

Lithuania

by

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List of Abbreviations

ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EU	European Union
LDDP	Lithuanian Democratic Labour Party (Lietuvos demokratine darbo partija)
MP	Member of Parliament
TAR	Teisės Aktų Registras
UN	United Nations
US	United States

List of Abbreviations

General Introduction

§1. LITHUANIAN CONSTITUTIONAL HISTORY

1. The text of the preamble of the 1992 Lithuanian Constitution (directly mentioning sixteenth-century Lithuanian Statutes and interwar Constitutions as constitutional sources) reflects the concept of a so-called historic constitution, under which the constitution is continuously undergoing historic developments and follows the spirit of the nation. Pursuant to this concept, the Lithuanian Constitution emerged in parallel to the statehood of Lithuania, and it has been continuously developing from the first legal acts of the State of Lithuania from the fourteenth century, through the Lithuanian Statutes of the sixteenth century until the traditions of the First Lithuanian Republic and finally crowned by the adoption of the Constitution in 1992. Under this view, even the 1992 Constitution may be regarded not as the end of Lithuanian constitutional development but rather as another historical step in a continuous journey.¹

2. When reading the Constitutional Preamble, one may reconstruct five historic dates which symbolise certain ‘legal revolutions’ in the history of Lithuanian constitutionalism, marking certain major breakthroughs in society covering ‘revolutionary’ changes in legal thinking, namely the years 1387, 1566, 1791, 1922 and 1992. The first date (1387) marks the first common state privilege of the Grand Duchy of Lithuania (which also became the first known legal normative act of the State of Lithuania) and symbolises the beginning of a transition from the old type of law to a medieval type of legal system, which incorporated Lithuania into the European *ius commune*. The second date (1566) is the date of adoption of the Second Statute of Lithuania and symbolises the transition from the medieval to the Renaissance humanism manner of legal thinking, including codification and systematisation of the entire legal system. The third date (1791) marks the adoption of the 1791 Constitution and the transition to an ‘Enlightenment Constitutionalism’. The fourth date (1922) marks the re-establishment of the Lithuanian State in 1918, including the adoption of the 1922 Constitution with a transition to the contemporary modern

1. On the concept of the Lithuanian historic constitution, see Vaidotas A. Vaičaitis. *History of Lithuanian Constitutionalism*. In ‘Lietuvos konstitucionalizmo istorija’ Vilniaus Universiteto leidykla’, 2016 (Vaidotas A. Vaičaitis, Jevgenij Machovenko, Jurgita Paužaitė-Kulvinskienė, Lina Griškevič eds), pp. 263–274 (http://www.tf.vu.lt/wp-content/uploads/2016/12/V_Vaicaitis_Summary_History_of_Lithuanian_constitutionalism.pdf).

legal system, and last but not least, the fifth date (1992) is that of the 1992 Constitution and symbolises the transition from the imposed soviet totalitarian legal system to positivist legal thinking built on the concepts of rule of law, democracy and inherent human rights.

3. The first historic constitutional legal sources of the ‘State of Lithuania’ include unquestionably the *national privileges of the Grand Duchy of Lithuania* (adopted between the fourteenth and sixteenth centuries) which may be interpreted as an obligation assumed by the Grand Duke towards the nobility to guarantee certain rights and freedoms upon his ascension to the throne. These legal instruments guaranteed certain constitutional values, such as aspects of the rule of law, democracy and human rights. At that time the rule of law was mainly reflected in the supreme hierarchical status of privileges within the state’s legal system. Since the sixteenth century, the values of democracy have been reflected in these privileges through the concept of sovereignty of civil society (nobility), elections to the Parliament (the *Seimas*), the emergence of parliamentarianism, as well as some personal, political and economic human rights. Obviously, democracy and the human rights of that time were perceived within the context of class-based society and were guaranteed only for the nobility as the only fully fledged citizens of the State of Lithuania. Finally, the constituent nature of the privileges, their special place within the hierarchy of legal sources and contents, which reflected the then civil contract within a state, allow them to be attributed to the historical sources of Lithuanian constitutionalism.

4. The Statutes of Lithuania (officially, ‘the Statutes of the Grand Duchy of Lithuania’) are directly mentioned in the Preamble. The Statutes of Lithuania form a compilation of certain codified sources of law covering the entire legal framework of the Grand Duchy of Lithuania of the sixteenth century, including legal norms spanning private and public law, and criminal and administrative rules. There were three editions of the Statutes of Lithuania: 1529, 1566 and 1588. Historically, they are known under the titles of the 1529 *First Statute* of Lithuania, the 1566 *Second Statute* of Lithuania and the 1588 *Third Statute* of Lithuania. The Statutes of Lithuania systematised and further expanded the constitutional values covered by the Grand Duke’s privileges. Within the context of these values along with the tradition of the constitutionalism of Lithuania, it may be concluded that the breakthrough (‘revolutionary’) event which took place during the legal reform of the Grand Duchy of Lithuania in the midst of the sixteenth century should be associated with the adoption of the 1566 Second Statute of Lithuania, one which laid the foundations for a Lithuanian parliamentary tradition. This Statute stipulated the principle of regular parliamentary elections to Parliament, the *Seimas*, equal and territorial representation of the entire relevant civil society (the nobility), mentioned the special status of representatives of the *Seimas*, limited the sovereign’s legislative competences and established the key legislative competences of the *Seimas*, including the imposition of taxes, proclamation of war and nomination of officials.

5. Despite the absence of reference to the 1791 Constitution in the Preamble to the 1992 Lithuanian Constitution, the 1791 Constitution must also be included in

the list of legal sources of Lithuanian constitutional traditions. From Lithuanian constitutional perspective, the 1791 constitution comprises not one but has at least five separate constituent constitutional acts: the Law on Cardinal Rights of 8 January, the Law on Local Assemblies (*Seymiki*) of 24 March, the Law on Towns of 21 April, the Government Act of 3 May, and the Mutual Pledge of the Two Nations (in Polish, '*Zaręczenie Wzajemne Obojga Narodów*') of 20 October. The most important and central constitutional act adopted in 1791 is, of course, the Government Act of 3 May 1791 (historically, 'the Constitution of 3 May'). However, as the latter does not refer to Lithuanian statehood, this 1791 Compound Constitution may, therefore, be treated as part of the Lithuanian constitutional tradition only if it includes the Mutual Pledge of the Two Nations adopted on 20 October 1791, which once again turned back to the idea of 'the Republic of the Two (Polish and Lithuanian) Nations'.

6. During this study of three constitutional values, a conclusion was drawn that despite the class nature of the 1791 Constitution (with specially designated class courts for the gentry, the urban and rural populations), *the rule of law* was most vividly expressed in the 3 May Government Act through its explicit principle of the separation of powers (focusing, in particular, on the independence of the judiciary) and the supremacy of this constitutional Act over other Acts. The constitutional value of democracy was most profoundly expressed in the 1791 Constitution in the expanding notion of citizenship and the principle of parliamentarianism, including regular elections, the uniform territorial representation of civil society in a bicameral *Seimas*, a rather detailed procedure of elections of representatives to the *Seimas*, immunity of parliamentarians, and the functions of legislation, parliamentary scrutiny and deliberation. As far as protection of human rights in the 1791 Constitution is concerned, it has to be emphasised that human rights did not receive much attention, because the Constitution was primarily dedicated to increasing the efficiency of state governance through modernisation of the then existing class democracy. All this resulted in a much greater focus on the political rights of citizens, in particular, on electoral rights to the *Seimas*.

7. The last historical reference contained in the 1992 Constitution of the Republic of Lithuania is to the constitutions of the 'interwar' or the 'First' Lithuanian Republic. The constitutional tradition of the First (interwar) Republic of Lithuania is closest to the current 1992 Lithuanian Constitution and embodies ideals of contemporary constitutionalism. The interwar period had three interim (1918, 1919, 1920) and three permanent (1922, 1928, 1938) constitutions, but the last two were adopted after the December 1926 *coup d'état*, moving to an authoritarian regime which symbolised the withdrawal of Lithuania in large part from the constitutional values, i.e., from the rule of law, democracy and effective protection of human rights (especially political rights). The history of Lithuanian constitutionalism analysed in this chapter, therefore, covers only six years (1920–1926), which makes it all the more relevant.

8. The 1922 Constitution of Lithuania was a typical constitution for a parliamentary (republican) democracy in Europe in the first half of the twentieth century.

