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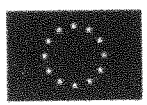

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Abbreviations

ABH	–	Decision of the Constitutional Court (Hungary)
ACC	–	Act on the Constitutional Court (Macedonia)
BverfGE	–	Entscheidungen des Bundesverfassungsgerichts (Germany)
Call.	–	Collection of Laws (Czech Republic)
CC	–	Constitutional Court (Macedonia)
CCA	–	Constitutional Court (Czech Republic)
CFSP	–	Common Foreign and Security Policy
COREPER	–	Committee of Permanent Representatives
CRCPA	–	Constitutional Review Court Procedure Act (Estonia)
CSFR	–	Czech and Slovak Federal Republic
DG	–	Directorates General (departments of EC)
EC	–	European Commission
ECB	–	European Central Bank
ECHR	–	European Convention of Human Rights
ECR	–	European Court Ruling
EEC Treaty	–	Treaty establishing the European Economic Community
ENP	–	European Neighbourhood Policy
ENPI	–	European Neighbourhood and Partnership Instrument
EP	–	European Parliament
EU	–	European Union
GRA	–	Government of the Republic Act (Estonia)
JCMS	–	Journal of Common Market Studies
MEPs	–	Members of the European Parliament

NATO	–	North Atlantic Treaty Organization
OECD	–	Organisation for Economic Co-operation and Development
OJ	–	Official Journal
PCA	–	Partnership and Co-operation Agreement
PermRep	–	Permanent Representation
RPIRA	–	Rules of Procedure and Internal Rules Act (Estonia)
SAAs	–	Stabilisation and Association Agreements
SCA	–	Special Committee for Agriculture
TEADA	–	Territory of Estonia Administrative Division Act
TEC	–	Treaty establishing the European Community
TEU	–	Treaty on the European Union
TFEU	–	Treaty on the Functioning of the European Union
UNESCO	–	United Nations Educational, Scientific and Cultural Organization

Foreword

'European political culture', 'European standards of human rights', 'European traditions' are terms widely used in the present-day political discourse. Europe has been torn by atrocious wars, it has been divided into two hostile blocks based on irreconcilable ideologies – and yet it confesses to ideals and principles as its "common heritage". Europe is proud of being the cradle of the philosophical theories of Enlightenment that have led to the establishment of a European Court protecting basic rights and freedoms of over 800 million people. Europe has common aims and aspirations, although it is composed of many different states formed by different traditions and convictions. Thus, the European culture is uniform and multifaceted at the same time.

Governance based on the rule of law has always been a point of reference for the European self-esteem. There is, however, no one generally accepted model, although many basic common concepts and ideas can be identified. The present volume undertakes to present the governmental systems of the majority of Central and Eastern European States that developed mainly after the revolutionary year of 1989, but still stick to their century-old traditions. It is impressive to realise the divergence of the solutions given to questions and problems that arise in similar contexts. Very often, the models have been developed on the basis of trial-and-error. The sometimes naïve reception of systems found elsewhere that could be observed at the beginning of the 1990s has given way to a more differentiated and critical approach to prefabricated solutions. Even very basic concepts such as sovereignty and rule of law can be interpreted in different ways.

The present analysis is a rich source for legal comparatists and political scientists. At the same time it can be read as a sort of crystallized history of the European political thought.

Vaidotas A. Vaičaitis

The Lithuanian Governmental System

Brief constitutional history. The state of Lithuania was formed by the unification of several duchies in the Baltic Sea region by Mindaugas, the first King of Lithuania, in the first half of the thirteenth century. Mindaugas also brought Christianity to Lithuania which was the last country in Europe to convert to Christianity. After several failed attempts by missionaries, it was 1387 before Lithuania finally converted, and in *Samogitia* (*Žemaitija*), the north-western region of the country, as late as the early fifteenth century. The refusal of other Lithuanian dukes to accept King Mindaugas' conversion to Christianity in the second half of the thirteenth century led to a certain 'weakening' of the country's international status from a kingdom to a grand duchy. In 1569 Lithuania and Poland formed a confederation with a common bicameral parliament and an elected king who was given the title King of Poland and Grand Duke of Lithuania. This state was called a 'Commonwealth' (*Rzeczpospolita* in Polish) of Two Nations since it comprised the Kingdom of Poland and Grand Duchy of Lithuania. The king was elected head of state without hereditary rights. He presided over the parliament which held the principal legislative powers. The Grand Duchy of Lithuania had its own legal system which was codified in the Lithuanian Statutes (*Lietuvos Statutai*)[1] of 1529, 1566 and 1588. The Commonwealth of Two Nations existed for more than two centuries until 1795, when it was partitioned by Russia, Prussia and Austria.

Towards the end of the Commonwealth's existence, the parliament, inspired by the French Revolution and the *Declaration des droits de l'homme et du citoyen*, adopted one of Europe's first written constitutions on 3 May 1791. The document's official title was the Law on Government.

[1] Also called as 'Statutes of Lithuanian Grand Duchy'.

The constitution did not proclaim a republican form of government but provided for a hereditary rather than an elected monarchy. It was also a victory for the *tiers état* whose members were for the first time invited to sit in the parliament. Montesquieu's idea of the separation of powers found expression in the text of the constitution of 3 May 1791. The constitution abolished the principle of ***liberum veto***[2] in the parliament the existence of which played a major role in the fall of the commonwealth. The constitution remained in force for only two years. The Commonwealth of Two Nations finally disappeared from the map of Europe in 1795. After the end of the World War I, the ideas of national sovereignty and the nation state inspired the creation of two separate republics, Poland and Lithuania.

The modern State of Lithuania was created on 16 February 1918 by the Act of Independence which proclaimed Lithuania an independent state and the successor to the Grand Duchy of Lithuania. After some hesitation about the country's form of government, in 1920 the Constituent Assembly *(Steigiamasis Seimas)* proclaimed Lithuania a democratic republic.[3] The First Lithuanian Republic[4] lasted until 1940, when the Soviet army occupied the country following a secret agreement between Hitler and Stalin. The first Lithuanian democratic constitution was adopted in 1922, declaring Lithuania a republic with a parliamentary form of government. According to the 1922 Constitution, the unicameral Parliament (*Seimas*) was the main actor in the political arena. Members of Parliament could be elected for a period of three years by a system of proportional representation. The Parliament had the right to elect and dismiss the president (by a two-thirds majority). The cabinet of ministers had to receive a vote of confidence from the parliament. The president had the power of veto, which could only be overruled by an absolute majority of the members of parliament. The parliament had sole legislative powers, whi-

[2] In the parliament of the Commonwealth of Two Nations every single noble (who represented the council of nobles of a particular administrative unit in the parliament) had a right to veto any decision of the parliament, which meant that a single person could destroy the proceedings of the parliament. Historians regard *liberum veto* as an 'abuse of democracy' and one of the main reasons for the country's decadence at the end of the eighteenth century.

[3] Attempts to make Lithuania a monarchy at the end of World War I, with Duke Wilhelm Karl von Urach as King Mindaugas II, failed after Germany's defeat. In 1918 the Lithuanian Council (*Lietuvos Taryba*), which was dominated by the political right-wing, invited Wilhem Karl von Urach to become king and the latter agreed to accept the position. This invitation was made when Lithuania was still occupied by German troops. But after Germany's defeat at the end of 1918, any political links with Germany became unpopular. Moreover, the major political forces (Christian Democrats and Social Democrats) elected to the Constituent Assembly in 1920 were pro-republican.

[4] There is some discussion in contemporary Lithuanian political and legal circles as to whether the republican tradition in Lithuania should be regarded as dating from the Commonwealth of Two Nations or from the inter-war republic (1920–1940).

le governmental directives had the status of subordinate legislation and could only embellish laws passed by the parliament. Two later constitutions, which were adopted in 1928 and 1938 after a *coup d'état* in December 1926, strengthened presidential powers and left the country subject to an authoritarian regime.[5]

The secret protocols of the Molotov-Ribbentrop Pact (August-September 1939) ultimately led to World War II. After Germany had occupied Poland and France, Soviet troops entered and occupied Lithuania, Latvia and Estonia in June 1940. Lithuania's president, Antanas Smetona, left the country the very next day. In August 1940 Lithuania and the two other Baltic countries were incorporated into the Soviet Union. On 23 June 1941, before German troops entered the country's territory, a provisional government was formed in Kaunas and proclaimed the restoration of independence. This declaration was never recognised by Hitler, and the provisional government was forced to go underground in August 1941. The second Soviet occupation began in 1944 and was to last until 1990. When the Soviet army entered the country in 1944, an armed resistance movement was formed. It existed for almost ten years until 1953, when the head of the resistance movement, General Jonas Žemaitis-Vytautas (who is also known as the fourth Lithuanian president), was captured and executed. The Declaration of 16 February 1949,[6] signed by the Council of the Resistance Movement for Freedom (*Lietuvos Laisvės Kovų Sąjūdžio Taryba*), was made part of the current Lithuanian legal system by a law of 12 January 1999.[7]

[5] The presidents of the First Lithuanian Republic were Aleksandras Stulginskis, Christian Democrat (1920–1926); Kazys Grinius, Social Democrat (1926); Antanas Smetona, National Party (1926–1940). The latter came to power after a *coup d'état* on 17 December 1926.

[6] 16 February 1949 Declaration of the Council of Lithuanian Resistance Movement for Freedom (extract): 'The Council of Lithuanian Resistance Movement, representing all of the military groups headed by an unanimous leadership within the territory of Lithuania declares: 1. The Council of Resistance Movement [...] shall be the supreme political body of the nation during the occupation period, in charge of the political and military struggle for liberation of the Nation. 3. Lithuania shall be a democratic republic. 4. The sovereign authority of Lithuania shall belong to the Nation. 6. Provisional National Council shall have legislative power from the end of occupation until democratic Parliament will be elected... 14. New Constitution shall be adopted with regard to principles of democracy and human rights and the restoration of the State of Lithuania shall be implemented in accordance with the spirit of the 1922 Lithuanian Constitution... 16. The Communist Party, as dictatorial and being contrary to independence of the Lithuanian state and to fundamental principles of the Constitution, shall be declared illegal... 22. The Council, joining the efforts of other countries to create a permanent peace founded upon justice and freedom, drawing support from full implementation of the principles of democracy grounded in Christian morality and declared by the Atlantic Charter, President Truman's 12 Points, The Universal Declaration of Human Rights and other declarations of justice and freedom, appeals to all democratic world for assistance in implementing its goals'[...].

[7] The Resistance Movement for Freedom was an armed anti-Soviet organization that existed from 1944 to 1953. About 100,000 partisans joined the armed anti-Soviet resistance movement in the three Baltic states. The small teams of partisans hid themselves in forests and were known to the population as 'the forest brothers'. Until 1949, all militias in Lithuania were divided into regional groups (*apygarda*) with different district military leaders (each regional group of partisans consisted of two to five corps which were split up into smaller detachments and squads). For reasons of security, the partisans lived in underground bunkers in small groups of four or five persons. In 1949, nine regional districts finally unified and formed the Council of the Resistance Movement for Freedom. The chairman of the council (Jonas Žemaitis) was elected from among the leaders of the regional resistance districts. Organized anti-Soviet resistance in the country was finally smothered by the Soviet army and KGB agents in the 1950s. During the anti-Soviet struggle, about 20,000-30,000 'forest brothers' were killed in Lithuania alone. Another 140,000 people were sent to concentration camps and 118,000 were deported. See The Anti-Soviet Resistance in the Baltic States (Vilnius, Genocide and Resistance Research Center of Lithuania, Akreta 2002).

Inspired by signs of the impending collapse of the Soviet empire and a certain political desire to reform the communist party, underground political, social and religious groups began to surface between 1988 and 1990 and new political groups and movements emerged in the country. On 24 February 1990, with their 'independence' program, the main social-political movement, the *Sąjūdis*, won the first free elections after the Soviet occupation, gaining more than two-thirds of the seats in the Parliament. The first session of the Parliament was held on 10 March 1990. The very next day, 11 March 1990, the Parliament proclaimed the Act of Restoration of the Independence of the Lithuanian State. This act was followed by passing the symbolic Law on the Reinforcement of the 12 May 1938 Lithuanian Constitution[8] and the Provisional Basic Law, which served as a transitional constitution. The validity of the 1938 Constitution was suspended on the same day. This Constituent Assembly (*Atkuriamasis Seimas*) completed its task by adopting the 1992 Constitution, after it had been approved in a popular referendum.

1. Basic constitutional principles determining the governmental activity

The main constitutional principles laid down in 1992 Lithuanian Constitution include democracy (Article 1), market economy (Article 46), equity and justice (Articles 29, 31 and 109), the subservience of state institutions to the people (Article 5), direct and representative democracy (Articles 2–5, 9, 33), separation of public powers (Article 5), constitutionalism (Articles 6, 7 and 110), the protection of human rights as natural rights (Article 18), the

[8] On 11 March 1990, the Parliament symbolically restored the validity of the 1938 Constitution in the country in order to show that the Lithuanian state had *de iure* never ceased to exist. On 11 March 1990, the 1938 Constitution was valid for just one hour until the Provisional Basic Law was passed.

right of expression and conscience (Articles 25 and 26), the right of association (Article 35), the principle of free elections (Articles 34 and 55), justice and independence of the judiciary (Article 109). In its case law, the Constitutional Court has also developed other constitutional principles which include adherence to the rule of law and the principles of proportionality, legal certainty, legitimate expectations, etc. Nevertheless, one of the most important constitutional principles is popular sovereignty (see also Preamble[9] and Articles 2, 3, 4 and 9). The idea of popular sovereignty was the founding principle which inspired long resistance after the soviet occupation bringing nation to the 'singing revolution' in the late eighties and restoration of independence in 1990. The idea of sovereignty as a political and legal concept roots in theology and therefore means 'absolute power', but in modern western political-legal reality this concept is moderated by the principle of separation of powers and the concept of human rights. This is also the case in Lithuania.

