of Lithuania with an impeccable reputation, higher education in law, and not less than a 10-year length of service in the field of law or in a branch of science and education as a lawyer may be appointed as justices of the Constitutional Court.

Article 104

While in office, the justices of the Constitutional Court shall be independent of any other state institution, person, or organisation, and shall follow only the Constitution of the Republic of Lithuania.

Before entering office, the justices of the Constitutional Court shall take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

The limitations established on work and political activities for the judges of courts shall also apply to the justices of the Constitutional Court.

The justices of the Constitutional Court shall have the same rights concerning the inviolability of their person as the Members of the Seimas.

Article 105

The Constitutional Court shall consider and adopt decisions on whether the laws of the Republic of Lithuania or other acts adopted by the Seimas are in conflict with the Constitution of the Republic of Lithuania.

The Constitutional Court shall also consider whether the following are in conflict with the Constitution and laws:

- (1) the acts of the President of the Republic;
- (2) the acts of the Government of the Republic.

The Constitutional Court shall present conclusions on:

(1) whether there were the violations of election laws during the elections of the President of the Republic or the elections of the Members of the Seimas;

(2) whether the state of health of the President of the Republic allows him to continue to hold office;

(3) whether the international treaties of the Republic of Lithuania are in conflict with the Constitution;

(4) whether the concrete actions of the Members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.

Article 106

The Government, not less than 1/5 of all the Members of the Seimas, and courts shall have the right to apply to the Constitutional Court concerning the acts specified in the first paragraph of Article 105.

Not less than 1/5 of all the Members of the Seimas and courts shall have the right to apply to the Constitutional Court concerning the conformity of the acts of the President of the Republic with the Constitution and laws.

Not less than 1/5 of all the Members of the Seimas, courts, as well as the President of the Republic, shall have the right to apply to the Constitutional Court concerning the conformity of

the acts of the Government with the Constitution and laws.

An application by the President of the Republic to the Constitutional Court, or a resolution of the Seimas, asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act.

The conclusions of the Constitutional Court may be requested by the Seimas or, in cases concerning elections to the Seimas or international treaties, by the President of the Republic.

The Constitutional Court shall have the right to refuse to accept a case for consideration or to prepare a conclusion if the application is based on non-legal reasoning.

Article 107

A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal.

On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the third paragraph of Article 105 of the Constitution.

Article 108

The powers of a justice of the Constitutional Court shall cease:

- (1) upon the expiry of the term of powers;
- (2) upon his death;
- (3) upon his resignation;
- (4) when he is incapable of holding office due to the state of his health;
- (5) when the Seimas removes him from office in accordance with the procedure for impeachment proceedings.

CHAPTER IX COURTS

Article 109

In the Republic of Lithuania, justice shall be administered only by courts.

When administering justice, judges and courts shall be independent.

When considering cases, judges shall obey only the law.

Courts shall adopt decisions in the name of the Republic of Lithuania.

Article 110

Judges may not apply any laws that are in conflict with the Constitution.

In cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.

Article 111

The courts of the Republic of Lithuania shall be the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts, and local courts.

For the consideration of administrative, labour, family, and cases of other categories, specialised courts may be established according to the law.

No courts with extraordinary powers may be established in the Republic of Lithuania in time of peace.

The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania.

Article 112

In Lithuania, only the citizens of the Republic of Lithuania may be judges.

The justices of the Supreme Court, as well as its President chosen from among them, shall be appointed and released by the Seimas upon submission by the President of the Republic.

The judges of the Court of Appeal, as well as its President chosen from among them, shall be

appointed by the President of the Republic upon the assent of the Seimas.

The judges and presidents of local, regional, and specialised courts shall be appointed, and their places of work shall be changed, by the President of the Republic.

A special institution of judges, as provided for by law, shall advise the President of the Republic on the appointment, promotion, and transfer of judges, or their release from duties.

A person appointed as a judge shall, according to the procedure established by law, take an oath to be faithful to the Republic of Lithuania and to administer justice only according to the law.