From the perspective of the rule of law, this Constitution may be said to have explicitly stipulated the principles of the supremacy of the constitution and the separation of powers. However, the *Seimas* enjoyed a dominant position vis-à-vis other authorities. The President of the State was to be elected by the *Seimas* and was part of the Government. Reference to the value of democracy was given in the Preamble and Article 1 but was most profoundly expressed through the principles of sovereignty of the nation, universal elections and parliamentarianism. For the first time in the history of Lithuanian constitutionalism, human rights had a separate individual chapter within a constitution which laid down fundamental personal, political, economic and cultural rights together with minority rights.

9. All three twentieth-century declarations of independence are also included into the Lithuanian constitutional bloc by the doctrine of Lithuanian constitutional law. These declarations are as follows: the Independence Act by the Lithuanian Council, 16 February 1918; the Declaration of 16 February 1949 by the Council of the Movement of the Struggle for Freedom of Lithuania; and the 11 March 1990 Independence Act of the Supreme Council. These three declarations are not only political but also constitutional (legal) documents, for their texts contain all three fundamental constitutional values: the rule of law, democracy and human rights.²

§2. CHARACTERISTICS OF THE LITHUANIAN STATE

10. The theory of state traditionally describes a state as having three constituent elements: public authority, a territory and a people or civil nation living under this authority and on the territory. This chapter will address all three elements.

I. Sovereignty and Public Authority

A. Concept of Sovereignty

11. The Lithuanian Constitution distinguishes between the concepts of sovereignty and state authority. State authority is mentioned in the context of the separation of powers among parliament, government, the president and the courts (Article 5)³ as limited powers, serving the people. Sovereignty, however, according to Article 3, should be unlimited power.⁴ The Lithuanian Constitution identifies explicitly two sovereigns: the nation (Articles 2⁵) and the State (Article 84, Item

2. On Lithuanian constitutional history, see further Lina Griškevič, Jevgenij Machovenko, Jurgita Paužaitė-Kulvinskienė, Vaidotas A. Vaičaitis. *Lietuvos konstitucionalizmo istorija. Istorinė Lietuvos konstitucija*. Vilniaus Universitetas, 2006.

3. Article 5: 'In Lithuania, state power shall be executed by the *Seimas*, the President of the Republic and the Government, and the Judiciary. The scope of power shall be limited by the Constitution. State institutions shall serve the people.'

4. Article 3: 'No one may restrict or limit the sovereignty of the nation or arrogate to himself the sovereign powers belonging to the entire nation.'

5. Article 2: 'Sovereignty shall belong to the Nation.'

16⁶). This is not a contradiction but just the paradox of a concept of competing for plural sovereignty according to which, on the one hand, the nation (as civil society) creates the State, but yet on the other hand, the State creates the nation. Nation and State as the most significant entities also appear in Article 9 of the Constitution which provides that ‘the most significant issues concerning the life of the *State* and the *Nation* shall be decided by referendum’. The Lithuanian ‘State’ in the Constitution is sometimes defined as the ‘Lithuanian Republic’. For instance, Article 136 says that ‘the Republic of Lithuania shall participate in international organisations ...’. In the Preamble, the Lithuanian State is also described as *teisinė valstybė*, a state under the rule of law or a *Rechtsstaat*. According to the jurisprudence of the Lithuanian Constitutional Court ‘the state under the rule of law’ is interpreted as one of the broadest constitutional principles (values). This will be considered further in Chapter 2 below.

12. Furthermore, in the text of the Lithuanian Constitution we may find even more implicit, competing, unlimited sovereigns, such as human beings (under the concept of innate human rights in Article 18), the European Union (EU) (pursuant to the 2004 Constitutional Act) and the Constitution itself (Article 5: ‘The scope of state powers shall be limited by the Constitution’).

B. The Separation of Powers

13. The principle of the separation of powers might be attributed to the broader principle (value) of the rule of law, or it could be treated as a separate constitutional principle, but here it will be analysed in the context of the State. This principle is not explicitly mentioned in the Lithuanian Constitution, but Article 5 defines three main authorities executing state powers: the *Seimas* as the legislature, the President of the Republic and Government as the executive and the courts as the judiciary. The structure of the Constitution also reflects this principle. First, it regulates the powers of the *Seimas* (Chapter 5), then the powers of the President and Government (Chapters 6 and 7) and lastly the powers of the constitutional and ordinary courts (Chapters 8 and 9).

14. How the powers are distributed in reality is very much related to the particular form of government. The text of the 1992 Constitution is something of a compromise between the model 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 *Seimas* and has to resign after general parliamentary elections (Articles 92 and 101), but on the other hand, the President of the Republic is elected directly by the people. The President is elected to office for five years, while the tenure of the *Seimas* (and consequently the Government) is four years. The President appoints the Prime Minister and the Ministers, and the Government has to ‘return its powers’ upon the election of the President (Articles 84 and 92). As a rule, one part of the Cabinet is appointed from the

6. Article 84, Item 16: ‘in the event of an armed attack threatening the sovereignty of the State ...’

newly elected Members of Parliament (MPs), but other Ministers are simply professionals and not necessarily members of a political party. In other words, the fact that the President of the Republic of Lithuania is directly elected (usually as an independent candidate), together with the existence of a ‘strong’ Constitutional Court with competence to review parliamentary legislation, allows us to refer to Lithuania’s form of government as what in French legal and political literature is called *parlementarisme rationalisé* or sometimes even to ‘semi-presidentialism’.

15. Of course, in practice, the form of government in Lithuania depends very much on the actual political actors, in particular the President’s ability to play a passive or active role in political life and his or her 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 (formerly the 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 President of the Republic and formal leader of the parliamentary majority party, played a fairly passive role in political life, leaving power mainly in the hands of the Prime Minister. But later Lithuanian Presidents started to be much more active political players.

16. There was a political crisis regarding the meaning of the country’s form of government in 1997–1998 when the independent 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, which together formed a majority in the *Seimas* at that time, took a more parliamentary 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 has stated that there exists in Lithuania ‘a parliamentary form of government with some semi-presidential features’, and after presidential elections, the Government has to submit itself to the President through the procedure of the so-called *démission de courtoisie* and that it does not have to resign if it receives a new vote of confidence from the *Seimas*. Therefore, after this experience, all newly elected Presidents have used this instrument of ‘*démission de courtoisie*’ in order to change certain Ministers in the Cabinet.

C. A Centralised or Decentralised Country?

17. According to the 1992 Constitution, Lithuania is a unitary state.⁷ The Kingdom of Lithuania in the thirteenth century and the interwar Republic were unitary

7. Article 10: ‘The territory of the State of Lithuania shall be integral and shall not be divided into any state-like formations.’

and fairly centralised states. On the other hand, the Grand Duchy was rather decentralised and the Commonwealth of Two Nations (from the sixteenth to the eighteenth centuries) was something of a cross between a federation and a confederation.

18. Yet there are sixty municipalities (*savivaldybės*) and ten counties (*apskritis*) in Lithuania. Residents of municipalities are represented by directly elected members of the municipal council, while after the 2010 administrative reforms, the county is merely a territorial unit without any administration. There are also ten Agents of the Government (*Vyriausybės atstovas*) in each county, whose task is to ensure that municipal decisions do not conflict with the decisions of the central government. Their decisions may be appealed to the administrative courts.

19. Does this mean that Lithuania is a centralised or decentralised country? The text of the Constitution does not provide a clear answer to that question. But the weight of evidence suggests it is more a centralised state. As it was previously mentioned above, decentralised public power in Lithuania is exercised only by municipalities or local government (*savivaldybės*). Although municipalities have the constitutional right to their own separate budget, autonomous from the central government, they have no right to collect taxes. A major part of the financial resources for municipal budgets, therefore, come from the national treasury. In that sense, it is difficult to speak of a real autonomy for local government and a decentralisation of state power in Lithuania until now. Moreover, the governors of the ten counties (*apskritis*) established in 1995 according to Article 123 of the Constitution used to be appointed by the central government (Article 123) until the administrative reform of 2010. At that time – during the economic crisis – county administrations were abolished for reasons of new public management and public savings. To sum up, the Republic of Lithuania is a unitary and fairly centralised state with an almost non-existing regional tradition so far.