1.1. Concept of sovereignty

The principle of popular (national) sovereignty embodied in 1992 Constitution can be defined as internal and external. In the context of internal sovereignty the Nation is being regarded as the highest political body in the country: 'the State of Lithuania shall be created by the Nation; sovereignty shall be vested in the Nation' (Article 2); 'the Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives' (Article 4); 'the most significant issues concerning the life of State and the Nation shall be decided by referendum' (Article 9). Accordingly so called external sovereignty is related with the State and the Nation's representation in the international sphere. For instance, Article 3 provides that 'the Nation [...] shall have the right to resist anyone who encroaches on its independence'. These concepts of internal and external

[9] 'The Lithuanian Nation, having established 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 natural 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 State under the rule of law, by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this Constitution'.

sovereignty of the nation are closely interrelated, but constitutional law is traditionally concerned with the internal sovereignty of the nation, while an external sovereignty is mostly a subject of international law.

The Constitution considers national elections and popular referendum as main instruments to express the principle of popular sovereignty. Starting from 1990 till 2008, six parliamentary elections and ten popular referendums were held in the country. What concerns popular referendums, they may be initiated either by the political body, the Parliament or by people themselves. But different non-governmental groups never succeeded to collect the appropriate number of signatures (300,000), required by the Constitution in order to initiate particular referendum. One of the main obstacles in collecting such number of signatures is the requirement of Law on referendums to do so within three months. Therefore all referendums in Lithuania were initiated by the Parliament. It also has to be said that Law on Referendum requires participation of half the constituents in order the referendum could be valid.[10] Therefore only five popular referendums or plebiscites have reached this high requirement: in 1991 – when people approved the constitutional provision that Lithuania should be an independent and democratic republic; three times in 1992 – when people disagreed on semi-presidential form of government; when people approved the Constitutional act stating that soviet military troops should be withdrawn from the Lithuanian territory and also when 1992 Constitution was approved and in 2003 – when people approved Lithuania's accession to the EU.

In this section some words should be said regarding Lithuania's accession to the European Union on 1 May 2004. During the accession process there were legal and political debates about whether it was necessary to adopt an amendment to the Constitution and, if so, what the terms of the amendment should be. The answer was not clear since the Act on International Treaties (1999) already guaranteed the precedence of ratified treaties over the national law in the Lithuanian legal system. On the other hand, however, it was not so clear whether this precedence also extended to the national Constitution. In order to get around this ambiguity, it was decided to incorporate some principles of the European law into the Constitution, thus raising their status to the constitutional law. In 2004, therefore, instead of amending a particular article of the constitution, a separate Constitutional

[10] According to this law, all citizens, notwithstanding to their will, have to be counted in order to proclaim the referendum as a valid one.

Act was adopted, in accordance with the procedure for amending the Constitution (Article 148), and became part of the Constitution. This method of amending the Constitution was upheld in a ruling of the Constitutional Court on 13 December 2004.

As it is in other Central and Eastern European countries, any reference to the curtailment or delegation of sovereignty is a very sensitive matter in Lithuania. This can probably be explained by the fact that the sovereignty which these countries lost after World War II was only restored in the 1990s after the withdrawal of Soviet military troops. But the issue of sovereignty is even more sensitive in the Baltic countries which were largely erased from the European political map after World War II. The 2004 Constitutional Act on Membership of the EU, therefore, does not mention 'delegation of sovereignty', but instead 'shares or confers some competences of the Republic of Lithuania... together with other Member States' (Article 1 of the Constitutional Act), which sounds less dramatic to Lithuanian ears. Therefore, the traditional concept of national sovereignty at least in theory was preserved even after Lithuania's accession to the European Union.

1.2. The rule of law, democracy and division of powers

1. Other important constitutional principle, embodied in the Preamble of the Constitution is the rule of law.[11] The principle of the rule of law is a new concept in the Lithuanian legal system, for it has never been written down in the Constitutions of the First Lithuanian Republic. This principle has to be regarded together with principles of democracy and free market and means that Lithuania is a democratic republic (Article 1) where direct democracy through public referendum and free elections and representative democracy through separation of public powers, together with parliamentarism and independence of judiciary, should be guaranteed. The principle of the rule of law in Lithuania is also related with the idea of constitutionalism which primarily means the insurance of the direct application and the highest rank of the Constitution by the Constitutional Court. The importance and application of these two principles in the modern Lithuanian legal and political system may be understood only in the context of the nation's experience of authoritarian regime at the end of the First Lithuanian Republic before the Second World War and totalitarian regime under the soviet occupation. Only in this historic context the ban of Communist Party and the prohibition of Nazi and Soviet symbols in the Lithuanian public sphere should be justified.

[11] In fact, the Lithuanian expression *teisinė valstybė* etymologically is closer to the German concept of *Rechtsstaat* than to the British *rule of law*.

2. Another important constitutional principle, related with democracy and the rule of law, is division of public powers. According to Article 5 of the Constitution, the public power in Lithuania is implemented by the *Seimas* (legislative power), the President and the Government (executive power) and courts (judicial power). But contemporary division of public powers is much more complex than recognition of this traditional 'triangle' of legislative-executive-judicial, underlined in 1992 Constitution. Firstly, today the public power in Lithuania is divided at least into four levels: European, national, regional (with some extent) and municipal. Secondly, even within the national level, we have such institutions as Lithuanian Central Bank (*Lietuvos bankas*), Supreme Audit Institution (*Valstybės kontrolė*), Office of General Prosecutor or ombudsmen, which do not fall into competence of any traditional 'triangle' public powers and exercise their powers rather independently.

The Lithuanian Constitutional Court in its case-law interprets the principle of division of powers rather strictly. For instance, it prohibited the practice of the so called 'double mandate' when members of Parliament use to be also members of the municipal council. According to case-law of the Constitutional Court, a Member of Parliament may not have any labour relations (e.g. s/he may not work as a teacher or professor at the University) and hold only an office of a minister. It is interesting, but this restriction to give lectures at the University does not extend to the office of a minister or judge of any court (including the Constitutional Court itself). The Lithuanian Constitution does not foresee a possibility of the so called 'delegated legislation', i.e. the Government or President of the Republic may not adopt statutes or establish state taxes. But in the majority of constitutional cases the principle of division of powers was used in order to protect judiciary from the influence of the political power. For instance, in some cases the Constitutional Court ruled that the Parliament had broken this principle by diminishing a remuneration of judges (e.g. judgment of 12 July, 2001). Relying on the same principle, it also strengthened the role of the Judicial Council as an advisory agency for the President in appointing judges. According to jurisprudence of the Constitutional Court, members of the Judi-

cial Council may be only judges (judgment of 9 May 2006). According to the same jurisprudence, the President of the Republic may not appoint a judge if the Judicial Council does not advise to do so.

But in Lithuania, as it is the case in some other democratic countries, the principle of division of powers may be understood only through the glasses of the system of 'checks and balances'. For instance, the President may dissolve the Parliament if the latter expresses the no-confidence for the Government or the prime minister (Articles 58 and 101), but the newly elected Parliament may announce pre-term elections of the President (Article 87). The *Seimas* adopts the statutes, but the President has a right of the suspensive veto. This idea of 'checks and balances' may be seen also in nomination and functioning of the judicial power: the Parliament has large discretion in appointing justices of the Constitutional Court, but the latter may declare any Act of Parliament unconstitutional and void. Therefore, the system of checks and balances also means that division of public powers has to be interpreted in the way not only to guarantee independence of judiciary from the political power and to keep a clear distinction among legislature and executive, but also to insure certain control and balance among main public agencies and to help for functioning all the public structure of the country. It also means that legislature, executive and judiciary have to cooperate in implementing various public functions. It was already underlined that the Lithuanian Constitution recognises the Westminster model when prime minister and ministers, as a rule, are designated among Members of Parliament and they may maintain both posts (Article 60). This idea of cooperation is reflected also in the impeachment procedure in Lithuania: according to the Rules of the Parliamentary procedure, the chief justice of the Supreme Court presides in the Parliament during the impeachment process and when it concerns the impeachment of the President of the Republic, this is only the Constitutional Court which may declare that acts of the President grossly violated the Constitution and that the President has committed the breach of an oath of office.

1.3. State structure and (de)centralisation

According to the Constitution, the Lithuanian territory is integral and shall not be divided into any state-like formations or entities (Article 10). This provision roots in the nation's struggle for independence and a sover-

eign state. In reality Lithuania is rather a centralised unitary country with directly elected municipal bodies and counties (*apskritys*) administrated by governors of the county, appointed by the Government.[12] Lithuania has no tradition of federalization or even decentralisation. The Kingdom of Lithuania in the thirteenth century, the Grand Duchy and the First Lithuanian Republic were unitary and fairly centralised states. Only the Commonwealth of Two Nations (from the sixteenth to the eighteenth centuries) was something of a cross between a federation and a confederation. Therefore, the unitary state model and strong centralisation grounds in the historic tradition rather than comes from constitutional provisions.

The decentralised state power in Lithuania is exercised at two levels: by municipalities and counties. Only municipalities have directly elected representatives, while the governor of a county is appointed by the central government (Article 123). The case-law of the Constitutional Court and the national political and legal elite also advocate the country's centralised form of government.[13] Accordingly, regionalisation in Lithuania should be regarded as de-concentration of the central public power, for counties do not have any legislative competence and could be described as '*préfectures*' in the French administrative tradition. Although municipalities have the constitutional right to their own separate budget, autonomous from central the government (Article 121), but under legislation they have no right to collect taxes. Almost all financial resources for the municipal budget, therefore, come from the central government which redistributes all national income. In that sense, it is difficult to speak of real autonomy of the local government and decentralisation of the state power in Lithuania up to now.

Up to July, 2010 there were 60 municipalities (*savivaldybės*) and ten counties (*apskritys*) in Lithuania. Residents of municipalities are represented by directly elected members of the municipal council. There are also ten Agents of the Government (*Vyriausybės atstovas*), whose task is to ensure that municipal decisions should not conflict with the decisions of the central government. Their decisions may be appealed to the administrative courts.

[12] In fact, acoording to the administrative reform – the counties (*apskritys*) are to be abolished up to July, 2010.

[13] For example, the Constitutional Court ruled on 13 December 2004 that the constitutional provision of Art. 121 that 'municipalities shall draft and approve their own budget' does not mean 'an independent (from central government) budget' and that Lithuania has a 'unified budgetary system'. In the same ruling, the Constitutional Court defended the quite centralised 'Weberian' model of the Lithuanian civil service.

Nevertheless, starting with 2004, when Lithuania joined the European Union, some decentralisation of the public power was promoted. Accordingly, in 2004 Constitutional Act on Lithuania's Membership in the EU was adopted. From then, as it was already said, acting public powers in the country may be divided into four levels: European, national, regional and municipal. Therefore the EU membership changed competence not only of the central national power, but also promoted some regionalisation. Because of that, Lithuanian counties have been treated as regional bodies in the EU structure and were granted with some new competences. The nearest future will show whether Lithuania will move towards decentralisation and regionalisation and whether regions will be established instead of former counties.

1.4. Political regime and type of the government

Since regaining independence from the totalitarian Soviet Union in 1990, the Lithuanian State has been very sensitive about the issue of the political regime.[14] In acts passed on 11 March 1990, the new government announced its commitment to establishing a democratic state. A Constitutional Act of 1991, which was approved in a popular referendum, stipulates that the statement that 'Lithuania is an independent and democratic Republic' is a constitutional rule and a fundamental principle of the state, which may be amended only by a majority of no less than three-quarters of the Lithuanian electorate. This principle of democracy was enshrined in Articles 1 and 148 of the 1992 Constitution and has been endorsed in the case-law of the Constitutional Court on numerous occasions.

The form of the government is not a strictly legal matter but rather a political issue. Nevertheless, legal science has something to say about it. The text of the 1992 Constitution is something of a compromise between the different models of a parliamentary regime and a semi-presidential regime. The final text of the Constitution includes elements of both models. On the one hand, the Government must have the confidence of the Parliament and has to resign after parliamentary elections (Articles 92 and 101), but on the other hand, the President of the Republic is elected directly by

[14] This sensitivity was also influenced by the experiences with the First Lithuanian Republic which turned into an authoritarian regime after a *coup d'état* in 1926.

the people. The President's tenure in office does not correspond with that of the Parliament. The President appoints the prime minister and ministers, and the Government has to 'return its powers' upon the election of the President (Articles 78, 84 and 92). In other words, the fact that the President of the Republic of Lithuania is directly elected, together with the existence of a 'strong' Constitutional Court with competence to review the parliamentary legislation, allow us to refer to Lithuania's form of government as what in the French legal and political literature is called *'parlementarisme rationalisé'*.