Article 113

Judges may not hold any other elective or appointive office, or work in any business, commercial, or other private establishments or enterprises. Nor may they receive any remuneration other than the remuneration established for judges and payment for educational or creative activities.

Judges may not participate in the activities of political parties or other political organisations.

Article 114

Interference by any institutions of state power and governance, Members of the Seimas or other officials, political parties, political or public organisations, or citizens with the activities of a judge or court shall be prohibited and shall lead to liability provided for by law.

Judges may not be held criminally liable or be detained, or have their liberty restricted otherwise, without the consent of the Seimas or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

Article 115

The judges of the courts of the Republic of Lithuania shall be released from their duties according to the procedure established by law in the following cases:

- (1) of their own will;
- (2) upon the expiry of the term of powers, or upon reaching the pensionable age established by law;
- (3) due to their state of health;

(4) upon election to another office, or upon transfer, with their consent, to another place of work;

(5) when their conduct discredits the name of judges;

(6) upon the entry into effect of court judgments convicting them.

Article 116

For a gross violation of the Constitution or a breach of the oath, or when they are found to have committed a crime, the President and justices of the Supreme Court, as well as the President and judges of the Court of Appeal, may be removed from office by the Seimas according to the procedure for impeachment proceedings.

Article 117

In all courts, the consideration of cases shall be public. A closed court hearing may be held in order to protect the secrecy of private or family life, or where the public consideration of the case might disclose a state, professional, or commercial secret.

In the Republic of Lithuania, court proceedings shall be conducted in the state language.

Persons who do not have sufficient knowledge of the Lithuanian language shall be guaranteed the right to participate in the investigation and court proceedings through a translator.

Article 118

A pre-trial investigation shall be organised and directed, and charges on behalf of the State in criminal cases shall be upheld, by prosecutors.

In cases established by law, prosecutors shall defend the rights and legitimate interests of the person, society, and the State.

When performing their functions, prosecutors shall be independent and shall obey only the law.

The Prosecution Service of the Republic of Lithuania shall be the Office of the Prosecutor General and territorial prosecutor's offices.

The Prosecutor General shall be appointed and released by the President of the Republic upon the assent of the Seimas.

The procedure for the appointment and release of prosecutors, as well as their status, shall be established by law. (*Amended 20 March 2003*)

CHAPTER X LOCAL SELF-GOVERNMENT AND GOVERNANCE

Article 119

The right to self-government shall be guaranteed to the administrative territorial units of the State, which are provided for by law. This right shall be implemented through the respective municipal councils.

The members of municipal councils shall be elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of the respective administrative units by the citizens of the Republic of Lithuania and other permanent residents of these administrative units on the basis of universal, equal, and direct suffrage by secret ballot.

The procedure for the organisation and activities of self-government institutions shall be established by law.

For the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it. (*Amended 12 December 1996; 20 June 2002*)

Article 120

The State shall support municipalities.

Municipalities shall act freely and independently within their competence defined by the Constitution and laws.

Article 121

Municipalities shall draft and approve their budgets.

Municipal councils shall have the right, within the limits and according to the procedure provided for by law, to establish local levies; municipal councils may provide for tax and levy concessions at the expense of their own budgets.

Article 122

Municipal councils shall have the right to apply to a court regarding the violation of their rights.

Article 123

At higher-level administrative units, governance shall be organised by the Government according to the procedure established by law.

The observance of the Constitution and laws and the execution of the decisions of the Government by municipalities shall be supervised by the representatives appointed by the Government.

The powers of the representatives of the Government and the procedure for the execution of their powers shall be established by law.

In cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality.

Article 124

The acts or actions of municipal councils or of their executive bodies or officials that violate the rights of citizens or organisations may be appealed against before a court.

CHAPTER XI FINANCES AND THE STATE BUDGET

Article 125

In the Republic of Lithuania, the Bank of Lithuania shall be the central bank, which belongs to the State of Lithuania by right of ownership.