II. State Territory

20. As it was previously stated, the state territory is a very important element to the State. This importance is also reflected in Article 10 of the Constitution, which says that ‘the boundaries of the State may be altered only by an international treaty of the Republic of Lithuania after it is ratified by four-fifths of all the Members of the *Seimas*’. The current Lithuanian territory, which the Lithuanian State ‘inherited’ after the declaration of independence from the Soviet Union in 1990, follows the borders of the ‘Lithuanian Soviet Socialist Republic’ which were arbitrarily settled by Stalin after the Second World War (and not following provisions of the 1920 Soviet-Lithuanian Peace Treaty). Nevertheless, the newly re-established Lithuanian State has never raised territorial complaints towards its neighbours. The territory of modern Lithuania comprises about 65,000 m², bordering Latvia to the North, Belarus to the East, Poland to the South and the Kaliningrad District (Russia) to the South West. The largest and most populous of the Baltic States, Lithuania has 60 mi/97 km of sandy coastline which faces the open Baltic Sea, between Latvia and

Kaliningrad District. In 2014, it also signed a sea border agreement with Sweden. Lithuania is glacially flat, except for moraine hills not higher than 300 m in its western uplands and eastern highlands. The terrain is marked by numerous small lakes and a mixed forest zone covering almost 33% of the country.

III. Population and Demographics

21. The people or civic nation is the third element of the state after public authority and territory. Fifty years of Soviet occupation under its authoritarian regime has had a negative influence on the attitude of people towards ‘participative democracy’. According to the 2021 population census, there are almost three million permanent inhabitants living in Lithuania. The biggest city in the country is the capital Vilnius, which counts more than half a million inhabitants. In 2020, men made up 47% and women 53% of the total population. The main ethnic minority groups are Polish (6%) and Russian (5%). As to religious affiliation, the main religious groups are the Roman Catholic (about 80%), the Orthodox Church (4%), while other religious communities comprise less than 1% of believers among them and 6% of inhabitants declare themselves as non-believers.

Part I. Sources of Constitutional Law

Chapter 1. The Constitution

§1. CHARACTERISTICS

22. Although the current Lithuanian State is a certain legal restoration of the interwar Lithuanian Republic which existed before the Soviet occupation, the Lithuanian political and legal elite decided in the beginning of the 1990s to adopt a completely new Constitution and not to follow the Latvian example of reintroducing the interwar 1922 Constitution of a parliamentary regime. Yet the 1992 Lithuanian Constitution, adopted by the Supreme Council – Constituent Assembly, is a compromise of two draft constitutions: the ‘parliamentary regime’ draft constitution (influenced by the 1922 Constitution); and a ‘semi-presidential’ draft constitution. It is also worthwhile to note that the Lithuanian Constitution is a complex constitution for it comprises not only the main text but also includes other constitutional acts (as a ‘constitutional block’) which are part of the Constitution: the 1918 and 1990 Independence Acts,⁸ the 1991 Constitutional Act ‘On the State of Lithuania’, the 1992 Constitutional Act ‘On non-alignment to post-Soviet eastern unions’ and the 2004 Constitutional Act ‘On membership of the Republic of Lithuania in the European Union.’ Of course, the text of the 1992 Constitution plays a central role in this complex constitution.

23. The 1992 Constitution consists of a Preamble and fourteen chapters, including chapters on human rights, parliament, government and presidency, judicial power, among others. The main constitutional principles or values enshrined in the Constitution are the rule of law, democracy and human rights. The constitutional value of the rule of law is mentioned in the Preamble and includes such constitutional principles (mentioned in various other provisions of the Constitution) as independence and the security of the State, the supremacy of the Constitution (including its direct effect and constitutional review), the separation of powers, public interests and so on. The constitutional value of democracy under the Lithuanian Constitution includes such principles as the sovereignty of people (nation) and direct democracy, which itself includes referendum and the principles of free elections, universal suffrage and a multi-party political system on the one hand and parliamentarianism as

8. Lithuanian Constitutional Court by its decision of 30 Jul. 2020 included also the 16 Feb. 1949 Declaration of the Council of the Movement of the Struggle for Freedom of Lithuania into this constitutional bloc. Teisės aktų registras (TAR), 2021-07-01, Nr. 14847.

an element of representative democracy on the other hand. The constitutional value of human rights under the Lithuanian Constitution is grounded on the idea of natural or inborn human dignity (Article 18) and includes, first, such rights as fundamental personal rights to life, equality and liberty, a right to privacy, freedom of thought and speech, political rights and economic, social and cultural rights. It has to be said that under the Constitution all these three constitutional values do not contradict but rather complement each other.

24. The 1992 Lithuanian Constitution is the longest-lasting Lithuanian constitution, counting already more than thirty years.

§2. AMENDING THE CONSTITUTION

I. Outline

25. The Preamble of the 1992 Constitution reveals the latter as a constituent social contract, adopted by the Lithuanian nation, and which might be changed only by constituent power. In fact, this Constitution was adopted by a 1992 popular referendum. Therefore, the Constitution itself provides two different amendment procedures: first by popular referendum and second by double voting in the *Seimas* – the latter also being a manifestation of the people's sovereignty. But according to a decision of the Lithuanian Constitutional Court of 11 July 2014, there are even some immutable constitutional provisions which may not be ever amended because they stem from the 1918 Lithuanian Independence Act. These are the state's independence, democracy and the natural (inborn) character of human rights.⁹ Lithuanian scholarship tends to call these fundamental immutable constitutional values a 'constitutional triangle' or the three pillars of modern constitutionalism, encompassing the (state under) rule of law, democracy and human rights.¹⁰ According to the Constitution, during a state of emergency or martial law, the Constitution may also not be amended either.

26. Article 147 provides that a motion to amend the Constitution may be initiated by not less than one-fourths of Members of the *Seimas* or by not less than 300,000 voters. During the quarter century of this Constitution's existence, it was only with the 2014 referendum on banning the acquisition of land by foreigners that a referendum was initiated upon the successful collection of 300,000 constituents' signatures.¹¹ In all other cases, constitutional amendment procedures were initiated in the *Seimas*.

9. TAR, 2014-07-11, Nr. 10117. See also the mentioned decision of 30 Jul. 2020, in which the Constitutional Court controversially ruled that three independence acts (those of 16 Feb. 1918, 16 Feb. 1949 and 11 Mar. 1990) have even supra-constitutional status. This decision was criticised by Lithuanian constitutionalists.

10. See e.g., Vaidotas A. Vaičaitis. *Introduction to the Concept of Constitutionalism* (English summary). In 'Lietuvos konstitucionalizmo istorija'. Vilniaus Universitetas, 2016, pp. 265–267.

11. In this case a referendum was not successful because of lack of voters participating in it: a quorum of no less than half the electorate is required in order to have a valid result.

27. The 1992 Lithuanian Constitution has been amended eight times. On two occasions (1996 and 2003) Article 47 was amended in order to guarantee a right for the EU citizens in Lithuania to acquire land. On two occasions (1996 and 2002), Article 119 was amended to extend the tenure of members of municipal councils. In 2004, Article 57 was changed to fix the second Sunday of October as parliamentary election days. In 2003, Articles 84–11 and 118 were amended to modify the status of the prosecutor's office and transfer the appointment power of the prosecutor general from the *Seimas* to the President. In 2006 (and currently the last constitutional amendment), the powers of the Central Bank were modified after the country's accession to the EU (Article 125). But the biggest constitutional change (2004) was the adoption of the separate Constitutional Act 'On Lithuania's membership in the EU'. It is a constitutive part of the Constitution, and it shaped the very Lithuanian constitutional concepts of sovereignty, the separation of powers, the supremacy clause, and parliamentarianism, among others. Finally, in 2019 the individual constitutional complaint was introduced by constitutional amendment.

A. Amendment Procedure by Popular Referendum

28. Article 148 provides that Chapter I 'On the Lithuanian State' and the last Chapter XIV 'On Amendments to the Constitution' might be amended only through a referendum. Furthermore, Article 1 of the Constitution may be altered only if not less than three-fourths of the electorate vote in favour thereof in a referendum.¹² A referendum for constitutional change has been used for the adoption of 1991 Constitutional Act 'On the Lithuanian State'. This had one provision only, which was later inscribed into Article 1 of the Constitution. It was also used for the 1992 Constitution itself and the 2004 Constitutional Act 'On Lithuania's membership in the EU'. According to Article 148, the First Chapter 'On the Lithuanian State', which establishes sovereignty of the people, independence, democracy, rule of law and other basic constitutional principles together with Chapter XIV 'On Amendment of the Constitution' should be amended only by the referendum. Article 1 stating that 'Lithuanian state is an independent democratic republic' may be amended only by no less than three-fourths majority of all electorate.