Of course, in practice the form of the government in Lithuania depends very much on the actual political actors, in particular the President's ability to play an active role in the political life and his relationship with the parliamentary majority. The political regime of the Second Lithuanian Republic can generally be described with the French term *cohabitation*, except for the period from 1993 to 1996 when President Algirdas Brazauskas and the parliamentary majority were from the same Labour Democratic Party (former communists).

> The interpretation of the form of government by the left-wing president can be said to have corresponded with the draft parliamentary-model constitution of the former communists. This interpretation meant that between 1993 and 1996, Algirdas Brazauskas, as the President of the Republic and formal leader of the parliamentary majority party, played a fairly passive role in the political life, leaving power mainly in the hands of the prime minister. It is too early in the political life of the country to say whether conservatives or liberals (or other center-right political parties) would adopt not 'parliamentarian', but semi-presidential interpretation of the Constitution if they held the post of the president and enjoyed a majority in the Parliament.

There was a political crisis relating to the interpretation of the country's form of government in 1998 when the independent, liberal candidate Valdas Adamkus was elected to the office of President. President Adamkus was of the opinion that the Government had to resign once the new President of the Republic had been elected. Conservatives and Christian Democrats, who together formed a majority in the Parliament at that time, took a more parliamentarian approach to the Constitution and argued that the Government had to resign only after parliamentary elections and asked the Constitutional Court to resolve the issue. In a ruling on 10 January 1998, the Constitutional Court supported this parliamentarian approach,

reasoning that the 1992 Constitution had established a 'parliamentarian form of government with some semi-presidential features' and that the Government does not have to resign after presidential elections if it receives a new vote of confidence from the Parliament. After some academic attempts to criticize the Court's judgment that the country had a parliamentarian form of government[15] and an unsuccessful experiment when President Rolandas Paksas (2003–2004) tried to concentrate the political power in his own hands without the support of a majority in the Parliament, it has now been settled that the constitutional form of the government in the country is a 'rationalized parliamentary regime' and it is difficult to imagine any new change in thinking on this subject in the near future even after election of very popular and dynamic President Dalia Grybauskaitė in 2009. It has to be said that, according to the Constitution the main political powers concentrate in the hands of the prime minister but not of the President of the Republic.

Lithuania has a multi-party political system with more than 10 active political parties[16] with two leading parties – Social democrats in the central left and Conservatives (*Tėvynės sąjunga – Krikščionys demokratai*) in the central right. From 1990 both were ruling parties for three times, including 2008 parliamentary elections.[17] Therefore, usually the ruling government is formed by the coalition *ad hoc*. It is interesting to mention that after 2004 parliamentary elections a so called 'minority government' was formed for almost two years, when the biggest political party (Labour party) withdrew from the ruling coalition.

[15] For example, see Egidijus Kūris, *Politinių klausimų jurisprudencija ir Konstitucinio teismo obiter dicta...* [*Jurisprudence of political question and obiter dicta of the Constitutional Court*], 1 Politologija (1998) pp. 3–94.

[16] Sixteen political parties participated in 2008 parliamentary elections, but only 7 overcame the 5% threshold in order to get to the Parliament: Conservatives (*Tėvynės Sąjunga, Krikščionys demokratai*), Social democrats, Nation's revival party (*Tautos prisikėlimo partija*), Party for Order and Justice (*Partija Tvarka ir teisingumas*), Labour party (*Darbo partija*), Movement of liberals (*Liberalų sąjūdis*) and Union of centre liberals (*Liberalų centro sąjunga*).

[17] Political parties nominated the prime minister after establishment of the Second Lithuanian Rupublic: 1990 – Sąjūdis (in certain extent this political movement might be linked with contemporary Conservative party), 1992 elections – LDDP (former Communists, which later merged with Social Democrats), 1996 – Conservative, 2000 – Social Democrat, 2004 – Social Democrat, 2008 – Conservative.

2. The governmental system

2.1. Constitution making

The 1992 Lithuanian Constitution, apart from the main text, has 3 other complementary constitutional acts which are a constituent part of the Constitution: the 1991 Constitutional law on the State of Lithuania, the 1992 Constitutional Act on the Non-alignment to the Post-Soviet Eastern Unions and the 2004 Constitutional Act on Membership of the Republic of Lithuania in the European Union. The Lithuanian Constitution could be described as rather rigid document in terms of the ability to amend it. The Constitution was first adopted by the Constituent Assembly (*Atkuriamasis Seimas*) and later approved in a popular referendum. According to the Constitution, two bodies have the power to amend the Constitution: the nation and the Parliament. The most significant provisions of the Constitution – those of Chapter I 'The State of Lithuania' and Chapter XIV 'Alteration of the Constitution' – can only be changed by the people in a referendum. All other provisions of the Constitution can be changed either by popular referendum (Article 9) or by a double vote of the *Seimas*, with no less than three months elapsing between the two votes if at least two-thirds of the deputies vote in favour of the amendment each time (Article 148). However, the political reality is that within eighteen years all nine constitutional amendments were adopted by a vote in the Parliament. As an exception, the 2004 Constitutional Act on Membership of the Republic of Lithuania in the EU was drafted and adopted by the Parliament after the people of Lithuania voted in favour of the EU membership in a referendum.

An initiative to amend the Constitution requires the support of no less than a quarter of the Members of Parliament or no fewer than 300,000 members of the electorate (Article 147). Once it is adopted, the President cannot veto a constitutional amendment and must sign and promulgate it. The amendment then enters into force not earlier than one month after its adoption (Article 149). But this provision to amend the Constitution starting with a popular initiative has never succeeded in practice.

> The 1992 Constitution has been amended nine times during sixteen years of its existence. The first amendment of the Constitution in 1996 changed Article 47. The original idea behind this article was to ensure that land in Lithuania could be owned either by private persons – Lithuanian nationals – or by the state. But in 1996 this provision was changed

to allow companies to own land, but only land that is not used for agriculture (for instance, the land under their buildings). In 2003 this provision was altered again by removing all constitutional restrictions on the ownership of land.[18]
Another constitutional provision that has been amended twice is Article 119. According to the original provision, members of a municipal council were to be elected every two years. Under an amendment in 1996, their tenure was extended to three years, and in 2002 the term of office was extended to four years. Their term of office is now the same as that of members of Parliament.
Two articles (Articles 84 and 118) were amended on 20 March 2003, strengthening the powers of the President of the Republic by giving him the power to appoint the prosecutor general with the assent of the Parliament. Before the amendment, ordinary legislation assigned the power to appoint the prosecutor general to the *Seimas*. Another amendment of 13 July 2004 fixed the date of parliamentary elections which are now held on the second Sunday of October (Article 57). The separate Constitutional Act on Membership of the Republic of Lithuania in the European Union was also adopted in 2004 using the procedure for alteration of the Constitution (Article 148) and is now a part of the Constitution. On 25 April 2006, Article 125 concerning the competence of the Lithuanian Central Bank was amended to bring it into line with the EU law.

2.2. European integration

On 1 May 2004, Lithuania together with other nine countries joined the European Union. The country's journey to accession to the EU was a long one. The Government had already declared its adherence to internationally recognised principles of law and the protection of human rights in the Act of Restoration of Independence on 11 March 1990 after almost 50 years of Soviet occupation. In 1993 Lithuania became a member of the Council of Europe. In 1995 the President of the Republic officially applied for accession to the EU and in 1996 the *Seimas* ratified the treaty of association with the EU. Finally, on 11 May 2003, the Lithuanian people approved accession to the EU in a popular referendum, and on 16 September 2003, the *Seimas* ratified the Athens Treaty on accession to the EU by virtue of which Lithuania joined the EU on 1 May 2004.
In other words, it took nine years from the official application for membership before Lithuania finally joined the European Community. During those nine years Lithuania implemented thousands of legislative measures in order to comply with the *acquis communautaire*. From a constitutional law perspective, one of the most important legal instruments relating to Lithuania's accession to the EU is the amendment of the Constitution in the Constitutional Act on Membership of the Republic of Lithuania in the European Union (13 June 2004) which was adopted two and half months after Lithuania joined the EU.

[18] Since the amendment of 23 October 2003, Article 47(3) reads: 'In the Republic of Lithuania foreign entities may acquire ownership of land, internal waters and forests according to an organic law'. A constitutional law adopted on 20 March 2003 stipulates a transitional period of seven years (which expired in 2010) for ownership of agricultural and forests by foreign subjects, including subjects of the EU member states.

During the accession process there were legal and political debates about whether it was necessary to adopt an amendment to the Constitution and, if so, what the terms of the amendment should be. The answer was not clear since the Act on International Treaties (1999) already guaranteed the precedence of ratified treaties over the national law in the Lithuanian legal system. On the other hand, however, it was not so clear whether this precedence also extended to the national Constitution and how direct effect should be granted for European regulations and directives. In order to get around this ambiguity, it was decided to incorporate some principles of the European law into the Constitution, thus raising their status to the constitutional law. In 2004, therefore, instead of amending a particular article of the Constitution, a separate Constitutional Act was adopted, in accordance with the procedure for amending the Constitution (Article 148), which became part of the Constitution. This method of amending the Constitution was upheld in a ruling of the Constitutional Court on 13 December 2004.

The Constitutional Act covers three clauses: first of all, principle of conferral (of competences), then – direct effect and primacy clause and, lastly, parliamentary scrutiny of the EU legislation.

1. The **principle of conferral** is formulated in the paragraph 1 which reads: 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 that, together with the other Member States of the European Union, it would meet its membership commitments in those areas as well as enjoy the membership rights'. This clause embeds 'the principle of conferral' (or 'conferred powers') and demonstrates that ultimate source of authority rests at the national level. In this regard Lithua-

nian Constitution adopts the model of 'the transfer/delegation of competences' as compared to another model found in the legal system of some other Member States, namely 'the transfer/delegation of sovereign powers' or even 'the limitation of sovereignty'. This model, as it is the case with other countries of the Central and Eastern Europe, is designed in the way not to mention the term of 'sovereignty' in order to escape possible problems with Articles 2 and 3 of the Constitution according to which all sovereign powers in Lithuania rest in the hands of the Lithuanian Nation. Moreover, the popular referendum is required for amendments of these articles of the Constitution.

2. Direct effect and primacy clause is formulated in the paragraph 2 which reads: 'The rules of the European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Whereas it grounds in the founding Treaties of the European Union, the rules of the European Union law shall be applied directly, while in the event of collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania'. This clause establishes a constitutional recognition of EU law as a valid source of binding rules in Lithuania. It provides for that not only founding Treaties, but also European regulations and directives shall be a constituent part of the Lithuanian legal system and also establishes the principle of the direct effect of the EU law. By adopting such a clause, the *sui generis* nature of the EU and its legal order was also recognised, since the existing provisions in the Constitution (e.g. Article 138) request to ratify international treaties before giving them the status of direct application in the Lithuanian legal system. The importance of paragraph 2 is that the basis for the application of the EU law now rests within the Constitution itself and so all the principles developed by the ECJ are constitutionalised. Natural consequences of such a clause are that the EU law was incorporated into the national legal system, that all state institutions have a duty to apply the EU law and interpret the national law in the light of it, and this duty stems not only from the EU primary law, but also from Lithuanian Constitution itself. It also provides with the rule of collision when the question regards the conflict of the national and the EU law as regards the question of primacy. However, according to the 14 March 2006 ruling of the Lithuanian Constitutional Court [III 9.4.], primacy of EU law does not cover Lithuanian Constitution itself (Article 7 of the Constitution: 'any law or other statute which is in conflict with Constitution shall be invalid'). The Court said that the EU law has supremacy in the Lithuanian

legal system, but with an exception to the Constitution itself. This ruling of the Constitutional Court may be justified not only relying on the wording of Article 7, but also on the fact that this article is formulated in the section I of the Constitution, which may be amended only through the popular referendum (this is not the case with the Constitutional Act on the EU Membership). Therefore, according to case-law of the Constitutional Court, the words 'other legal acts' of the Constitutional Act do not encompass the national Constitution.

3. Finally, parliamentary scrutiny of EU legislation clause is formulated in the paragraphs 3 and 4 which reads as follows: 3. 'The Government shall inform the *Seimas* about the proposals to adopt acts of European Union law. As regards the proposals to adopt the acts of European Union law regulating the areas which, 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 Rules of Parliamentary Procedure, submit to the Government the opinion of the *Seimas* concerning the proposals to adopt the acts of the 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[19] are not necessary'.

This clause tries to solve so called problem of 'democratic deficit', when executive branch (the Council of the European Union) has the major legislative powers in the European Union. According to paragraph 4 of the Constitutional Act, the Government does not even have to issue a directive concerning a proposal to adopt a particular EU legislation. The Lithuanian Parliament, learning from the experience of other Member States, therefore included in the text of the Constitutional Act an obligation on the Government to inform the Parliament on any proposals to adopt the EU legisla-

[19] Art. 95 reads as follows: the Government shall resolve the affairs of public governance at its sittings by adopting directives by majority vote of all the members of the Government... The Government directives shall be signed by the prime minister and the minister of a corresponding branch.

tion. Although the initiative of the EU legislation rests in the hands of the Government, but according to the parliamentary scrutiny clause – the Parliament has to be not only informed about all legislative proposals, but the Government is obliged to follow the Parliament's consultations and recommendations, when the European matter concerns the areas of parliamentary competence. Paragraph 3 of the Constitutional Act also stipulates that the Government is obliged to cooperate with the parliamentary Committees for European Affairs and Foreign Affairs on the EU matters. Therefore, the traditional power of parliamentary scrutiny covers also the EU matters, when the Government has to inform the Parliament about the execution of the latter's proposals on the EU legislation. It is too early to say how effective in practice this parliamentary scrutiny clause is in Lithuania.