The procedure for the organisation and activities of the Bank of Lithuania, its powers, and the legal status of the Chairperson of the Board of the Bank of Lithuania, as well as the grounds for his release from duties, shall be established by law. (*Amended 25 April 2006*)

Note. To recognise that the Law of the Republic of Lithuania Amending Article 125 of the Constitution (wording of 25 April 2006; Official Gazette *Valstybės žinios*, 2006, No. 48-1701), in view of the procedure of its adoption, is in conflict with Paragraph 1 of Article 147 of the Constitution of the Republic of Lithuania.

The Constitutional Court of the Republic of Lithuania, Ruling 24-01-2014, published 24-01-2014, identification code 2014-00478.

[In accordance with the ruling of the Constitutional Court of 24 January 2014, from the day of the official publication of this ruling, Paragraph 2 of Article 125 of the Constitution may not be applied. This does not mean that Article 125 of the Constitution comes into force in

the wording effective before the entry into force of the Law Amending Article 125 of the Constitution.]

Article 126

The Bank of Lithuania shall be directed by the Board of the Bank, consisting of the Chairperson, Deputy Chairpersons, and members.

The Chairperson of the Board of the Bank of Lithuania shall be appointed for a five-year term by the Seimas upon submission by the President of the Republic.

Article 127

The budgetary system of the Republic of Lithuania shall consist of the independent State Budget of the Republic of Lithuania and independent municipal budgets.

The revenue of the State Budget shall be raised from taxes, compulsory payments, levies, income from state-owned property, and other income.

Taxes, other payments to the budgets, and levies shall be established by the laws of the Republic of Lithuania.

Article 128

Decisions concerning state loans and other basic property liabilities of the State shall be adopted by the Seimas upon the proposal of the Government.

The procedure for the possession, use, and disposal of state-owned property shall be established by law.

Article 129

The budget year shall start on the 1st of January and shall end on the 31st of December.

Article 130

The Government shall draw up a draft State Budget and present it to the Seimas not later than 75 days before the end of the budget year.

Article 131

The draft State Budget shall be considered by the Seimas and shall be approved by law before the start of the new budget year.

During the consideration of the draft budget, the Seimas may increase expenditure provided that it specifies financial sources for the additional expenditure. The expenditure established by law

may not be reduced as long as these laws are not altered.

Article 132

If the State Budget is not approved on time, in such cases, at the beginning of the budget year, the budget expenditure each month may not exceed 1/12 of the expenditure of the State Budget of the previous budget year.

During the budget year, the Seimas may change the budget. It shall be changed according to the same procedure according to which it is drawn up, adopted, and approved. When necessary, the Seimas may approve an additional budget.

CHAPTER XII THE NATIONAL AUDIT OFFICE

Article 133

The system and powers of the National Audit Office shall be established by law.

The National Audit Office shall be headed by the Auditor General, who shall be appointed for a five-year term by the Seimas upon submission by the President of the Republic.

Before taking office, the Auditor General shall take an oath. The oath shall be established by law.

Article 134

The National Audit Office shall supervise the lawfulness of the possession and use of state-owned property and the execution of the State Budget.

The Auditor General shall submit a conclusion to the Seimas concerning the report on the annual execution of the budget.

CHAPTER XIII FOREIGN POLICY AND NATIONAL DEFENCE

Article 135

In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice.

In the Republic of Lithuania, war propaganda shall be prohibited.

Article 136

The Republic of Lithuania shall participate in international organisations provided that this is not in conflict with the interests and independence of the State.

Article 137

There may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.

Article 138

The Seimas shall ratify or denounce the following international treaties of the Republic of Lithuania:

(1) on the alteration of the boundaries of the State of the Republic of Lithuania;

(2) on political co-operation with foreign states; mutual assistance treaties; as well as treaties of a defensive nature related to the defence of the State;

(3) on the renunciation of the use of force or threatening by force; as well as peace treaties;

(4) on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states;

(5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations;

(6) multilateral or long-term economic treaties.

Laws, as well as international treaties, may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania.

International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania.

Article 139

The defence of the State of Lithuania against a foreign armed attack shall be the right and duty of each citizen of the Republic of Lithuania.

The citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law.