B. Amendment Procedure in the *Seimas*

29. Article 148 also provides the Constitution's 'parliamentary amendment' procedure, which has become the standard procedure, for almost all constitutional amendments have been used this way. Therefore, the Lithuanian Constitution is usually amended by double (sequential) voting in the *Seimas* with no less than a two third's majority of all MPs, with an interval of at least three months between those two votes. This interval of reflection between the votes might be interpreted in the light of the principle of popular sovereignty (Article 2), where representatives of the people have to 'listen to the opinion' of their constituents after the first vote and before the second. An amendment to the Constitution failing under this procedure

12. Article I reads, 'The State of Lithuania shall be an independent democratic republic.'

may only be resubmitted to the *Seimas* for reconsideration, not earlier than one year afterwards. The President of the Republic does not have a veto right after the adoption of an amendment to the Constitution; he/she has to promulgate it within five days. An amendment to the Constitution shall come into force not earlier than one month after its adoption.

Chapter 2. Hierarchy

§1. THE CONSTITUTION

30. According to Article 6, the Lithuanian Constitution is directly applicable and according to its Article 7, any law or other act that contradicts the Constitution shall be invalid. Further, according to Article 110, judges should not apply any laws that are in conflict with the Constitution. In cases when there are grounds to believe that any legal act to be applied in a concrete case is in conflict with the Constitution, the judge shall suspend consideration of the case and shall apply to the Constitutional Court for its decision, whether the law or another legal act in question is in compliance with the Constitution. Therefore, the 1992 Lithuanian Constitution created a hierarchical structure of legal instruments with the Constitution at the top and the Constitutional Court as a guardian of this superiority of the Constitution. But the 2004 Constitutional Act ‘On Lithuania’s membership in the EU’ (which is a part of the Constitution) also has a priority rule, one which says that, when the EU rules stem from the founding Treaties of the EU, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania in the event of the collision of legal norms. Nevertheless, the Lithuanian Constitutional Court in its case law interprets this priority (of the EU law) rule in a way that this priority does not cover the 1992 Constitution itself.¹³

§2. TREATIES

31. Article 135 says that in implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law. Article 138 provides that international treaties ratified by the *Seimas* shall be a constituent part of the legal system of the Republic of Lithuania. The ratification process, adoption and status of international treaties are regulated by the Law on International Treaties, which stipulates *inter alia* that in case of conflict between Lithuanian laws and a ratified international treaty, the provisions of the latter prevail.

32. In this context, it should be said that the ratification procedure in the Lithuanian legal system means that the *Seimas* needs to adopt a formal ratification act (statute) but not necessarily including the text of the particular international treaty submitted for ratification. The text of that particular international treaty/agreement to be ratified is, as a rule, published in the Official Gazette (*‘Valstybės žinios’*) later on (sometimes it can even take several years). Therefore, priority status over parliamentary legislation extends only to those international treaties and agreements which have received parliamentary approval.

13. See, e.g., its Ruling of 14 Mar. 2006. *Valstybės žinios*, 2006, Nr. 30-1050.

33. According to Article 105, the Constitutional Court has jurisdiction to decide on the constitutionality of a treaty concluded by the Republic of Lithuania (before and after ratification). But it has exercised this jurisdiction only once, when in 24 January 1995, it issued the opinion ‘On the constitutionality of the European Convention of Human Rights’. Before ratification of the European Convention on Human Rights (ECHR) in the *Seimas*, the President of the Republic had submitted to the Court a question of whether some provisions of the ECHR did not contradict human rights provisions in the Lithuanian Constitution. In its judgment, the Court agreed, in principle, with the idea that the European Convention theoretically might be in contradiction with the Lithuanian Constitution. For example, the Court was asked to rule, *inter alia*, on whether provision of Article 4 of the Convention (‘No one shall be required to perform forced or compulsory labor’) contradicts Article 48 Constitution, that ‘work performed by persons convicted by court shall not be considered forced labor’, on the basis that this constitutional provision may include some penitentiary labour (for instance, as a criminal punishment without imprisonment). But the Court interpreted Article 48 of the Constitution in light of the jurisprudence of the European Court on Human Rights (ECtHR) and concluded that the Lithuanian Constitution does not permit penitentiary labour without imprisonment as a criminal punishment. Finally, the Court concluded that the European Convention does not contradict the Lithuanian Constitution.

34. In its ruling of 17 October 1995, the Constitutional Court distinguished between ratified and non-ratified treaties. According to the Court, only ratified international treaties have the status of a parliamentary statute (but should not contradict the Constitution), while non-ratified treaties to which Lithuania has acceded may contradict neither the Constitution nor parliamentary legislation. Another important point of this ruling is that the Court here also distinguished between international treaties and agreements concluded by officials *ex officio* having authority to do so in the name of the State of Lithuania (the President of the Republic, the Prime Minister and the Minister of Foreign Affairs), and other international agreements of various public agencies concerning cooperation with relevant foreign partners, which might be not necessarily directly applied by the courts.

§3. LEGISLATION

35. Legislation in Lithuania is divided into two types of statutes: ordinary laws (*įstatymai*) and organic or qualified laws (*konstituciniai įstatymai*). This distinction is based on the number of members of the *Seimas* required to vote in favour of the law to be passed.

I. Ordinary Statutes

36. Every member of the *Seimas* has the right to initiate both types of legislation, as have the Government and the President. Citizens also have the right of legislative initiative for both types, and the *Seimas* must consider a draft law submitted

to it supported by at least 50,000 Lithuanian citizens (Article 68). The latter legislative procedure is very rare though. The Government, through its various authorities, prepares the large majority of bills and presents them to the *Seimas*.

37. Legislative procedure is regulated by the Rules of Parliamentary Procedure (*Seimo Statutas*). There are three steps (so-called three readings) for the enactment of laws in the *Seimas*. The first step is the presentation of the bill and its acceptance, in principle, in 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 *Seimas*. The Rules of Parliamentary Procedure also provide, for an accelerated procedure, for the adoption of legislation. Ordinary laws are enacted by a simple majority of the deputies participating in the session. According to the Rules of Parliamentary Procedure, a quorum of not fewer than half of all *Seimas* members is required to pass legislation. A law may also be adopted by popular referendum, but it has never been used since the establishment of the Second Lithuanian Republic in 1990. According to Article 71, within ten days of receiving a law passed by the *Seimas*, the President of the Republic either shall sign and officially promulgate the law or shall veto it. If the law adopted by the *Seimas* is neither vetoed nor signed by the President within the ten days, the law shall come into force after it is signed and officially promulgated by the Speaker of the *Seimas*. According to case law of Constitutional Court, the President may not suspend promulgation of adopted legislation (if it is not vetoed), therefore, the latter constitutional provision may only be applied in exceptional cases (e.g., serious illness of the President). A law adopted by referendum may not be vetoed and must be signed and officially promulgated by the President within five days.

38. The vast majority of legislation is drafted by the Government (or its appropriate Ministry) and only in a few instances are the bills prepared by individual *Seimas* members. The *Seimas* adopts around five hundred new laws in a year, but the vast majority of them represent primarily small amendments, with only some of them being completely new laws or codes.

II. Special Majority Acts (*konstituciniai įstatymai*)

39. A special legal status is accorded to ‘organic’ or ‘qualified’ legislation, which according to Article 69 of the Constitution are called ‘constitutional laws’. These laws must be adopted with a qualified parliamentary majority. Despite their ‘constitutional’ terminology (*konstituciniai įstatymai*), they do not obtain a constitutional or like status in the Constitutional Court’s case law. In the hierarchy of legal instruments, organic legislation (*konstituciniai įstatymai*) should occupy an intermediate position between ordinary laws and the constitution; therefore, they may not contradict the Constitution itself.

40. According to the Constitution, first, the list of organic laws should be adopted by at least a three-fifths majority (85 members out of the current 141). Second, each organic law mentioned in that list has to be adopted by a bare majority, a majority of at least half of members of the *Seimas* (71 members).