2.3. The legislature and legislation

Section V of the 1992 Constitution concerning the Parliament (*Seimas*) follows the section on human rights and is the first section devoted to state powers. This position in the order of the sections of the Constitution illustrates the special status that Lithuania's Parliament enjoys in relation to other state institutions.

2.3.1. Parliamentary elections and the composition of the Parliament

The right of citizens to stand for election and to vote in parliamentary elections is guaranteed in Articles 4 and 34 of the Constitution. However, a person's 'passive' right to be elected as a Member of Parliament is subject to certain criteria. He or she has to be a Lithuanian citizen who is permanently resident in the country, and is not bound by an oath or a pledge to a foreign state and is at least 25 years old. Soldiers engaged in compulsory national service and persons who have not completed a court-imposed sentence, as well as persons declared legally incapable by a court, may not stand as candidates for parliamentary elections (Article 56 and 141). According to the case law of the Constitutional Court, a Member of Parliament may not hold a dual mandate (for instance, he or she may not also be a member of a municipal council). According to ordinary legislation, anyone who has previously been removed from office as the President of the Republic,

a Member of Parliament or a judge of a high court following an impeachment procedure may also not stand for parliamentary elections.[20] However, if this provision of the Law on *Seimas* Elections is enforced, it might be reviewed by the European Court of Human Rights.

According to the Constitution, Lithuania's unicameral Parliament, the *Seimas*, has 141 members. Parliamentary elections are held every four years on the second Sunday of October (Article 57) on the basis of universal, equal and direct suffrage by secret ballot (Article 55). Universal suffrage means that every adult Lithuanian citizen aged 18 or older is entitled to vote in parliamentary elections, with the exception of those who are mentally incapable. Equal suffrage means that all voters have one vote, and direct suffrage means that every voter must vote directly and may not transfer or delegate their vote to anyone else.

Legislation provides that half the Members of Parliament (71) are elected by a majority system and the other half (70) by a proportional representation electoral system. This mixed electoral system has already been used five times, starting with the elections in 1992. Accordingly, the country is divided into 71 electoral districts for parliamentary elections. Voters receive two ballots and have to elect one representative in each of the districts and also cast a vote for a political party or coalition. Although the intention in adopting the mixed electoral system was to enjoy the advantages of both systems, in practice the effect of this system is that votes are distributed according to the proportional system, while the majority system does not play an important role at the end of the day.

The Central Electoral Commission (*Vyriausioji rinkimų komisija*), together with district and local electoral commissions, organizes and monitors the process of parliamentary elections. Legislation provides that the High Administrative Court will hear appeals against decisions of the Central Electoral Commission or its failure to act before the end of voting. The Constitutional Court is competent to examine alleged violations of electoral laws within 24 hours of the announcement of the official results. A political party or a candidate that wishes to bring a complaint to the Constitutional Court

[20] This provision was enacted after a ruling by the Constitutional Court on 25 May 2004 in which the Court, dealing with the possibility of the President of the Republic who had been removed from office standing in future presidential elections, said that if the aforementioned officer breaks the oath of the office he may (never) take the oath of office again, 'as a reasonable doubt would always exist, which would never disappear [...], whether an oath repeatedly taken by this person to the Nation would not be fictitious'.

must do so through the President of the Republic or through the *Seimas*. Following the 1996, 2004 and 2008 parliamentary elections, in response to requests from the relevant political parties and candidates, the President requested a conclusion of the Constitutional Court concerning the election of a particular Member of Parliament in a particular electoral district. The Constitutional Court in its three conclusions till now has never found the violations of the electoral laws which could cause organisation of a new parliamentary election in any relevant electoral district.[21]

The *Seimas* consists of the Board of the *Seimas* (which includes the speaker of the *Seimas*, five-six deputy speakers and the leader of the opposition), the Board of Elders, permanent committees, *ad hoc* commissions and inter-parliamentary relations groups. The Board of the *Seimas* (*Seimo valdyba*) decides on various organisational issues: it finances the MP's business trips; it may reduce (by one third) the monthly salary of a MP if the latter failed to attend without an important justifying reason more than half the Parliament sittings of that month; it decides on matters of MP's accommodation and compensation of his/her expenses; when necessary, it forms working groups for drafting laws; it approves the structure of the Office of the *Seimas* etc. According to the Constitution the speaker of the *Seimas* is the second highest public officer (after the President of the Republic). He presides over the sittings of the *Seimas* and the Board of the *Seimas* or charges one of his Deputies to carry out this function.

The Board of Elders (*Seniūnų sueiga*) consists, as a rule, of leaders of political factions and members of the Board of the *Seimas*. The principal task of the Board of Elders is to consider and approve work programmes of parliamentary session and agendas of sittings, to co-ordinate issues concerning the organisation of the work of the committees and parliamentary groups and to submit drafts of the decisions on said issues to the *Seimas* and the Board. The Constitution directly mentions only two permanent parliamentary committees: Committee on Foreign Affairs and Committee on European Affairs. But the *Seimas* for purposes of parliamentary control founded permanent committees according to existing ministries and other public agencies.[22]

[21] See the Conclusions of the Constitutional Court on 23 November 1996, 5 November 2004 and 7 November 2008.

[22] There were 15 permanent committees, 9 permanent commissions and 2 *ad hoc* commissions at the beginning of 2009. Eight political factions were formed after 2008 parliamentary elections.

2.3.2. Parliamentary immunity and the impeachment procedure

Article 62 of the Constitution states that Members of Parliament as representatives of the Nation have got immunity from prosecution for criminal offenses and they may not be detained without the consent of the Parliament. Nor may Members of Parliament be prosecuted for their votes or speeches in the Parliament. They may, however, be declared liable for acts of personal insult or slander. The parliamentary immunity is also connected with the constitutional provision that Members of Parliament may only be removed from office by means of an impeachment procedure supported by no less than three-fifths of all the Members of Parliament (Article 74). Lithuania has a mixed judicial and parliamentary impeachment system, which means that even though a Member of Parliament may have been found guilty of a criminal offense by a criminal court, the Parliament still has the discretion not to vote for his or her removal from office.[23]

2.3.3. Legislation and legislative procedure

Legislation is, of course, the most important instrument the *Seimas* possesses to exercise its powers, which are set out in Article 67 of the Constitution. The *Seimas* has 'general competence' in the legislative process (by contrast, for example, with the French parliament under the 1958 constitution). This means that the *Seimas* may enact laws regarding any matters in the social, economic and private sphere. Following the (continental) European constitutional tradition, the Lithuanian Constitution does not contain a clause similar to the First Amendment of the US Constitution forbidding the parliament from passing certain kinds of legislation. Naturally, this does not mean that the Lithuanian legislature has *carte blanche* in the legislative process. Legislation adopted by the *Seimas* must be consistent with the Constitution, including the jurisprudence of the Constitutional Court, the jurisprudence of the European Court of Human Rights and, since Lithuania's

[23] This mixed impeachment system produced an unsatisfactory outcome in 1998 when a Member of Parliament, Audrius Butkevičius, was convicted of taking bribes and given a prison sentence by a criminal court but the motion for his impeachment in the Parliament did not secure the three-fifth majority required for his removal from office. The impeachment procedure does not apply for the removal of the prime minister or a minister. According to Article 101 of the Constitution, a minister must resign if more than half the Members of Parliament support a vote of no confidence in him or her.

accession to the EU, with the European legislation, including the jurisprudence of the European Court of Justice.

Every Member of Parliament has the right to initiate legislation in Lithuania, as have the Government and the President. Citizens also have the right of the legislative initiative, and the *Seimas* must consider a draft law submitted to it by at least 50,000 Lithuanian citizens (Article 68), but till 2010 legislation was never adopted using this popular initiative. The Government, through its various authorities, prepares a large majority of bills and presents them to the Parliament. There are three steps in the procedure for the enactment of laws in the *Seimas*, which is a very similar procedure to the traditional practice of three readings. The first step is the presentation of the bill and its acceptance *en principe* in a plenary session. The second stage involves hearings and deliberations on the bill in a parliamentary committee. The third step is the final adoption of the bill in a plenary session of the Parliament. The *Seimas'* Standing Orders also provide for an accelerated procedure for the adoption of legislation. Legislation in Lithuania is divided into two types of statutes: ordinary laws (*įstatymai*) and organic laws (*konstituciniai įstatymai*). The distinction is based on the number of Members of Parliament required to vote in favour for the law to be passed. Ordinary laws are enacted by a simple majority of the votes of deputies participating in the session.[24] According to the existing legislative practice, two steps should be followed in order to enact the organic legislation: an Amendment of the Constitution with reference to the organic law should be adopted and then the organic law can be enacted by an absolute majority of the votes of all Members of Parliament (Article 69).[25]

> Therefore, the organic legislation involves laws intended to flesh out the provisions of the Constitution. An original feature of Article 69 of the Constitution is that it provided that one of the first legislative tasks of the *Seimas* was to adopt 'the list of organic laws'. But the adoption of a list of organic laws would have imposed certain legislative restrictions on the Parliament since a qualified majority would be required for the adoption of the laws included in the list. The *Seimas* therefore decided not to constrain its future legislative competence and has never adopted such a list. Consequently, it is, in practice, very difficult to adopt an organic law in Lithuania. Therefore, the Constitutional Court has accepted that the organic legislation can only be adopted in implementing the provisions of an amendment of the Constitution. Up to 2010, only two organic laws were adopted in Lithuania, and one of them was declared void by the Constitutional Court (ruling of 24 December 2002) simply because the enactment of this organic law was not provided for in a particular amendment to the Constitution.[26]

[24] According to the Rules of Parliamentary Procedure (the Standing Orders), a quorum of no fewer than half the members of Parliament is required to pass legislation.

[25] Once the organic law has been adopted, it may be amended only by no less than three-fifths of MPs.

Once a statute has been adopted, it has to be signed and promulgated by the President of the Republic. The President has no right to refer a question concerning the constitutionality of a statute to the Constitutional Court either before or after it has been promulgated. Instead, the President has the power to veto the statute. The Parliament may overrule the President's veto by an absolute majority of votes of all the Members of Parliament in the case of ordinary legislation and by a three-fifth majority of the votes of all deputies in the case of organic legislation. A statute enters into force after its promulgation by the President of the Republic and its publication in the official gazette, 'Valstybės žinios'.

2.3.4. Cooperation with other public agencies – interrelated powers

First of all, the *Seimas* exercises its legislative powers together with the Government and the President, as the Government initiates the vast majority of legislative bills and the President has veto and promulgation discretion. The Constitutional Court also has to be mentioned here, for it participates in legislative process at least through *via negativa*. Concerning the nomination of the highest public officials, here the *Seimas* has to share its powers with the President of the Republic. In impeachment procedure – though the last word belongs to the Parliament, but it has to ground its decision on the judgment of the Constitutional Court respectively. The *Seimas* adopts the state budget, but this is the Government's task to draft and implement it. In the field of external relations the *Seimas* has to leave an initiative in the hands of the President and the Government. While the Parliament sets

[26] According to the amendment of Article 47 of the Constitution of 23 January 2003, foreigners in Lithuania may purchase land, interior waters and forest under a procedure prescribed by the organic law. On 20 March 2003, the *Seimas* adopted (as an amendment of the previous organic legislation) a corresponding organic Law on implementation of amendment of Article 47 paragraph 3 of the Constitution with a three-fifth majority (Art. 69(3) of the Constitution). This is the only valid organic law to date.

the date of presidential elections, the President has the same discretion for parliamentary elections.

2.4. The head of state

Between 1990 and 1992, before the adoption of the new Constitution, the speaker of the Parliament (*Aukščiausiosios Tarybos Pirmininkas*) was the country's most senior official and assumed the role of the head of state in the national and international arena. The 1992 Constitution restored the office of the President of the Republic but, by contrast with the parliamentarian Constitution of 1922, it created a distinction between the Government and the President of the Republic by providing that the latter is elected directly by the people.

2.4.1. Eligibility

The Constitution provides that the head of state is the President of the Republic. To participate in presidential elections, candidates may not be younger than 40 years of age, must live in Lithuania for at least the last three years and must be Lithuanian citizens 'by origin' (*pagal kilmę*). What precisely is meant by the formulation 'Lithuanian citizen by origin' in Article 78 is not clear but may possibly be explained by the concept of *ius sanguinis*.

> One interpretation may be that the candidate has to be a descendant of Lithuanian citizens of the First (inter-war) Lithuanian Republic. For instance, it may be the case that Soviet emigrants, to whom the Lithuanian citizenship was granted after the restoration of independence in 1990, may not stand for presidential elections under the Constitution. But does the same apply to their descendants who were born in the territory of Lithuania during the Soviet occupation or after 1990? Does the provision allow a descendant of Lithuanian parents who was born abroad to stand for the presidency if he or she moves to Lithuania? All of these questions can only be answered in time if any of these examples occur in practice.