The organisation of national defence shall be established by law.

Article 140

The main issues of national defence shall be considered and co-ordinated by the State Defence Council, which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council shall be headed by the President of the Republic. The procedure for its formation and activities, as well as its powers, shall be established by law.

The President of the Republic shall be the Commander-in-Chief of the Armed Forces of the State.

The Government, the Minister of National Defence, and the Commander of the Armed Forces shall be responsible to the Seimas for the administration and command of the armed forces of the State. The Minister of National Defence may not be a serviceman who is not yet retired to the reserve.

Article 141

Persons performing actual military service or alternative service, as well as the officers of the national defence system, the police, and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who are not retired to the reserve, may not be Members of the Seimas or members of municipal councils. They may not hold any elective or appointive office in the civil State Service, or participate in the activities of political parties or organisations.

Article 142

The Seimas shall impose martial law, announce mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania.

In the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on defence against the armed aggression, impose martial law throughout the State or in its separate part, or announce mobilisation, and submit these decisions for

approval at the next sitting of the Seimas, or immediately convene an extraordinary session in the period between sessions of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic.

Article 143

If a regular election must be held in time of war actions, either the Seimas or the President of the Republic shall adopt the decision to extend the term of powers of the Seimas, the President of the Republic, or municipal councils. In such a case, elections must be called not later than three months after the end of the war.

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.

Article 145

Upon the imposition of martial law or the declaration of a state of emergency, the rights and freedoms specified in Articles 22, 24, 25, 32, 35, and 36 of the Constitution may temporarily be limited.

Article 146

The State shall take care of and provide for servicemen who lose their health during military service, as well as for the families of servicemen who lose their lives or die during military service.

The State shall also provide for citizens who lose their health while defending the State, as well as for the families of citizens who lose their lives or die in defence of the State.

CHAPTER XIV THE ALTERATION OF THE CONSTITUTION

Article 147

A motion to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than 1/4 of all the Members of the Seimas or not less than by 300 000 voters.

During a state of emergency or martial law, the Constitution may not be amended.

Article 148

The provision “The State of Lithuania shall be an independent democratic republic” of Article 1 of the Constitution may be altered only by referendum if not less than 3/4 of the citizens of Lithuania with the electoral right vote in favour thereof.

The provisions of the First Chapter “The State of Lithuania” and the Fourteenth Chapter “The Alteration of the Constitution” may be altered only by referendum.

Amendments to the Constitution concerning other chapters of the Constitution must be considered and voted at the Seimas twice. There must be a break of not less than three months between the votes. A draft law on the alteration of the Constitution shall be deemed adopted by the Seimas if, during each of the votes, not less than 2/3 of all the Members of the Seimas vote in favour thereof.

A failed amendment to the Constitution may be submitted to the Seimas for reconsideration not earlier than after one year.

Article 149

The President of the Republic shall sign an adopted law on the alteration of the Constitution and officially promulgate it within five days.

If the President of the Republic does not sign and promulgate such a law within the specified time, this law shall come into force when the Speaker of the Seimas signs and promulgates it.

A law on the alteration of the Constitution shall come into force not earlier than one month after its adoption.

FINAL PROVISIONS

Article 150

The constituent part of the Constitution of the Republic of Lithuania shall be:

The Constitutional Law “On the State of Lithuania” of 11 February 1991;

The Constitutional Act “On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions” of 8 June 1992;

The Law “On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania” of 25 October 1992;

The Constitutional Act “On Membership of the Republic of Lithuania in the European Union” of 13 July 2004. (*Amended 13 July 2004*)

Article 151

This Constitution of the Republic of Lithuania shall come into force on the day following the official publication of the results of the Referendum provided that more than half of the citizens of the Republic of Lithuania with the electoral right give their consent to this Constitution in the Referendum.

Article 152

The procedure for the entry into force of this Constitution and separate provisions thereof shall be regulated by the Law of the Republic of Lithuania “On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania”, which, together with this Constitution of the Republic of Lithuania, shall be adopted by referendum.