41. The list of organic laws (*konstitucinių įstatymų sąrašas*), which was adopted by the *Seimas* only in 2012 (thus some twenty years after the adoption of the Constitution) and then supplemented in 2014, includes ten organic laws. (The Constitution had not prescribed the content of this list: it only obliged the *Seimas* to adopt the list as such.) These are the Organic Laws on National Language, National Emblem, National Flag, National Anthem, Referendums, Electoral Code, Popular Legislative Initiative, Petitions, Emergency Powers and Implementation of the European Fiscal Compact. Until 2021, only the latter Organic Law has been adopted and included in the list in 2014. There is also a second Organic Law – on the Implementation of Article 47(3) of the Constitution (on Acquisition of Land in Lithuania by foreign subjects), adopted in 1996 and amended in 2003.¹⁴

§4. SECONDARY LEGISLATION

42. According to the Lithuanian Constitution, executive orders have to implement parliamentary legislation and may not contradict it. Accordingly, from the Constitution we may deduce the hierarchy of executive legal instruments as follows: Presidential Decrees (*Prezidento dekretai*), government regulations (*Vyriausybės nutarimai*), Ministerial Acts (*ministro įsakymai*) and municipal regulations and orders.

I. Presidential Decrees

43. Although Presidential Decrees stand at the top of all legal acts of executive power, the scope of their regulation is, nevertheless, much narrower than that of government regulations. This is because the constitutional competence of the President rests primarily not in the power to implement parliamentary legislation or to regulate social life, but in the nomination, temporary substitution and dismissal from the office of public officials (first of all judges and Ministers), the legislative initiative and promulgation, the grant of pardons, citizenship, military and diplomatic ranks, and state awards, and the approval of public heraldry and so on. Therefore, Presidential Decrees, as a rule, do not have universal normative character, being related to all the issues mentioned above. The President issues around thirty Presidential Decrees in a month.

14. Article 47(3): 'In the Republic of Lithuania, foreign entities may acquire the ownership of land, internal waters, and forests according to organic law.' This is the only case when the Constitution itself mentions the concrete title of an organic law to be adopted.

44. The Lithuanian Constitution clearly differentiates between martial law and the declaration of a state of emergency. In general, it is the *Seimas* which has the competence to declare a state of emergency and the state of war or mobilisation. But in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, this power belongs to the President of the Republic, which should be applied by issuing an appropriate decree (Article 142). In this case, this Presidential Decree has to be approved by the *Seimas* at its next available session. The President's Decree does not need to be countersigned by a government member with exception of four cases: declaration of state of emergency, granting of citizenship and diplomatic and military ranks. Since the establishment of the 1992 Constitution, neither emergency nor martial legislation or decrees have been passed in Lithuania. Nevertheless, in 2020 during sanitary crises, the Government introduced quarantine and other special legal regimes, which drastically limited human rights and other constitutional values, without parliamentary approval.

II. Government Regulations

45. The Government (the Cabinet) has rather wide competence in the administration of public issues and is a central manifestation of all public authority. As a rule, the Government issues regulations in the implementation and execution of parliamentary legislation (especially in matters related to human rights); but in rare cases it may regulate some issues even without empowering legislation, relying instead directly on provisions of the Constitution. In any case, governmental regulations may not contradict legislation and the Constitutional Court has jurisdiction to review the conformity of governmental regulations not only with the Constitution but also with relevant legislation.

46. Article 95 of the Constitution states that the Government shall decide the affairs of public governance at its sittings by adopting governmental regulations by majority vote of all the members of the Government. Those governmental regulations shall be signed by the Prime Minister and the Minister of the respective area. According to the Constitution and the Law on Government, governmental regulations are the main legal instruments of the Government which have normative (universally obligatory) character. They issue more than one hundred governmental regulations a month, ranging from legislative initiatives to the administration of public property, from establishment and management of various public institutions to determining state borders or the protection of environment. Other acts of government (e.g., governmental resolutions and the orders of the Prime Minister) usually do not have normative character nor the same public significance as the governmental regulations mentioned in Article 95 of the Constitution.

III. Ministerial Acts

47. According to the Law on Government, a particular Minister exercises his competence (of running a ministry) by issuing Ministerial Acts, pertaining to the

field of competence of that Ministry. These Ministerial Acts may have universal normative character (if not related, for example, to the creation of working groups), but they may not contradict legislation and governmental regulations. The Supreme Administrative Court has the jurisdiction to review the conformity of Ministerial Acts with the legislation and the Constitution. The number of such Ministerial Acts depends on the particular Ministry: for instance, the Justice Minister adopts less than ten Ministerial Acts in a month, while the Health Minister, more than fifty in a month. During the COVID-19 crises in 2020–2021, the Health Minister was appointed as chief of civil operations with powers to adopt mandatory acts of universal character and became the most influential minister in the Cabinet after the Prime Minister.

IV. Municipal Legal Acts

48. Municipal legal instruments are at the bottom of the hierarchy of executive legal instruments. The Law on Local Government mentions three types of municipal legal acts: decisions of a municipal council (*savivaldybės tarybos sprendimai*), decrees of a municipal mayor (*mero potvarkiai*) and orders of a Director of Municipal Administration (*savivaldybės administracijos direktoriaus įsakymai*).¹⁵ Decisions of a municipal council shall be adopted by a majority of members of that council. They should be signed by a mayor (who is the chairman of the relevant municipal council) and a secretary of the council. Decrees of a mayor (unlike the orders of the Director of Municipal Administration) are usually political, and not legal, instruments. The Law on Local Government provides that a mayor shall issue an appropriate decree, for example when authorising a member of the municipal council to represent the municipality outside the municipality or when announcing a public vote.

49. Municipal Acts are binding for all municipal enterprises, institutions and organisations as well as for the inhabitants of the particular municipality and for local government.

§5. CASE LAW AND UNWRITTEN LAW SOURCES

50. Lithuania belongs to the civil legal tradition, therefore, it does not have long-standing experience in accepting precedent as a binding source of law. The Lithuanian Constitution is silent about precedents and the status of case law or the *stare decisis* principle. Despite that, the Constitutional Court has ruled in its 2006–2007 decisions that, according to the constitutional principles of equality, justice and the rule of law, courts (including the Constitutional Court itself) should be bound by their own previous decisions or by those of higher courts in cases with analogous facts (the *stare decisis* doctrine).¹⁶ Of course, according to the Constitutional Court,

15. Law on Lithuanian local government as amended on 15 May 2014. No. XII-883.

16. See e.g., Constitutional Court decisions of 28 Mar. 2006 (Valstybės žinios, 2006-03-31, Nr. 36-1292)

these precedents may be reinterpreted if this reinterpretation were constitutionally necessary. Therefore, the Law on the Judiciary (*Teismų įstatymas*) was amended in 2008 following upon this case law of Constitutional Court according to which the courts should now be bound by their own precedents and those of the higher courts in analogous cases.

51. Unwritten law (conventions or general principles of law) is not a binding source of law in Lithuania. Despite that, the Constitutional Court has the competence to create constitutional conventions and to rely on certain general principles of law in its case law. For instance, in a decision of 10 January 1998, the Constitutional Court ruled that, despite a lack of clear constitutional provisions, the Government had to return its powers after presidential elections to the newly elected President, who must submit to the *Seimas* the candidature of the same Prime Minister. And if the *Seimas* approved it, the same Government was empowered anew to exercise its functions. After the latter decision, this was accepted therefore as a valid constitutional convention. As concerns general principles of law, the Constitutional Court sometimes uses them in order to ground its case law. For instance, the Court sometimes relies on such principles as proportionality, legal certainty, legal expectations, accountability of public power and others, but, as a rule, they are not autonomous legal sources, but deduced by the Court from the broader constitutional principles of rule of law and justice mentioned directly in the Lithuanian Constitution.

and 24 Oct. 2007 (Valstybės žinios, 2007-10-27, Nr. 111-4549).

Chapter 3. Codification, Interpretation and Publication

§1. CODIFICATION

52. Codification of legislation is rather an old tradition of Lithuanian legal culture. For instance, the so-called Lithuanian Statute (*Lietuvos Statutas*) of the sixteenth century (the very last edition was from 1588, which was valid in Lithuanian territory until 1840) covered the then entire Lithuanian legal system, encompassing administrative, criminal, civil and procedural law. The current Lithuanian legal system has: a Code of Administrative Sanctions; Criminal and Civil Codes, as well as Codes of Criminal and Civil Procedure; a Code of the Enforcement of Punishment; a Penitentiary Code; and a Labour Code. The Electoral Code, the adoption of which is provided in the List of Organic Laws, has not yet been adopted up to 2021, leaving certain (minor) procedures and requirements for various elections to be regulated in various different ways by other legislation.