Legislation further provides that former KGB officers and agents must inform the Central Electoral Commission of their former status and include the information in all their election campaign publicity. Another requirement is that candidates must not be bound by an oath or pledge to a foreign state (Article 56). This provision can be seen as erecting a barrier against

persons who used to work for a foreign secret service during the Soviet occupation. In practice, this restriction can be used against persons who have obtained foreign citizenship through naturalization, i.e. by swearing an oath of allegiance to the state concerned.[27]

2.4.2. Presidential elections

Article 81 of the Constitution states that the candidate who, during the first round of voting in which at least half the voters participated, received more than half the votes of all the voters who participated in the election, shall be deemed elected. If fewer than half the registered voters participated in the election, the candidate who receives the greatest number of votes, but not less than one-third of the votes of all voters, shall be deemed elected. If during the first round, no single candidate gets the requisite number of votes, a repeat election has to be organized two weeks later between the two candidates that received the largest number of votes. The candidate who receives more votes thereafter shall be deemed elected.

The term of office of the President is five years, while Members of Parliament are elected for four years. The President of the Republic may be re-elected for a second consecutive term, but it has never happened yet.[28]

Upon election, the President of the Republic swears an oath to the Lithuanian Nation and to the Constitution in the Parliament before the chairperson of the Constitutional Court.

2.4.3. Immunity and privileges

The President of the Republic enjoys immunity from criminal or administrative liability, i.e. the President may not be detained or have his freedom otherwise curtailed while in office (Article 86).[29]

[27] For instance, Valdas Adamkus had to prove that he has renounced his American citizenship (acquired through the naturalization procedure) when he was elected to the office of the President of the Republic of Lithuania.

[28] There were five elections for the office of the President of the Republic between 1993 and 2010. In 1993 (Mr Algirdas Brazauskas), in 1998 (Mr Valdas Adamkus), in 2003 (Mr Rolandas Paksas), in 2004 (Mr Valdas Adamkus) after President Rolandas Paksas was removed from office in impeachment proceedings and in 2009 (Mrs Dalia Grybauskaitė). Only two candidates were elected already during the first round: Mr Algirdas Brazauskas in 1993 and Mrs Dalia Grybauskaitė in 2009.

[29] As President Paksas' impeachment shows, this constitutional immunity is a fairly effective tool which can play a very important role in times of political struggle.

While in office, the President must suspend his activities in any political parties. According to the ordinary legislation, a person who has been elected to the office of the President retains the title of 'President' for life. The legislation provides that even after leaving office, the President retains the right to a residence, a car and driver and a security guard. A person who has been removed from the office of the President is stripped of these privileges.

2.4.4. Powers of the President

The principal powers of the President under the Constitution lie in the sphere of foreign affairs and national defence. The President decides basic issues of foreign policy, represents the country in foreign relations, signs international treaties and agreements, appoints ambassadors, awards diplomatic ranks and titles and receives letters of credential from diplomatic representatives of foreign states. The President is the commander-in-chief of the armed forces (Article 140). With the assent of the Parliament, the President appoints the commander-in-chief of the army and the head of the security service, confers the highest military ranks, presides over the State Defence Council,[30] and in the event of an armed attack, can impose martial law and declare a mobilisation of forces (Article 142). In practice, however, the President does not have sufficient power to compete with the ministries of foreign affairs and national defence in the sphere of external relations and national security. The ministries have large numbers of staff and various departments to deal with the relevant matters. In the sphere of foreign affairs, for instance, the President of the Republic is (with some exceptions) the actor of the last resort, while the initiative for taking action is left entirely in the hands of the Government and the minister of foreign affairs. The same can be said in the context of national defence. The minister of national defence has all the levers in hand as far as military matters are concerned. In Lithuania, therefore, the President of the Republic is the primary source of the national policy in the sphere of foreign affairs and national defence but acts in concert with the Government.

[30] According to Article 140 of the Constitution, the main issues of national defence are considered and coordinated by the State Defence Council which consists of the President of the Republic, the prime minister, the speaker of the Parliament, the minister of national defence and the commander of the Armed Forces.

As the head of state, the President of the Republic has the power to grant citizenship,[31] to confer state awards and to grant pardon to convicted criminals. According to Article 85 of the Constitution and ordinary legislation, there are only four instances when presidential decrees have to be countersigned by the appropriate minister, which reveals certain parliamentary scrutiny over acts of the President. Accordingly, the minister of foreign affairs has to sign decrees for the appointment and recall of diplomatic representatives of the Republic of Lithuania, the acceptance of letters of credential and the recall of diplomatic representatives of foreign states and the conferral of the highest diplomatic ranks and titles. The minister of national defence must countersign decrees conferring the highest military ranks. Decrees granting the Lithuanian citizenship must be countersigned by the minister of interior affairs, and the prime minister has to countersign a decree declaring a state of emergency (the decree on state emergency was never passed up to 2010). In all other cases listed in Article 84 of the Constitution, the president has complete discretion and may act alone, escaping any parliamentary scrutiny instruments.

2.4.4.1. Formation of the Government and the appointment of senior civil servants and officials

In practice, the main powers of the President focus on the formation of the national Government and the nomination of senior civil servants and public officials, including members of the judiciary. After parliamentary elections, the President appoints the prime minister, with the consent of the Parliament and the members of the cabinet on the prime minister's recommendation. Nevertheless, the President of the Republic is not a 'formal' head of state as in the case of pure parliamentary regimes. Because he or she is directly elected and enjoys popular support – the President provides a certain balance between different public institutions and political actors. For instance, the President has considerable powers in the selection of a particular minister. As a rule, in choosing the candidate, the President must naturally confine his or her selection to candidates that have been nominated by a majority in the Parliament, but he or she has the discretion to reject a particular candidate for ethical reasons, on grounds of politi-

[31] The competence of the President in granting citizenship as a reward for special merits for the Republic of Lithuania was practically abolished after the ruling of 30 December 2003 of the Constitutional Court.

cal transparency or because of a possible conflict between the candidate's public and private interests.[32] As has been shown in practice, the President who enjoys wide popular support may even convince the prime minister to resign, although he or she does not have *de iure* legal instruments to do so.[33] Subject to the approval of the Parliament, the President appoints the prosecutor general, the commander of the Army and the head of the Security Service. The President (after receiving the advice of the independent Judicial Council) appoints judges of local, district and specialised courts and nominates candidates for appointment by the Parliament as justices of the Supreme Court and the Constitutional Court.

The President of the Republic also has a very important role in the parliamentary legislative process. Firstly, the President has the right to initiate legislation, although practice has shown that the President rarely initiates bills and few bills initiated by the President become law. The main actors in the legislative process are the Government and the committees in the Parliament.

Secondly, the President has a right of suspensive veto over bills that have been passed by the Parliament, which can only be overruled by an absolute majority of the Members of Parliament.[34] The terms of the presidential veto in the Lithuanian Constitution allow the President (i) to refer the law back to the Parliament for reconsideration, accompanied by relevant reasons but with no specific legislative proposals, or (ii) to present his own amendments with regard to the law. It should be noted, however, that, although the presidential veto is fairly weak, the Parliament can easily overrule it only when the governing coalition has a big majority in the *Seimas*. Nevertheless, presidents have not used this instrument very often; the number of statutes that have been vetoed is quite low, and the number of vetoes that have been accepted by the Parliament is even lower. But in time of political crises or minority government – the President's veto becomes rather an effective instrument.

[32] For instance, after the parliamentary elections in 2004, the President rejected one candidate for the post of the minister of education when it emerged that he had earlier signed a certain spurious document when he was a senior official.

[33] In 1998 after a public speech by President Valdas Adamkus in which he declared a lack of confidence in the prime minister, Gediminas Vagnorius, the latter decided to resign even though he had received a vote of confidence from Parliament a couple of days before.

[34] The Lithuanian Parliament has 141 MPs, so 71 votes are enough to overturn the President's veto for ordinary legislation, while 85 votes (three-fifths of the total) are required to overturn the President's veto for organic laws (there is practically no legislation of the latter type in the Lithuanian legal system).

Thirdly, until a ruling of the Constitutional Court on 19 June 2002, the President of the Republic sometimes used what is known as a 'pocket veto'. This involved expressing disagreement with a particular bill by refusing to sign it within the ten-day period prescribed by the Constitution without giving any reason. In that case, according to the Constitution, the bill can be signed into law by the speaker of the *Seimas* without the President's signature (Article 71). In its ruling, the Constitutional Court virtually abolished the President's power of 'pocket veto' by saying that a veto must always be accompanied by specific reasons and legal arguments.

Finally, as the head of state the President of the Republic always concludes the legislative process by promulgating legislation adopted by the Parliament. It ought to be mentioned here again that the President of the Republic has no right to refer a statute that he or she considers to be unconstitutional to the Constitutional Court before its promulgation. The President may only challenge the constitutionality of the Government directive before the Constitutional Court.

2.4.4.2. The President's discretion to dissolve the Parliament

In case of a conflict between the Parliament and the Government (the cabinet of ministers) the President has the power to dissolve the Parliament; however, this power has never been used during the eighteen years since the adoption of the 1992 Constitution.[35] The President's discretionary power is actually fairly weak since, on the one hand, it can only be used in two cases: (i) if the *Seimas* fails to approve the Government's programme for a second time within 60 days of its presentation or (ii) on a proposal by the Government, if the *Seimas* expresses no confidence in the Government (Article 58). On the other hand, the President's power is limited not only by the fact that it is confined to these two instances and that it actually depends on the will of the Government, but also by the fact that after dissolution, a newly elected Parliament can decide, with a majority of three-fifths of its members, to call new presidential elections (Article 87). Of course, it is conceivable that in practice the President could use his discretion in the event of a political stalemate. The President is therefore only likely to use this discretionary power in the event of a serious political conflict between the Government and the *Seimas* and if there is the assurance of sufficient public support for this risky political act.

[35] It has just sometimes been 'recalled' by candidates during an election campaign.

2.4.4.3. The President's relations with the Government (the Cabinet of Ministers)

The wording of Article 5 of the Constitution describes the President of the Republic and the Government as the executive branch. In contrast with the 1922 Constitution, however, the 1992 Constitution distinguishes between the Government and the President. The Government here means only the Cabinet of Ministers and is formed by the will of a majority of the Members of Parliament, while the directly elected President of the Republic is a separate institution and, as the head of state, he has not only executive but also other competences and powers.[36] The President enjoys discretion in choosing the prime minister and other ministers, but – as it was already mentioned – the constitutional tradition dictates that the prime minister is chosen from the majority of the Parliament since the Government has to receive a vote of confidence from the Parliament. As a rule, the President does not participate at meetings of the Government or in its activities, but instead assumes a position of moral authority and maintains a balance between the different state authorities. In matters relating to foreign affairs, the President has a coordinating role for he generally acts in consultation with the prime minister and the minister of foreign affairs in this domain.

2.4.5. Legal acts of the President

The President of the Republic has only one form of legal instrument for exercising presidential powers. This is the presidential decree (*Prezidento dekretas*). As a rule, decrees of the Lithuanian President have no legislative or normative character. Some, but not all, presidential decrees have to be countersigned by a minister (Article 85). By virtue of the Constitution and ordinary legislation, presidential decrees granting the Lithuanian citizenship have to be countersigned by the minister of interior affairs, decrees conferring high diplomatic rank – by the minister of foreign affairs, decrees granting high military rank – by the minister of national defence and a declaration of a state of emergency has to be countersigned by the prime minister. For all other decrees – concerning the appointment and dismissal of various

[36] The competence of the President is sometimes described by Lithuanian legal scholars as 'mixed', because it includes some signs of legislative (e.g. veto) and even judicial competence (e.g. the right of pardon). See e.g. E. Šileikis, *Alternatyvi konstitucinė teisė* [*Alternative constitutional law*], (Vilnius, TIC 2003) p. 447.

national officials, including the prime minister and ministers, the signing of international treaties, mobilisation, the date of parliamentary elections, the conferral of state awards, the granting of a pardon to convicted offenders, the establishment of public commissions and even for the dissolution of the Parliament – the President enjoys total discretion and they do not have to be countersigned by any member of the Government. In the four cases mentioned above, where a minister has to countersign decrees issued by the President, the appropriate ministers are fully responsible for the decrees they have signed (Article 85). However, according to a ruling by the Constitutional Court on 30 December 2003, even if a decree is later signed by a minister, the President is not released from personal constitutional responsibility if the decree constitutes a gross violation of the Constitution.

2.4.6. The office of the President

The 1992 Constitution does not contain any provisions concerning the office of the vice-president. The President instead has six or seven principal advisors (the heads of various departments) who are sometimes referred to as the President's 'team'. The President is free to appoint around forty civil servants in whom he has 'personal (political) confidence'. These 'career personnel' are appointed and managed by the Chancellor of the President's office. The President's office is in the country's capital, Vilnius. In the event of the President's death, resignation or removal from office by impeachment, the speaker of the *Seimas* assumes the President's duties *pro tempore*. In these cases, new presidential elections must be organized within two months. The speaker of the *Seimas* also assumes the office if the President is temporarily unable to perform the duties of the office, for example, due to illness (Article 89). Under the Lithuanian Constitution, therefore, the second-highest state official after the President of the Republic is the speaker of the *Seimas* and not the prime minister, as is the case in some other countries with a similar form of government.

2.4.7. Impeachment of the President

The constitutional concept of impeachment of the President can best be understood in light of the actual impeachment of President Rolandas Paksas in 2004.