Article 153

After the adoption of this Constitution of the Republic of Lithuania by referendum, the Seimas of the Republic of Lithuania, by 25 October 1993, may alter, by a 3/5 majority vote of all the Members of the Seimas, the provisions of this Constitution of the Republic of Lithuania contained in Articles 47, 55, 56, Item 2 of the second paragraph of Article 58, in Articles 65, 68, 69, Items 11 and 12 of Article 84, the first paragraph of Article 87, in Articles 96, 103, 118, and in the fourth paragraph of Article 119.

Article 154

The Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania “On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania”, adopted by referendum, shall be signed and,

within 15 days, promulgated by the Chairman of the Supreme Council of the Republic of Lithuania.

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Vilnius, 6 November 1992

THE CONSTITUENT PART OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

THE CONSTITUTIONAL LAW OF THE REPUBLIC OF LITHUANIA ON THE STATE OF LITHUANIA

The Supreme Council of the Republic of Lithuania,

taking account of the fact that, during the general poll (plebiscite) held on 9 February 1991, more than three-quarters of the population of Lithuania with the active electoral right voted by secret ballot that “the State of Lithuania would be an independent democratic republic”,

emphasising that, by this expression of sovereign powers and will, the Nation of Lithuania once again confirmed its unchanging stand on the independent State of Lithuania;

interpreting the results of the plebiscite as the common determination to strengthen and defend the independence of Lithuania and to create a democratic republic, and

executing the will of the Nation of Lithuania, adopts and solemnly proclaims this Law.

Article 1

The statement “The State of Lithuania shall be an independent democratic republic” is a constitutional norm of the Republic of Lithuania and a fundamental principle of the State.

Article 2

The constitutional norm and the fundamental principle of the State as formulated in the first article of this Law may be altered only by a general poll (plebiscite) of the Nation of Lithuania provided that not less than three-quarters of the citizens of Lithuania with the active electoral right vote in favour thereof.

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Vilnius, 11 February 1991

THE CONSTITUTIONAL ACT OF THE REPUBLIC OF LITHUANIA ON THE NON-ALIGNMENT OF THE REPUBLIC OF LITHUANIA TO POST-SOVIET EASTERN UNIONS

The Supreme Council of the Republic of Lithuania,

invoking the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent

State of Lithuania and acting upon the will of the entire Nation, as expressed on 9 February 1991, and

witnessing the attempts to preserve, in any form, the former Union of Soviet Socialist Republics with all its conquered territories, and the intentions to draw Lithuania into the defensive, economic, financial, and other “spaces” of the post-Soviet Eastern bloc,

r e s o l v e s:

1. To develop mutually advantageous relations with each state that was formerly a component of the USSR, but never join, in any form, any new political, military, economic, or other unions or commonwealths of states formed on the basis of the former USSR.

2. Any activities seeking to draw the State of Lithuania into the unions or commonwealths

of states specified in the first article of this Constitutional Act shall be regarded as hostile to the independence of Lithuania, and liability for them shall be established by law.

3. There may be no military bases or army units of Russia, or the Commonwealth of Independent States or its constituent states, on the territory of the Republic of Lithuania.

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Vilnius, 8 June 1992

THE LAW OF THE REPUBLIC OF LITHUANIA ON THE PROCEDURE FOR THE ENTRY INTO FORCE OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

Article 1

Upon the entry into force of the Constitution of the Republic of Lithuania, the Provisional Basic Law of the Republic of Lithuania shall become null and void.

Article 2

Laws, as well as other legal acts or parts thereof, that were in force on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania shall be effective inasmuch as they are not in conflict with the Constitution and this Law, and shall remain in force until they are either declared null and void or brought in line with the provisions of the Constitution.

Article 3

The provisions of the laws of the Republic of Lithuania that regulate the status of the supreme institutions of state power and governance of the Republic of Lithuania, as well as the status of deputies and municipal councils, shall be in force until the elected Seimas decides otherwise.

Article 4

The powers of the Supreme Council of the Republic of Lithuania and its deputies shall cease

from the moment when the elected Seimas of the Republic of Lithuania convenes for its first sitting.