§2. INTERPRETATION

53. The official interpretation of law in Lithuania may be realised only by the courts. All courts may interpret the Constitution, but the Constitutional Court has the last word in its interpretation as ‘official interpreter of the Constitution’. Methods of interpretation of the Constitution have to differ from the interpretation of other legislation by the ordinary courts. According to its decision of 1 December 2017, the Constitutional Court held that the Lithuanian Constitution may be interpreted by linguistic (textual), historic and systemic methods, while the interpretation of ordinary law may also include such methods as a reference to general principles of law, teleological approach and the intent of the legislature, to precedents or case law, as well as comparative law and other principles. On the other hand, the Constitutional Court normally does not mention particular interpretation methods in its case law.

§3. PUBLICATION

54. Promulgation and publication is a necessary element in order for the particular source of law to be valid. According to Law on the Fundamentals of Lawmaking,¹⁷ there are four stages of lawmaking: initiative, preparation, adoption, and promulgation. During 1993–2013, all relevant adopted legal acts had to be published in the Official Gazette (*Valstybės žinios*). In 2014, an electronic ‘Register of Legal Acts’ (*Teisės aktų registras*) had been established, which mentions twenty different sources of law to be published there, including decisions of the Constitutional Court, the Supreme Court and of the Supreme Administrative Court. The same legislation provides that all normative legal acts come into force the very next day after their publication (promulgation) in the Register of Legal Acts if the law does not mention otherwise.

17. Valstybės žinios, 2012-09-22, Nr. 110-5564.

Part II. Form of Government

Chapter 1. General

§1. INTRODUCTION

55. The 1992 Constitution is a compromise between a parliamentary and a semi-presidential type of constitution. On the one hand, the Government must have the confidence of Parliament (*Seimas*) 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 the people. The President's tenure in the office does not correspond with that of the Parliament; he or she 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 parliamentary legislation, allows finding some semi-presidential features in the Lithuanian constitutional structure. However, the Government – or better said, the Prime Minister and his Cabinet – backed by a ruling coalition in the *Seimas* is the main player of political power in the country.

56. This two-headed executive in Lithuania usually can be described within the meaning of the French term '*cohabitation*', because Lithuanian Presidents, as a rule, up to 2019 presidential elections, have been independent politicians not belonging to any political party (with exception of President Algirdas Brazauskas), while the Prime Minister usually is a leader of the majority party (with exception of tenure of 2016–2020 and 2020–2024, when Prime Ministers were not party members). In the period of 1993–1996, when President Algirdas Brazauskas was also a leader of the parliamentary majority party – then the Labour Democratic Party (former communists) – he played a fairly passive role in political life, leaving power mainly in the hands of the Prime Minister. It is worth mentioning that there was a political crisis relating to the interpretation of the country's form of government in 1997–1998 when the independent 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. In its decision of 10 January 1998, the Constitutional Court ruled 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 *Seimas*. But these 'features of a semi-presidential

regime’ de facto were very much strengthened by the charismatic characters of President Valdas Adamkus (1997–2003 and 2004–2009) and later by the first female President, Dalia Grybauskaitė (2009–2019), who was able to concentrate large power in her hands through nominations of various public officials, from the President of the Central Bank to the Prosecutor General and the Chief of the Secret Service.

§2. ‘POUVOIRS DE FAIT’: POLITICAL PARTIES, LOBBIES AND INTEREST GROUPS

57. After Lithuania was re-occupied by the Soviets in 1944, the totalitarian regime was installed without any civil or political rights and with only the ruling Communist Party.¹⁸ It was only possible ‘to vote’ for the candidate nominated by the Communist Party, and that in elections to local and central soviets (councils), which were some kind of attribute of the so-called people’s or soviet democracy. Even underground opposition was suppressed by the KGB (Soviet Committee for State Security). But in 1972 some Catholic priests, nuns and laymen managed to organise an underground group to publish the ‘Chronicle of the Catholic Church in Lithuania’ (*Lietuvos katalikų bažnyčios kronika* or *LKB kronika*) which, despite harsh persecution, survived until 1989. In 1975, the ‘Lithuanian Helsinki Group’, a dissident organisation, was established to monitor the implementation of the Final Act of the Conference on Security and Cooperation in Europe (better known as the ‘Helsinki Accords’). In 1978, the Lithuanian Freedom League (*Lietuvos laisvės lyga*), another dissident organisation, was established and was the only one striving for Lithuania’s independence. On 23 August 1987, on the forty-eighth anniversary of the Molotov–Ribbentrop Pact, the League together with some activists from the *Chronicle* organised the first anti-Soviet rally on Lithuanian territory that was not forcibly dispersed by the Soviet police.

58. The contemporary Lithuanian political system is derived from the civic reform movement *Sąjūdis*, which emerged in 1988 towards the end of the Soviet regime, and together with Latvian, Estonian and other similar people’s fronts led to the regime’s collapse. Some activists from earlier dissident movements joined the *Sąjūdis*, which used mass meetings to advance its goals. Communist leaders threatened to crack down on *Sąjūdis* but backed down in the face of mass protests. *Sąjūdis* candidates fared well in the first democratic elections to the Soviet Congress of People’s Deputies, the newly created Soviet legislative body, on 26 March 1989. In thirty-six of the forty districts in which they ran, their candidates defeated the Communists. On 23 August 1989, the fiftieth anniversary of the signing of the Nazi-Soviet Molotov-Ribbentrop Pact, a 600 km, two million strong human chain reaching from Vilnius to Tallinn focused international attention on the aspirations of the Baltic nations. This demonstration and the coordinated efforts of the three nations became known as ‘The Baltic Way’ as the main example of the so-called Singing Revolution.

18. The first Soviet occupation lasted from 1940 to 1941, the Nazi occupation lasted from 1941 to 1944 and the second Soviet occupation lasted from 1944 to 1990.

59. In December 1989, after intense social pressure, the Communist Party of Lithuania seceded from the Communist Party of the Soviet Union and agreed to give up its monopoly on power. Then, in 1990, it was renamed the Lithuanian Democratic Labour Party (*Lietuvos demokratinė darbo partija*, LDDP). In the 1992 parliamentary elections (the second parliamentary elections after the restoration of independence), the LDDP, led by the popular former communist leader Algirdas M. Brazauskas, received an absolute majority of votes and was the governing party between 1992 and 1996. In 2001, the LDDP (still led by Brazauskas) merged with the Social Democrats.

60. In February 1990, *Sąjūdis* representatives won a majority of seats (101 out of 141) in the Supreme Council of the Lithuanian Soviet Socialist Republic, the marionette parliament of so-called Soviet Lithuania. The *Sąjūdis* leader, Vytautas Landsbergis was elected as the Speaker of the Supreme Council as the then highest public official. This led to the declaration of independence on 11 March 1990,¹⁹ and the Supreme Council (*Aukščiausioji Taryba*) became the first Lithuanian Parliament after the Soviet occupation. The Supreme Council sat from 1990 to 1992 ending its task with the adoption of the Constitution and new parliamentary elections. In those elections, following some unpopular economic reforms, the LDDP (the former Communists) won.

61. The *Sąjūdis* movement fragmented during 1989–1993 into various political parties: the Christian Democrats (*Lietuvos krikščionių demokratų partija*, 1989); the Social Democrats (*Lietuvos socialdemokratų partija*, 1989); the Lithuanian Union of Political Prisoners and Deportees (*Lietuvos politinių kalinių ir tremtinių sąjunga*, 1990); the Lithuanian Farmers Party (*Lietuvos valstiečių sąjunga*, 1990); the Liberals Union (*Lietuvos liberalų sąjunga*, 1990); the Conservatives (*Tėvynės sąjunga – Lietuvos konservatoriai*, 1993) among others. In some cases, it represented a restoration of the interwar Lithuanian political structure (e.g., the Christian Democrats, the Social Democrats, and the Farmers Party). When, in 1993, the leader of the *Sąjūdis*, Vytautas Landsbergis appealed for the creation of a Conservative Party, it became clear that this party could be treated as the main successor of the *Sąjūdis*. Between 2004 and 2008, the Conservative Party merged with the Union of Political Prisoners and Deportees and with the Christian Democrats to become the biggest political party (Home Union – Christian Democrats) at the centre-right of the country's political spectrum. On the other side, the Social Democrats merged with LDDP (the former Communists) in 2001 to become the largest political entity occupying the centre-left.