According to the Constitution, the Rules of Parliamentary Procedure and the conclusion of the Constitutional Court on 31 March 2004, there are six stages in the process of impeachment of the President:

(i) the formation of an impeachment committee in the Parliament which examines the President's actions and formulates impeachment charges;
(ii) the preliminary stage of the impeachment process when the Parliament approves the impeachment charges, appoints parliamentary prosecutors and sends the impeachment charges to the Constitutional Court for legal and constitutional evaluation;
(iii) the conclusions of the Constitutional Court on whether the President's actions as formulated in the impeachment charges actually violated the Constitution;[37]
(iv) the legal submissions by the parties;
(v) the closing statement by the President of the Republic in the Parliament;
(vi) a vote in the Parliament on whether to remove the president from office.

2.4.7.1. Wrongdoings that can form the legal basis for impeachment of the President

Prior to the impeachment process of President Rolandas Paksas, the legal doctrine in Lithuania made no distinction between impeachment charges concerning any particular public official, be it the President, a Member of Parliament or justices of higher courts (judges of the Court of Appeal and the Supreme Court and justices of the Constitutional Court). The Lithuanian Constitution provides for three formal impeachment charges: (i) gross violation of the Constitution, (ii) breach of the oath of office and (iii) commission of a criminal offense.

A formal reading of the text of Article 74 therefore suggests that any of these three impeachment charges may be used with an equal effect for an impeachment procedure against any public official. The impeachment of President Rolandas Paksas showed that in practice the third impeachment charge cannot be used against the President of the Republic since he

[37] According to the Constitution (Arts 86 and 105), the Parliament may only vote to remove the President from office if the Constitutional Court concludes that the latter's violation of the Constitution is gross. According to a conclusion of the Constitutional Court on 31 March 2004, if it concludes that the president did not violate the Constitution or that there was no gross violation, the impeachment process must be terminated.

enjoys the constitutional immunity (Article 86). Accordingly, the only entity competent to make a legal assessment of impeachment charges against the President of the Republic is the Constitutional Court. Pre-judicial investigation institutions (e.g. police) have no constitutional competence to institute criminal proceedings against the President of the Republic. Thus it appears that if the Lithuanian President commits a serious crime (e.g. high treason), the Constitutional Court should not treat the charge as a criminal offense but could interpret it as a gross violation of the Constitution and as a breach of the oath of office.

Another point to note here is a certain peculiarity of the list of grounds for impeachment in Lithuania. Violation of the Constitution and high treason are often specified as grounds for impeachment in the constitutions of other countries. However, there are very few countries in the world where a breach of the oath of office is ground for impeachment, first and foremost because an oath is primarily a moral concept. In order to avoid this moral dimension and other difficulties in determining whether President Paksas had breached the oath of office, the Constitutional Court decided to look at the specific wording of the oath and link it with the other impeachment charge, i.e. a gross violation of the Constitution. In its ruling of 31 March 2004, the Court found that a breach of the oath of office is always a gross violation of the Constitution and *vice versa*.

A final peculiarity of the grounds for impeachment in Lithuania is that in order to remove a person from office, it is not enough to find a violation of the Constitution; the violation must be gross. According to the case-law of the Constitutional Court, not all violations of the Constitution should be regarded as gross violations, and to decide whether a violation of the Constitution is to be regarded as a gross violation, the actual content and circumstances of the President's actions must be evaluated.

> It should be pointed out here that in the case of President Paksas, the Constitutional Court interpreted the gross violation of the Constitution (and breach of the oath of office) first and foremost from the perspective of President Paksas' vulnerability to and dependence on the supporter of his presidential campaign, Mr. Borisov, which the *ad hoc* parliamentary commission deemed to constitute a threat to Lithuania's national security. In the absence of any such threat to national security, it appears that the Constitutional Court might not have concluded that President Paksas had committed a gross violation of the Constitution or breached the oath of the office. In other words, it seems likely that the Constitutio-

nal Court affirmed the charges against the President on the grounds that Mr. Borisov, who was informed by the President that he was under investigation by the security service and to whom the Lithuanian citizenship was unlawfully granted, was suspected of having links with 'the mafia' and Russian secret agencies. Therefore, even though the authors of the Lithuanian Constitution agreed on broader grounds for impeachment than in France, for instance, where the only ground for impeachment of the president is high treason, and did not include high treason as a ground for impeachment in the text of the Constitution, we, nevertheless, see shades of high treason in the Court's ruling in its interpretation of the very idea of impeaching the President.

2.4.7.2. The institution with power to impeach the President: the Parliament or the Constitutional Court?

First of all, it should be noted that the *Seimas* has the competence to initiate impeachment proceedings and has the power to make the final ruling on whether to remove the President from office. Only the *Seimas* is competent to formulate impeachment charges and to appoint the *Seimas'* prosecutors, and only Members of Parliament may vote to remove the President from office. Accordingly, the institution with power to impeach the President in Lithuania is the *Seimas*.

But another important actor in impeachment proceedings against the President is the Constitutional Court. This is the only court with competence to determine whether there are constitutional and legal grounds for impeachment. In other words, the Parliament may not remove the President from office if the Constitutional Court is of the opinion that the President acted within the boundaries of his discretion and did not violate the Constitution. In this case, the role of the Constitutional Court is somewhat similar to that of a grand jury, except that the Court has the power to pronounce a verdict of guilty or not guilty on the charges brought against the President. Nevertheless, the Parliament has the constitutional discretion, relying only on political reasons, to allow the President who has been found guilty to remain in office, for instance, if it feels that the president enjoys sufficient public support.

Thus, here we see that in the case of impeachment, the founders of the Lithuanian Constitution did not follow the Austro-German model which gives the constitutional court the power to remove the president from office. The procedure for impeachment of the President in the 1992 Constitution could be said to be a compromise between the American parliamentary model on the one hand and the Austro-German judicial model on the other.

2.4.7.3. Parliamentary majority required for removing the President from office

The drafters of the 1992 Constitution established a form of government which can generally be characterized as a 'rationalized parliamentary regime' or 'a parliamentary regime with some features of semi-presidentialism'. The provisions concerning the impeachment of the President were, however, taken from the parliamentarian draft constitution of the LDDP. Consequently, the parliamentary majority (three-fifths of all members of Parliament) required to remove the President from office is the same as for other senior officials, such as Members of Parliament and judges. The Constitution does not follow the standard approach where a majority of two-thirds of the Members of Parliament is required to remove the President from office; indeed, if the majority required to impeach the President had been two-thirds, President Paksas could not have been removed from office since the decision to remove him from office was taken by a margin of just five votes of three-fifth majority.

2.4.7.4. Legal and political consequences of impeachment

According to the Constitution, the constitutional powers and immunity of the President are not affected even when impeachment charges have been laid and approved by the Constitutional Court. This means that throughout the impeachment process, the President continues to hold office in the same way as before the procedure was initiated. During the impeachment proceedings, the President can defend himself with all the legal, political and other powers and means at his disposal, thereby limiting the ability of other legal and political actors (primarily the Parliament and the Constitutional Court) to remove him from office.

Until the impeachment of President Paksas, the Lithuanian legal and political world had no idea what restrictions would be placed on a President who had been removed from office. The Constitution says nothing on this subject. The question is whether a President who has been removed from office for gross violation of the Constitution and breach of the oath of office may run for office in future presidential elections? The political elite in

Lithuania made it clear that an affirmative answer to this question would be contrary to the very idea of civil society, the rule of law and other constitutional principles and therefore decided to amend the Law on Presidential Elections and the Constitution to prevent a President who was removed from office from running in presidential elections for the next five years. The Constitutional Court, however, rejected the rationale of this temporary disqualification from the passive electoral right and decided that the spirit of the Constitution requires not just a temporary but a permanent and complete disqualification of such a person from the political arena.[38]

> The Court's rationale was that a person who had breached the oath to the Nation and been removed from office could never again occupy a public office that is connected with an oath of office by virtue of the Constitution. The Court stated that such a person should never 'take an oath to the Nation again, for there would always exist a reasonable doubt, which would never disappear [...], as to whether this person will really perform his duties as President of the Republic, or, in other words, whether an oath repeatedly taken by this person to the Nation would not be fictitious'.[39]
>
> In this ruling, the Court indirectly referred to the 'permanent political disqualification' clause in the US Constitution and said that the president, once removed from office, may not stand in either future presidential elections or parliamentary elections. Nevertheless, it will be up to the European Court of Human Rights to say in the future whether the application of this restriction satisfies the requirements of the European Convention on Human Rights and its 1st Protocol.[40]

2.5. The Government

2.5.1. Mandate of the Government and its termination

According to the Constitution (Article 91), the Government consists of the prime minister and ministers. The President of the Republic is not

[38] According to the Court, such a person may not stand for any public office which, by virtue of the Constitution, is linked with an oath of office (the President of the Republic and a member of the national Parliament in this case) and may not hold the office of minister.

[39] Constitutional Court Judgment of 25 May 2004 section [III.6].

[40] For more information see V.A. Vaičaitis, *Impeachment of the President of the Lithuanian Republic: the procedure and its peculiarities*, in *The Uppsala Yearbook of East European Law 2004* (Uppsala University 2005) pp. 248–282.

a member of the Government. According to Article 60 of the Constitution and case-law of the Constitutional Court, the prime minister and ministers may be selected from amongst the Members of Parliament but may not hold any other mandate than that of Member of Parliament, i.e. they may not be members of a municipal council. The Constitution does not impose any residential, citizenship or age requirements on candidates for the post of the prime minister or minister (in contrast with the office of the President of the Republic and Members of Parliament). There is no office of a deputy prime minister or minister without portfolio in Lithuania since, according to Article 98 of the Constitution, a minister is the head of a particular ministry.[41] Therefore, if the prime minister is temporarily unable to exercise the powers of the office, another minister substitutes him (Article 98). The Constitution specifically refers to the minister of National Defence (Article 140). Other ministries can be established or abolished at the discretion of the Parliament. It should be noted that there is no tradition of forming a so-called shadow cabinet in Lithuania, for the Lithuanian political system should be described as a multi-party system (as opposed to the so called two-party system).

The prime minister is appointed (generally after parliamentary elections[42]) by the President of the Republic with the approval of the *Seimas*. The President therefore takes the initiative for the appointment of the prime minister but – as it was mentioned above – the President's discretion is limited and constitutional convention dictates that he accepts the results of the parliamentary elections. A new Government must always receive a vote of confidence from a majority of the Members of Parliament. There is an office of the Chancellor of the Government (*Vyriausybės kancleris*) but it is not politically relevant since his or her primary responsibility is to prepare the Government's meetings.

Ministers are appointed by the President on the nomination of the prime minister. As a rule, the prime minister is the leader of biggest political faction in the Parliament and other ministers are representatives of other parliamentary parties which form a ruling coalition. After the prime min-

[41] The number of ministries in Lithuania ranges from thirteen to sixteen. In 2008 there were thirteen ministries: foreign affairs, interior affairs, finance, national defence, education, culture, justice, economy, social security & labour, health, agriculture, environment and transport.

[42] There were 6 parliamentary elections from 1990 to 2008, but at the end of 2008 – the 15th government was ruling. It means that the ruling party or coalition more than twice changes its prime minister during its tenure.

ister and ministers are appointed by the President,[43] the former presents the list of members of the Government and the Government's program to the *Seimas* for consideration within fifteen days of being appointed. The new Government then assumes all its constitutional powers after the *Seimas* has approved its program by a majority of the votes of the Members of Parliament participating in the session (Article 92).

Although the Constitution says that ministers are directly subordinate to the prime minister (Article 96), in reality this subordination depends on whether the Government is made up of ministers from political parties different from that of the prime minister or of members of the same party. We can only speak of genuine subordination of ministers to the prime minister in the Lithuanian legal system in the latter situation. According to Article 101(4), a minister must resign if more than half the Members of Parliament express no confidence in him or her (it happens very rarely in practice). This indicates that members of the Government have individual responsibility. On the other hand, all the cabinet members have to resign if the Parliament expresses no confidence in the prime minister or if the latter resigns (Article 101(3)), which suggests solidarity or joint responsibility of the Government. Joint Government responsibility is also implied by Article 101, second sentence, which reads that if more than half the ministers' change, the Government has to be re-invested with authority by the Parliament (but this constitutional provision was never put in practice up to 2010).

2.5.2. Competence of the Government

The Government is the executive branch of central authority. But executive in this sense does not mean that the only task of the Government is execution of the parliamentary legislation. As a rule, the legal basis of the Government's competence lies in an Act of Parliament but, according to the case-law of the Constitutional Court, e.g. a ruling of 18 December 2001, the Government may also issue directives in the absence of empowering legislation, relying directly on the provisions of the Constitution and on the constitutional principle of separation of public powers (Articles 5 and 94). In principle, the only limitations in this case are that the Government should

[43] According to the constitutional convention, the President of the Republic may reject the candidate if a he or she thinks that the candidate has no appropriate support in the society for the latter's improper or non-transparent coordination of public and personal interests. But the President may not decide which political party may hold a particular ministerial portfolio.

not regulate human rights without an appropriate statute; governmental directives should not interfere with the competence of the Parliament (as set out in Article 67 of the Constitution) and should not be contrary to the Parliament's legislation. Naturally, the Government will rarely act without an appropriate statute to legitimise its actions.