The Members of the Seimas of the Republic of Lithuania shall convene for the sitting on the third working day after the official announcement by the Central Electoral Commission, following both election rounds, that not less than 3/5 of all the Members of the Seimas have been elected.

Article 5

The following text of the oath for a Member of the Seimas of the Republic of Lithuania shall be established:

“I (full name),

swear to be faithful to the Republic of Lithuania;

swear to respect and uphold its Constitution and laws and to protect the integrity of its lands;

swear to strengthen, to the best of my ability, the independence of Lithuania, and to conscientiously serve my Homeland, democracy, and the welfare of the people of Lithuania.

So help me God.”

The oath may also be taken by omitting the last sentence.

Article 6

During the period when there is still no President of the Republic, the legal situation shall be equivalent

to the situation provided for in Article 89 of the Constitution of the Republic of Lithuania.

When necessary, the Seimas may, by a majority vote of more than half of all the Members of the Seimas, extend the terms provided for in Article 89, but for no longer than a four-month period.

Article 7

The justices of the Constitutional Court of the Republic of Lithuania and, from among them, the President of the Constitutional Court must be appointed not later than one month after the election of the President of the Republic.

When the justices of the Constitutional Court are appointed for the first time, three of them shall be appointed for a three-, three for a six-, and three for a nine-year term.

The President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court, when proposing candidates to be appointed as

justices of the Constitutional Court, shall indicate who of them should be appointed for a three-, who for a six-, and who for a nine-year term.

The justices of the Constitutional Court who will be appointed for three- or six-year terms may hold the same office for one more term of office after an interval of not less than three years.

Article 8

The provisions of the third paragraph of Article 20 of the Constitution of the Republic of Lithuania shall become applicable after the laws of the Republic of Lithuania on criminal procedure have been brought in line with this Constitution.

Chairman of the Supreme Council of
the Republic of Lithuania
Vytautas Landsbergis

Vilnius, 6 November 1992

THE CONSTITUTIONAL ACT OF THE REPUBLIC OF LITHUANIA ON MEMBERSHIP OF THE REPUBLIC OF LITHUANIA IN THE EUROPEAN UNION

The Seimas of the Republic of Lithuania,
executing the will of the citizens of the Republic of Lithuania, as expressed in the referendum on membership of the Republic of Lithuania in the European Union, held on 10–11 May 2003,

expressing its conviction that the European Union respects human rights and fundamental freedoms and that Lithuanian membership in the European Union will contribute to the more efficient securing of human rights and freedoms,

noting that the European Union respects the national identity and constitutional traditions of its Member States,

seeking to ensure the fully fledged participation of the Republic of Lithuania in the European integration, as well as the security of the Republic of Lithuania and welfare of its citizens,

having ratified, on 16 September 2003, the Treaty Between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom

of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic to the European Union, signed on 16 April 2003 in Athens, adopts and proclaims this Constitutional Act:

1. The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its state institutions in the areas provided for in the founding Treaties of the European Union and to the extent it would, together with the other Member

States of the European Union, jointly meet its membership commitments in those areas, as well as enjoy membership rights.

2. The norms of European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of European Union law shall be applied directly, while in the event of the collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.

3. The Government shall inform the Seimas about the proposals to adopt the acts of European Union law. As regards the proposals to adopt the acts of European Union law regulating the areas that, under the Constitution of the Republic of Lithuania, are related to the competences of the Seimas, the Government shall consult the Seimas. The Seimas may recommend to the Government a position of the Republic of Lithuania in respect of these proposals. The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may,

according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the proposals to adopt the acts of European Union law. The Government shall assess the recommendations or opinions submitted by the Seimas or its Committees and shall inform the Seimas about their execution following the procedure established by legal acts.

4. The Government shall consider the proposals to adopt the acts of European Union law following the procedure established by legal acts. As regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.

The Law Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act was signed by President of the Republic of Lithuania Valdas Adamkus.

Vilnius, 13 July 2004

LITHUANIAN CONSTITUTIONALISM

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