62. Liberal political parties in Lithuania have also become more and more popular in the contemporary Lithuanian political system, although they do not have an

19. In the foreign literature, the restoration of Lithuanian independence is very often dated not by the 1990 independence declaration but with Lithuania's international recognition commencing in February 1991. From a constitutional law point of view, to say that Lithuania restored its independence in 1991 is a mistake, whatever the position in international law. To say otherwise would mean that from March 1990 until August 1991 Lithuania was still under Soviet rule, which was not the case.

interwar tradition. The political party ‘Lithuanian Union of Liberals’ (*Lietuvos liberalų sąjunga*), founded in 1990, has been a peripheral player in political life. In 2002, it merged with the Centre Party, creating the Liberal and Centre Party (*Liberalų ir centro sąjunga*). In 2006, the Liberals Movement (*Lietuvos Respublikos Liberalų Sąjūdis*) split off from this party and became the second liberal party. In the 2008 parliamentary elections, both liberal parties hardly reached the 5% threshold but did enter the ruling coalition led by the Conservatives. In the 2012 parliamentary elections, only the Liberals Movement received at least 5% of the popular vote, and in the 2016 elections again, only the Liberals Movement reached the threshold, receiving more than 9% of votes despite a big financial scandal involving the Party’s chairman. In 2020, a new Liberty Party (*Laisvės partija*) was founded and received a mandate in the 2020 parliamentary elections with 5% of the votes.

63. The Lithuanian political system used to work on a traditional left-right (social democratic-conservative) spectrum. But it is fragile; its fragility rests on the fact that almost in all parliamentary elections newly created populist parties, led by charismatic leaders, succeed in reaching the 5% threshold (in order to become a parliamentary party). For instance, in the 2000 elections, it was the Social Liberal Party (*Naujoji sąjunga*) led by Artūras Paulauskas; in 2004, it was the Liberal Democrat Party (later ‘Order and Justice’ *Partija Tvarka ir teisingumas*) led by Rolandas Paksas; in 2008, the National Resurrection Party (*Tautos prisikėlimo partija*) led by showman Arūnas Valinskas; and in 2012, the Way of Courage (*Draugų kelias*) led by former judge Neringa Venckienė. In the 2016 parliamentary elections, the earlier peripheral Lithuanian Farmers and Greens Union (*Lietuvos valstiečių ir žaliųjų sąjunga*) won the elections, and together with the smaller partner of the Social Democrats formed a coalition of two ruling parties. In 2020, the newly founded Liberty party (*Laisvės partija*) received 5% of the votes and together with the Conservatives and Liberals Movement formed a coalition of two ruling parties.

64. In Lithuania, there are also Russian and Polish political parties, but only the Polish political party (*Akcja Wyborcza Polaków na Litwie*), led by charismatic leader Valdemar Tomaševski, managed to cross the 5% threshold barrier in the 2012 and 2016 parliamentary elections.

65. Currently, then, there are around ten political parties in Lithuania participating in national or European elections. In the 2020 parliamentary elections, six political parties managed to cross the 5% threshold: the Conservatives (*Tėvynės sąjunga – Krikščionys demokratai*), the Lithuanian Farmers and Greens Union (*Lietuvos valstiečių ir žaliųjų sąjunga*), Labour Party (*Darbo Partija*) the Social Democrats (*Lietuvos socialdemokratų partija*), the Movement of Liberals (*Liberalų Sąjūdis*), Liberals Movement (*Liberalų Sąjūdis*) and Liberty Party (*Laisvės Partija*).

66. According to the Law on Political Parties, political parties in the country have special legal status compared to other associations. Their founders and members shall only be Lithuanian citizens and citizens of other EU Member States living in the country, while other associations may be founded by foreign citizens. In

order to establish a political party in Lithuania, no less than 2,000 citizens are required, while an ordinary association can be founded by at least three persons aged at least 18 years. Political parties (but not ordinary associations) having at least 2,000 members may present their electoral list for parliamentary elections. During European and municipal elections, independent electoral committees may also compile a list of candidates. According to the Law on Political Parties, those political parties receiving no less than 2% of votes during parliamentary, local or European elections are funded by the state.

67. According to the 2000 Law on Lobbying Activities, a lobbyist has to have an official certificate from the National Commission on Ethics in Public Service. A lobbyist must file with the Commission each year a report on his or her lobbying activities. The National Commission on Ethics in Public Service will control, analyse and summarise the application of this law.

68. Another way to influence political decisions is the instrument of public inquiry hearings, a procedure in parliamentary committee on a particular legislative draft, where any association may participate. A schedule and agenda of such public hearings must be publicly announced. But in practice, there are a relatively small number of officially registered lobbyists in Lithuania because of negative public opinion. Therefore, various interest groups prefer to influence politicians informally. In 2016, the leader of the Liberals Movement resigned both from the party and the *Seimas* after being accused of taking bribes from one of the largest Lithuanian business groups.

§3. MISCELLANEOUS

I. Referendum

69. A referendum is one means of direct expression of popular sovereignty. According to Article 4 of the Constitution, the nation shall execute its supreme sovereign power either directly or through its democratically elected representatives. Article 9 says that the most significant issues concerning the life of the state and the nation shall be decided by referendum. As a rule, the *Seimas* calls a referendum, but one may also be organised if not less than 300,000 of the electorate so request. There are about 2 million citizens having voting rights in the country.

70. According to the Law on Referendums, there are mandatory and consultative referendums in Lithuania. The provisions subject to a mandatory referendum become law immediately after majority approval in the referendum, while provisions subject to a consultative referendum must be implemented through the *Seimas*. A consultative referendum to be valid requires the participation of at least half of the electorate, while a mandatory referendum requires not only the participation, but also approval by half of the electorate in order to be valid.

71. Only five referendums have been successful during thirty years of the Second Lithuanian Republic's existence. Provisions have never been adopted by referendum initiated by people. The main reason why legislative provisions say that the participation of half the electorate is necessary in order for a referendum to be valid is because political participation in Lithuania is rather low. This quorum of one half of the electorate has been reached only in six cases: the 1991 plebiscite on independence and democracy; the 14 June 1992 referendum on the withdrawal of the Soviet army from Lithuanian territory; the 25 October 1992 referendum on the approval of the Constitution; the 2003 referendum on membership in the EU; the 2012 consultative referendum on the construction of a new nuclear power station in Lithuania and the 2019 referendum on broadening cases of double citizenship (the latter two provisions were not adopted though). The other seven attempts to adopt provisions through popular referendum have failed because of not attaining the required electoral quorum.

II. Delegation of Powers

72. Article 5 of the Constitution guarantees the separation of powers, and Article 67 vests legislative and taxation powers in the *Seimas*. Relying on these provisions, the Constitutional Court settled in its case law the principle that delegation of legislative and taxation powers to the Government is not possible under the Lithuanian Constitution. However, the Constitutional Court does not object to the practice of delegating regulatory powers granted to the Government further to a particular competent Ministry or other governmental agency. But the Court does require that the Government retain control over the implementation of such delegation. Despite of that, during the COVID-19 crises, the Government adopted many regulatory decisions, whose content has intervened into legislative competence of the *Seimas*.

Chapter 2. Head of State

§1. ELECTIONS

73. 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 Head of State in the national and international arenas, because the office of the President did not exist according to the 1990 Provisional Basic Law. The 1992 Constitution restored the office of the President of the Republic. But, by contrast with the parliamentary 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 and that the President is not part of the Government.

I. Eligibility

74. Presidential elections in Lithuania are to be held every five years. Until 2014, there were six presidential elections after the adoption of the 1992 Constitution: in 1993, electing the charismatic former communist leader Algirdas M. Brazauskas; in 1998, electing the American émigré Valdas Adamkus as an independent candidate; in 2003, electing the Rolandas Paksas; in 2004 (after the impeachment of Paksas) again electing Valdas Adamkus; in 2009, electing the independent candidate Dalia Grybauskaitė, the European Commissioner for financial programming (in 2014 she was re-elected for a second term) and in 2019, electing Gitanas Nausėda, the independent economist. Presidential elections, as a rule, have a higher participation rate than any other popular elections. Even so, during the last three elections it has reached only a 52% level of participation. There is a tendency in Lithuania to elect an independent candidate for office of the President of the Republic.