In practice the Government initiates all political and legal reforms and possesses the most important legal and political instruments for implementing its program. It drafts a large majority of legislative bills, administers public property, prepares the draft of the state budget and collects and distributes the taxes (through the national tax agency (*Valstybinė mokesčių inspekcija*) and other public agencies). Moreover, through the Ministry of Foreign Affairs, the Government establishes and maintains diplomatic relations with other countries and, together with the President, is the main actor in external relations.

The Constitution assigns principal responsibility for administering the affairs of the state and maintaining the national security and the public order to the Government. In reality the Government exercises its powers through different ministries and other public agencies. The Government is headed by the prime minister who represents the Government and coordinates the work of the different ministries and agencies. Government directive (*Vyriausybės nutarimas*) is adopted by a majority of all the members of the cabinet and is signed by the prime minister and the sponsoring minister. If the Government is formed by a single party, the prime minister enjoys powers equivalent to those of his counterpart in the Westminster model.[44] If the Government is a large coalition, however, the prime minister's powers are less substantial. In June 2006 a so-called 'minority government' was formed for the first time in the history of the Second Lithuanian Republic, which lasted more than one year.

2.5.3. Trust and accountability of the Government

The Government has to have the confidence of the Parliament and must resign if it loses that confidence or if the Parliament passes a vote of no-confidence in the prime minister. This has happened only once in sixteen years since the adoption of the 1992 Constitution. This vote of no-

[44] This happened only once – after 1992 parliamentary elections, when the former Communist party (*Lietuvos Demokratinė Darbo Partija*) became the only ruling party.

confidence can also take the form of the Parliament's refusal to approve an annual state budget, but it still has never happened. The Government must also resign if the prime minister resigns, which reflects the principle of solidarity of the cabinet (Article 96). An absolute majority of Members of Parliament may remove any minister from office (Article 101). Ministers are politically accountable to the *Seimas*. However, notwithstanding the lack of any provision to this effect in the Constitution, convention provides that the President has the discretion (see also Article 96) to declare his loss of confidence in a particular minister if there is an apparent conflict between his private and public interests or on other moral grounds. Accordingly, if the Parliament wants to remove a minister from office, it does not need to pursue a complicated impeachment procedure.

Like Members of Parliament, members of the Government have legal immunity while they are in office. According to the Constitution, the prime minister and other ministers may not be prosecuted or detained without the consent of the Parliament (Article 100).

3. Safeguarding the Constitution and human rights

3.1. The *Seimas* Ombudsmen (*Seimo kontrolieriai*)

Article 73 of the Constitution provides for the office of *Seimas* ombudsman (*Seimo kontrolieriai*). This article is included in the section of the Constitution dealing with the Parliament although the institution of the *Seimas* ombudsman is an independent public entity. The explanation for this lies not only in the title of the institution but also in the fact that the institution of the ombudsman has historically evolved from an agency of the Parliament. According to the Law on the *Seimas* Ombudsman Institution, the *Seimas* must appoint two *Seimas* ombudsmen for a term of five years. The ombudsmen may not be reappointed and may only be removed from office following a vote of no confidence adopted by a majority of all the members of the *Seimas* (Article 75). Although members of Parliament can ask the ombudsmen to investigate a specific matter on the basis of information they have received, the ombudsmen receive the majority of complaints directly from citizens.

The *Seimas* ombudsmen could be called 'maladministration ombudsmen' since, according to Article 73, their task is to examine complaints from

citizens about bureaucratic hindrance and abuse of authority by public officials. According to the Law on the *Seimas* Ombudsman Institution, ombudsmen have the power to examine complaints concerning any public officials with the exception of the President of the Republic, Members of Parliament, the prime minister or judges. The institution of ombudsman is regarded as a non-judicial agency (as opposed to a 'pre-judicial institution'), since recommendations of the ombudsmen, as a rule, are considered as an instrument of soft law and therefore may not be appealed to the courts. Notwithstanding, these recommendations are not of a normative character, but public bodies tend to follow them (percentage of their application in Lithuania tends to reach 80%). According to the Constitution, the *Seimas* ombudsmen may not initiate a review of the constitutionality of legal acts they are reviewing, but they can initiate the so called 'abstract judicial review' of different executive decrees (lower than those of the Government) in administrative courts, therefore their activity is very important in assuring one's infringed constitutional rights. Since the powers of the *Seimas* ombudsmen are limited to controlling bureaucracy and abuses of power, the offices of the ombudsman for Equal Opportunities and for Child Rights Protection were established as separate institutions in 1998 and 2000, respectively.

3.2. Judicial power

The main power in protecting one's infringed constitutional rights, nevertheless, rests in the judicial power. Two independent systems of courts exist in Lithuania: ordinary courts and administrative courts. Article 111(1) of the Constitution establishes a system of courts of general jurisdiction (or ordinary courts) to deal with civil and criminal cases. In accordance with the continental European tradition, this provision anchors a judicial system of three instances, courts of first instance, appeal and cassation, in the Constitution. There is no jury system in Lithuania, nor are there lay judges. All judges, including those of the local courts, are professional jurists who, again according to the European tradition, are appointed and not elected.[45]

[45] Legislation provides that a Master of Law degree from a university and five years of legal practice is required in order to apply for the office of a judge. In Lithuania there is no special school for magistrates as there is in France, for example, but a candidate is required to have a year's practical experience in the court. The candidate is also required to pass a special examination which is set by the Ministry of Justice and covers all the major subjects of law.

The competence of the ordinary courts is laid down in the Law on Courts (*Teismų įstatymas*) and extends to minor civil and penal cases. Cases in local courts are heard by a single judge. There are 54 local courts (*apylinkės teismas*) with around 480 judges, and they are established in practically every municipality. The local court is the court of first instance, which has jurisdiction to establish the facts of the case and, as a rule, has a heavier workload than the higher courts.

According to Article 112 of the Constitution, the president is principally responsible for appointing members of the judiciary. The president appoints judges of ordinary and district courts and of specialised administrative courts, including the High Administrative Court. Judges of the Court of Appeal are appointed by the President with the consent of the Parliament, and justices of the Supreme Court are appointed by the Parliament on nomination by the President. However, according to a judgment of the Constitutional Court on 9 May 2006, the president may appoint, promote or remove a judge from office only after receiving advice from the independent Judicial Council which is made up entirely of judges. As a rule, judges are appointed until the age of 65. Justices of the Supreme Court and Constitutional Court and judges of the Court of Appeal can only be removed from office by impeachment proceedings in the *Seimas*.

The independence of the judiciary is guaranteed by the constitutional principle of the separation of public powers (Article 5), by the immunity afforded to members of the judiciary and the prohibition of interference with the activities of judges (Article 114), by the fact that judges are appointed for life and their removal from office is constitutionally restricted (Articles 115 and 116) and by the requirement that all decisions of the President concerning the appointment and removal from office of members of the judiciary must be made on the advice of the Judicial Council. The remuneration of the judiciary is also constitutionally protected (Article 113). The Constitutional Court ruled on 12 July 2001 that the Law on the Remuneration of State Officials, which purported to reduce the salaries of judges, contravened the constitutionally guaranteed independence of the judiciary (Article 109) and other constitutional principles and declared this piece of legislation void. Nevertheless later on the possibility to reduce the salaries of judges (and other civil servants) during the period of economic crises was justified by the jurisprudence of the Court.

Administrative courts should be mentioned here. Until the judicial reforms of 1999, Lithuania had a unitary judicial system composed only of

courts of general competence, with the Supreme Court at the top of the system. The decision was taken in 1999 to establish separate specialised courts with competence to adjudicate in administrative cases. The legal basis for this reform was Article 111 of the Constitution.[46] It was initially decided to establish only lower specialised courts and integrate them into the existing judicial system with the existing Court of Appeal and the Supreme Court. One year into the reform process, in 2000, however, a separate High Administrative Court was established as the court of the final resort in administrative proceedings. Accordingly, there are now two separate judicial systems and two separate highest courts with competence to develop the judicial practice. There are only six administrative courts in Lithuania: five district administrative courts (as courts of first instance) and the High Administrative Court (as the court of appeal).

One of the main ideas behind the establishment of separate administrative courts was to have specialist judges who could administer justice better and more quickly in disputes between citizens and the government, with the exception of criminal cases. As a rule, the competence of the administrative courts extends to settling disputes between private (individuals or legal entities) and public entities. It would be fair to say that the purpose of establishing the administrative courts was to address bureaucracy and maladministration in public bodies. In theory at least, the separate system of administrative courts is intended to provide better protection for individuals against infringement of their rights by public authorities.

As mentioned earlier, administrative courts are generally competent to resolve legal disputes between private parties and public authorities. Most administrative proceedings involve a dispute between an individual and a public agency (for instance, a driver *versus* the police or a taxpayer *versus* the tax agency). The administrative courts in Lithuania also have competence to resolve legal disputes between civil servants and their employers, for instance, in labour disputes in the civil service. According to legislation, in Lithuania it is even possible to bring an action against the Parliament, for instance, if an official is dismissed by an act of Parliament (see, for example, the ruling of the High Administrative Court of 3 July 2003). The administrative courts are also competent in cases involving a dispute between two public agencies, e.g. a municipality and the central government.

[46] Art. 111(2) reads 'For the investigation of administrative, labour, family and cases of other categories, specialized courts may be established according to law'.

The High Administrative Court and the district administrative courts also have the power of the so called 'abstract constitutional review' – to review the constitutionality and legality of ministerial and other lower executive directives. During a case, an ordinary court can ask the administrative court to review a document's constitutionality or legality (concrete review). If the ordinary court is uncertain about the executive instrument's constitutionality (compatibility with the Constitution) or legality (compatibility with an Act of Parliament), it has to suspend the proceedings and apply for a ruling on the matter by the administrative court.[47] A finding by the administrative court that the instrument in question is in conflict with the Constitution or legislation renders it void, as is the case with a similar ruling by the Constitutional Court, and it may not be applied by any private or public entity. In other words, besides the concrete review of maladministration, public agencies can also ask the administrative courts for an abstract review of the legality of a particular executive legal instrument.

3.3. The Constitutional Court

As is the case in almost all the new democracies of the Central and Eastern Europe, the 1992 Lithuanian Constitution established a strong Constitutional Court (according to the Austro-German model) in order to guarantee constitutionalism, the rule of law and the protection of human rights.

3.3.1. Selection and appointment of the justices

The method of selection of justices of the Constitutional Court has already proved its effectiveness, which might explain the Court's success in assuming a prominent role and gaining authority among other legal and political actors, along with popular public support. The ordinary legislation provides that, as a rule, prospective justices will be selected from among university professors (in 2009 eight justices from nine were university teachers or professors). This is one of the crucial factors in explaining how the Court has been able to change the entire legal system and even the legal mentality of political and legal actors in Lithuania through its case-law. Judges of

[47] The High Administrative Court is competent to review the legality of documents of any central executive agency (for instance, a ministerial decree), while district administrative courts may review the legality of legal instruments issued by regional and local authorities.

ordinary courts who had been trained and practiced in the narrow-minded Soviet system would not have been able to adapt to the new legal concepts of civil society, the rule of law and the democratic state in the immediate aftermath of the Soviet occupation in the 1990s.

The nine justices of the Constitutional Court are appointed for nine years and may not be reappointed. Every three years the Court is reconstituted with the appointment of three new justices. The justices are appointed by the *Seimas*. One candidate is proposed by the President of the Republic, the second by the speaker of the *Seimas* and the third by the chief justice of the Supreme Court. The *Seimas* may reject a candidate but it never did so up to 2008 nominations. The *Seimas* also appoints the chief justice of the Constitutional Court on the President's nomination.

The justices have immunity and may not be detained or prosecuted for criminal offences without the consent of the Parliament. They can only be removed from office through impeachment proceedings in the Parliament. Justices of the Court (like ordinary judges) may not occupy any other public office but, according to Article 113 of the Constitution, they may continue their academic career.

3.3.2. The right to address the Constitutional Court

The Constitution of Lithuania does not provide for a system similar to that of constitutional complaint in Germany or *amparo* in Spain which allows individuals to address the Constitutional Court. Questions are submitted to the Constitutional Court by political actors (the President, the *Seimas*, or a group representing one-fifth of the members of the *Seimas*, and the Government) or by judges of the ordinary and administrative courts.

According to Article 110 of the Constitution, ordinary and specialized courts do not have to apply an act of Parliament that is in conflict with the Constitution. If the judge of the court examining the case is uncertain about the constitutionality of a statute or governmental directive, he or she has to suspend the case and refer the matter to the Constitutional Court to review the constitutionality of the specific legal instrument. The effect of this provision is that the majority of cases reaching the Constitutional Court are referred to it by judicial authorities. It also means that ordinary courts have to interpret legislation in the light of the Constitution and of the case-law of the Constitutional Court. Although the Constitutional Court often expresses the opinion that it is the only authority entitled to interpret the Constitution,

ordinary and administrative courts also have a duty to interpret the Constitution before referring cases to the Constitutional Court. The judiciary in Lithuania therefore has the discretion not to apply an act of Parliament if it is obviously contrary to the Constitution or to the case-law of the Constitutional Court in accordance with the concept of *acte claire* or *acte éclairé*, as it is accepted in the case-law of the European Court of Justice. Naturally, the ordinary courts may not declare a statute of the Parliament or any other legal instrument void. It would therefore be fair to say that the 1992 Constitution established a decentralised system of interpretation and application of the Constitution in Lithuania. On the other hand, it has to be admitted that ordinary courts in Lithuania still lack the courage to interpret and apply the Constitution independently.

According to the Constitution, the three main public authorities can control each other by challenging the constitutionality of each other's legal instruments, but the President and the Government rarely use their discretion to challenge the Constitutional Court.[48] The opposition in Parliament, by contrast, is second to the judiciary in terms of initiating the constitutional review.

3.3.3. Competence of the Lithuanian Constitutional Court

The first thing that needs to be said is that the Constitutional Court in Lithuania does not have the sole prerogative to review the constitutionality of legal instruments. The Constitutional Court has the power to review the parliamentary legislation (ordinary and organic laws and other acts of Parliament), presidential decrees, governmental directives and international treaties (before or after ratification). The judicial review of the constitutionality of lower legal instruments, such as legal acts of ministers and other executive bodies, is the task of administrative courts. The Constitutional Court is also not competent to overrule judicial rulings. It is also important to note that, as a rule, the Constitutional Court exercises *a posteriori* constitutional control.

[48] The President of the Republic may only contest the legality and constitutionality of governmental decrees, while the Government may only challenge the constitutionality of an act of Parliament. The President also a couple of times, addressed the Constitutional Court for its conclusion after parliamentary elections.

3.3.3.1. Abstract constitutional review

The abstract review of constitutionality refers to cases where the Constitutional Court is asked by a political authority to answer an abstract or formal question concerning the constitutionality of a legal act outside the context of litigation. In this type of judicial review, the Constitutional Court is in fact being asked to resolve a legal dispute between political actors, for example, between the opposition in the Parliament and the Government, represented by a majority in the Parliament.

> In the case of the abstract judicial review of constitutionality, the Constitutional Court has primarily a political function and the task of settling a political dispute or even a political crisis. The political elite sometimes uses the abstract constitutional review to secure the adoption of an unpopular political decision, as was the case in 1998 when capital punishment was abolished not by an Act of Parliament (by an amendment of the Criminal Code) but by a ruling of the Constitutional Court on the constitutionality of this form of punishment. A relevant example of a case where the Constitutional Court resolved a political crisis was the impeachment process involving President Rolandas Paksas in 2003–2004.

3.3.3.2. Concrete constitutional review

The judicial authorities (ordinary and administrative courts) may refer a matter to the Constitutional Court if they are uncertain about the constitutionality of a legal document which it has to consider in a particular case. In this case, the court addresses the Constitutional Court and suspends the litigation until the latter delivers its ruling. In reality, of course, the parties in the case request this suspension, but the court has the discretion not to grant it if it feels there are no legal grounds for the party's motion.

> The concrete constitutional review constitutes the bulk of the workload of the Constitutional Court. This kind of judicial review of constitutionality makes the Lithuanian Constitutional Court an integral part of the judicial system, for it directly links the judiciary with the Constitutional Court and obliges the judiciary to apply the reasoning of the Constitutional Court in specific cases. Moreover, the Constitutional Court has to link its reasoning to the facts of the case if its reasoning is to become a precedent for the ordinary courts. It has to be said that the Constitutional Court is still fairly reluctant to refer to the facts of a case in its rulings.

3.3.3.3. Judicial review of constitutionality of Acts of Parliament, presidential decrees and governmental directives

The Constitutional Court may examine not only the content of an Act of Parliament (or other legal instrument) but also its form or the procedure of its enactment. According to Article 69 of the Constitution, the adoption of legislation in the Parliament has to follow the Rules of Parliamentary Procedure (*Seimo Statutas*). Consequently, public bodies may refer legislation to the Constitutional Court if they feel that the Parliament did not follow the established Rules of Parliamentary Procedure. It is not clear how detailed this formal review of the enactment procedure should be but, as a rule, the Court applies the concept of substantial violation of the rules of the parliamentary procedure. For instance, it may consider not only the number of votes in favour of the statute but may even regard the adoption of an act of Parliament without the opinion of the judicial committee concerning the constitutionality of the bill (which is required as a form of the preventive control of legislation) as substantial violation of the rules of the parliamentary procedure and therefore of the Constitution.[49]

The Constitutional Court may review the constitutionality of the statute not only against specific provisions of the Constitution but also in light of the preamble (e.g. the principle of the rule of law) and even constitutional principles not directly mentioned in the text of the Constitution but developed in the case-law of the Constitutional Court itself (e.g. principles of legal certainty and legal expectations).

The majority of cases of constitutional review probably relate to the constitutionality of statutes. According to the Constitution, challenges to the constitutionality of an Act of Parliament can be brought by a group consisting of no less than one-fifth of the Members of Parliament (or by the *Seimas* itself[50]), the Government or the courts. The President cannot challenge the constitutionality of legislation.

Government directives must be in conformity not only with the Constitution but also with the parliamentary legislation and ratified international treaties. The Constitutional Court therefore reviews not only the constitutionality of legislation but also the legality of governmental directives.

[49] See e.g. the Constitutional Court Ruling of 19 January 2005, section [II.18].

[50] According to Art. 106 of the Constitution, if the *Seimas* as such (and not a group of MPs) challenges an act of Parliament before the Constitutional Court, the applicability of the contested act is automatically suspended.

As a rule, a presidential decree has no normative value and review by the Constitutional Court is therefore fairly unusual. The Court has examined the constitutionality of presidential decrees only three times.[51] Decrees of the President (like the directives of the Government) have to comply not only with the Constitution but also with the Parliament's legislation.

3.3.3.4. Judicial review of the constitutionality of international treaties and agreements

The Constitutional Court has the power to review whether an international treaty is in conflict with the Constitution (Article 105). According to the Constitution, only ratified international treaties and agreements become part of the Lithuanian legal system (Article 138). The President or the *Seimas* can ask for a treaty's constitutionality to be reviewed before it is ratified. This only happened once when the President challenged the constitutionality of the European Convention on Human Rights before it was ratified in the *Seimas*. The Constitutional Court ruled on the matter on 24 January 1995. The review of international treaties before their ratification is the only example of *a priori* constitutional review by the Court. The Court is not precluded from verifying the constitutionality of an international treaty after its ratification by the Parliament but has never done so up to now.

3.3.3.5. Role of the Constitutional Court in impeachment proceedings

The Constitutional Court's powers in the impeachment process were not clear until the impeachment of President Rolandas Paksas in 2004. As this impeachment process showed, the Constitutional Court has a very significant, not to say crucial, role in the process. Notwithstanding the fact that the Court does not have the power to remove the President, a Member of Parliament or judges of higher courts from office, since this is at the discretion of the Parliament (Article 74), the Court's conclusion that the actions of a particular official have violated the Constitution is final and decisive and cannot be overruled by any other public body or court of justice. It is theoretically possible, however, that a public official who has been found

[51] Constitutional Court Judgments of 30 December 2003, 15 April 2004 and 2 June 2005.

by the Constitutional Court to have violated the Constitution may remain in office for political reasons.

Impeachment charges brought against the President – as it was mentioned above – are formulated by the Parliamentary Impeachment Commission and, if confirmed by the Parliament, presented to the Constitutional Court for examination. The Court has to evaluate the charges and present its conclusion as to whether the offences formulated by the impeachment commission actually constitute a violation of the Constitution.

In effect, therefore, if the Constitutional Court is asked to evaluate the constitutionality of the actions of an official in an impeachment procedure, it is playing the role of the Constitutional Grand Jury and is competent to say whether the public official is guilty or not guilty of violating the Constitution.[52]

3.3.3.6. The Constitutional Court as electoral court

There is no specific electoral court in Lithuania. However, the Constitutional Court and the High Administrative Court can hear claims regarding the legality of decisions made by the Supreme Electoral Commission (*Vyriausioji rinkimų komisija*) which is responsible for organising and supervising national elections. Legislation provides that decisions of the Commission or its failure to act may be appealed to the High Administrative Court before the end of voting. The official announcement of the results of parliamentary or presidential elections is made within 24 hours, after which a political party or candidate that disagrees with a decision of the Supreme Electoral Commission may ask the Constitutional Court for a conclusion on whether there has been a violation of electoral laws (see also Article 105). Any such request must be made through the *Seimas* or through the President.

> The Constitutional Court has three times received such a request: after the 1996, 2004 and 2008 elections, when it examined possible violations of the electoral law in a particular electoral district. The Court in conclusions of 23 November 1996 and 5 November 2004, employing the concept of a substantial breach of electoral laws, ruled that, notwithstanding some minor violations during the campaign, the electoral laws had not been broken. Although the Constitution (Article 107) provides that the final decision regarding the annulment of the results of an election rests with the *Seimas*, it is difficult to imagine a situation where the Parliament would not accept the conclusion of the Constitutional Court that the electoral laws were violated during an election campaign.

[52] In its above mentioned conclusion of 31 March 2004, the Court addressed the question of whether the President had breached the oath of office. In this sense, we can also speak of the Constitutional Court as certain High Court of Honour with the competence to review a breach of oath, which is traditionally understood to be primarily a political and moral concept.

3.3.4. Effect of a ruling of the Constitutional Court declaring all or part of a legal act unconstitutional

If the Constitutional Court declares that all or part of a legal act is in conflict with the Constitution, that instrument or the part of it declared unconstitutional may not be applied by the courts or by any other public or private entity (Article 107). The Constitutional Court cannot annul the legal act in the strict sense of the word, but it can make it legally void. It is the duty of the entity that adopted the instrument to withdraw the entire instrument or the part of it that has been declared unconstitutional from the national legal system. For instance, the Rules of Parliamentary Procedure regulate what the *Seimas* has to do if the Constitutional Court declares an act of Parliament to be unconstitutional.

Problems sometimes arise, however, if the *Seimas* is slow to change the unconstitutional piece of legislation.

> For instance, on 21 December 1999, the Constitutional Court declared that the new Law on Reimbursement of State Officials was in conflict with the Constitution in so far as it reduced the salaries of members of the judiciary, including the salaries of justices of the Constitutional Court. Since this ruling, the salaries of members of the judiciary have been paid on the basis of an earlier government directive. This was formally illegal because, according to legislation, the salaries of members of the judiciary have to be regulated by an act of Parliament and not by the executive. An appropriate statute (Law on Reimbursement of judges) was only adopted in 15 November 2008.

Another question that can arise is what happens if the Constitutional Court mentions some imperfections or gaps in legislation in its considerations, but not in its final ruling, in *obiter dicta* for instance? While the answer is not clear, practice shows that, as a rule, the Parliament and other public bodies tend to follow the Court's reasoning and change their legal instrument accordingly.

3.3.5. Judgments of the Constitutional Court

According to the Constitution and ordinary legislation, the Constitutional Court may deliver two types of judgments: rulings and conclusions. Until 2004 the distinction was assumed to be that rulings were final judgments of the Court on the constitutionality of a legal instrument, whereupon the unconstitutional legal act would be legally void and may not be applied, while a conclusion was regarded as official legal expertise and a non-binding recommendation for the *Seimas* on issues over which it has the final decision.[53] In a conclusion dating from 31 March 2004, however, the Court completely changed the notion that conclusions of the Constitutional Court are non-binding. Law on Constitutional Court also provides for an explanation (*sprendimas*) as a third type of an act of the Constitutional Court which may be issued after request of parties of the case in asking to explain a meaning of particular ruling (*nutarimas*) of the Court.

3.3.5.1. Rulings of the Constitutional Court

A ruling (*nutarimas*) is the main legal instrument by which the Constitutional Court forms its case-law. In 2008 the Constitutional Court delivered nineteen rulings. The courts and political actors (the President, the *Seimas* and the Government) can seek a ruling of the Constitutional Court if they are uncertain about the constitutionality of a legal document.

3.3.5.2. Conclusions of the Constitutional Court

Only the *Seimas* and the President can request a conclusion of the Court. According to the Constitution, the Constitutional Court presents conclusions (*išvada*) on questions submitted to it relating to the following (Article 105): (i) whether electoral laws have been violated during presidential and parliamentary elections; (ii) whether international treaties of the Republic of Lithuania are in conflict with the Constitution; (iii) whether the actions of state officials facing impeachment proceedings are in conflict with the Constitution; (iv) whether the health of the President of the Republic allows him to hold office.

[53] See also C. Tauber, *Constitutionalism in Estonia, Latvia and Lithuania* (Uppsala, Iustus Förlag 2001) p. 183.

During the fifteen years of its existence, the Constitutional Court has delivered only five conclusions: one conclusion on the constitutionality of international treaty, when in 1995 it concluded that the European Convention on Human Rights was not in conflict with the Constitution; one conclusion on impeachment, when in 2004 it concluded that the President Rolandas Paksas had grossly violated the Constitution; and three conclusions on parliamentary elections, when after 1996, 2004 and 2008 parliamentary elections it found no violations of electoral laws.

With its conclusion on 31 March 2004 during the impeachment proceedings against President Paksas, the Constitutional Court reversed the premise that a conclusion was only a non-binding recommendation for the Parliament. The Court stated that its conclusion concerning the constitutionality of an official's actions is final and cannot be overruled by the Parliament or any other public entity. The Court ruled that the Parliament is only competent to decide whether the official should be removed from office. Following this ratio, we can say that the Court's conclusions in other cases must have the same definitive effect.