75. Article 81 of the Constitution states that the candidate who, during the first round of voting in which at least half of the electorate participated, receives more than half of the votes cast shall be deemed elected. If less than half of all the registered voters participated, the candidate receiving the greatest number of votes (but not less than one-third of all votes cast) shall be deemed elected. If during the first round, no single candidate gets the requisite number of votes, a repeat election has to be organised two weeks later between the two candidates receiving the largest number of votes. The candidate who receives the most votes thereafter shall be deemed elected. Upon election, the President of the Republic swears an oath to the Lithuanian Nation and to the Constitution in the *Seimas* before the Chief Justice of the Constitutional Court.

76. To stand in presidential elections, candidates may not be younger than 40 years of age, must have lived in Lithuania for at least the last three years and must be a Lithuanian citizen '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 at least initially by the concept of *ius sanguinis*. One interpretation may be that the candidate has to be a descendant of Lithuanian citizens of the First (interwar) Lithuanian Republic. For instance, it may be the case that Soviet emigrants, to whom Lithuanian citizenship was granted after the restoration of independence in 1990, may not stand for presidential elections under the Constitution. But it is not settled whether the same applies to their descendants who were born in the territory of Lithuania during the Soviet occupation or after 1990. Nor has it been settled whether the provision allows a descendant of Lithuanian parents who was born abroad to stand for the presidency if he/she then moves to Lithuania. All of these questions can only be answered if and when any of these examples occur in practice. Nevertheless, it should be mentioned that in 1998, Valdas Adamkus was admitted as a candidate (after the subsequent court decision) although the last fifty years before his candidacy he was living in the US, in 2009, Valdemar Tomaševski was admitted as a proper candidate despite being of Polish ethnic origin, and in the same year, Dalia Grybauskaitė was admitted as presidential candidate, although for the last three years she had been serving as a European Commissioner and residing in Brussels.

77. Legislation further provides that former KGB agents must inform the Central Electoral Commission of their former status and include the information in all their election campaign publicity.²⁰

78. Moreover, candidates must not to be bound by an oath or pledge to a foreign state (Article 56). This provision can be seen as erecting a barrier against former KGB officers. In practice, this restriction can be also used against persons who have obtained foreign citizenship through naturalisation, i.e., by swearing an oath of allegiance to the state concerned. For instance, Valdas Adamkus had to prove after the elections that he had renounced his American citizenship (acquired through the naturalisation procedure) when he was elected to the office of President of the Republic of Lithuania.

§2. DOUBLE STATUS OF THE PRESIDENT

79. Article 77 says that the President of the Republic is the Head of State and represents the Lithuanian State. According to Article 84(16), the President of the Republic is a representative of the sovereign state. Representation of the sovereign might be also concluded from the fact that the competencies of the President include his/her participation in legislative, executive and even quasi-judicial power (through granting pardon for convicted persons). However, Article 5 attributes the office of the President to the Executive Branch. Therefore, the Lithuanian President has a so-called double constitutional status: being part of executive, and yet as Head of State (sovereign), he/she oversteps the concept of the separation of powers.

20. Law on Elections to the *Seimas*, as last amended on 16 Jun. 2015. No XII-1795.

I. Executive Powers of the President

80. The Constitution expressly lists some, but not all, of competences of the President which might be ascribed to executive power. One of them is the President's jurisdiction to issue Presidential Decrees (*Prezidento dekretas*) which, according to the Constitution, should implement parliamentary legislation and, therefore, have the ranking of executive legal acts. Moreover, Presidential Decrees, according to the Lithuanian Constitution, have as a rule no normative or universal character but deal with the appointment of particular officials, grants of citizenship or pardons, and such like. This executive ranking of Presidential Decrees might also be explained by the requirement that some of them have to be countersigned by a particular Minister (Article 85). By virtue of the Constitution and ordinary legislation, Presidential Decrees granting Lithuanian citizenship have to be countersigned by the Minister of Interior Affairs, decrees conferring high diplomatic ranks by the Minister of Foreign Affairs; decrees granting high military ranks, by the Minister of National Defence, and a declaration of a state of emergency, by the Prime Minister. 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 the 30 December 2003 ruling of the Constitutional Court, even if a decree is countersigned by a particular Minister, the President is not released from personal constitutional responsibility if the decree constitutes a gross violation of the Constitution.

81. According to the Lithuanian Constitution and legislation, the President of the Republic has the power to appoint high public officials: Ministers, judges (local, district and appellate), the Prosecutor General, and the head of the military, as well as the directors of the state security department (*Valstybės Saugumo Departamentas*), anti-corruption agency (*Specialiųjų Tyrimo Tarnyba*) and public procurement office. He/she also has the power to nominate (for *Seimas* approval) justices of the Supreme and Constitutional Court, the head of the Central Bank, and the Auditor General. Recalling the President's double constitutional status, appointment powers of highest public officials are the traditional competence of a Head of State beyond mere executive power, in the tradition of a sovereign monarch.

II. President as Head of State and the Representative of the Sovereign State

82. As was noted above, some of the powers of the President go beyond mere executive powers because he/she is the Head and Representative of the Sovereign State according to Lithuanian Constitution. Traditionally the Head of State is responsible for forming a government (a cabinet of Ministers) and appointing the highest public officials. Moreover, as was pointed out, the Lithuanian President appoints judges from first instance to appellate levels, the Prosecutor General, the head of the military, and the directors of two security agencies: the state security department (VSD); and the anti-corruption agency (STT). Of course, the President has no unfettered discretion in choosing candidates for these offices. He/she has to

request the advice of the Judicial Council before appointing local and district judges and has to obtain *Seimas* approval for the appointment of appellate judges and other high public officials.

83. Besides the appointment powers, the President also has a right under Article 84(23) of the Constitution to grant pardons for convicted and jailed persons, which might be treated as related to the judicial power.

84. The Lithuanian President also announces the date of parliamentary elections and may dissolve Parliament in exceptional cases (Article 58). Such dissolution has never happened since adoption of the 1992 Constitution. The President has a right of legislative initiative, but it is used rather rarely. He/she has the power to proclaim and promulgate legislation adopted by the *Seimas* (Articles 68–72). The President also has veto rights, but a veto may be overruled by more than half of MPs. The terms of a presidential veto in the Lithuanian Constitution allow the President: (i) to refer the law back to the *Seimas* for reconsideration, accompanied by the reasons with no specific legislative proposals; or (ii) to present his own amendments with regard to the law. It should be noted, however, that the presidential veto is fairly weak: the *Seimas* can easily overrule it when the ruling coalition has a big enough majority. Although the number of statutes that have been vetoed is quite low (and the number of vetoes that have been accepted by the *Seimas* is even lower), President Dalia Grybauskaitė enjoyed a large number of successful vetoes during her first tenure (2009–2014) due to her strong popularity and a weak ruling majority in the *Seimas*.

85. It is important to note that the President of the Republic has no right to refer to the Constitutional Court a statute that he/she considers to be unconstitutional before its promulgation. The President may only challenge the constitutionality of government directives (the main form of government legal acts) before the Constitutional Court.

86. The President's rights of conferring state awards, of granting citizenship (as a rule, for merit to Lithuanian State), of conferring high diplomatic and military ranks (Article 77) and to decide the basic issues of foreign policy (Article 84-1, including the signing of international treaties) all fall also outside the concept of pure executive prerogative and recall the competences of a sovereign monarch. The President also has a right to declare a state of emergency and mobilisation and to impose martial law. Finally, according to Article 140, the President, as Head of State, is *ex officio* a chair of the National Defence Council and Commander-in-Chief – also treated as historical competencies of a sovereign.

87. To conclude, according to the Lithuanian Constitution, the President of the Republic, as Head of State, has a double status. While being a part of the Executive Branch, he/she, nevertheless, also enjoys the powers historically attributable to a sovereign, including not only the formation of government and appointment of high officials but also participation in legislation and others related to judicial powers.

§3. IMMUNITIES AND COMPETENCES OF THE PRESIDENT

Immunity and Privileges

88. Some immunities and privileges of the President may also be regarded as relicts of a historical sovereign. According to the Lithuanian Constitution (Article 86), the President of the Republic is the only public officer who, while in the power, enjoys plain immunity not only from criminal, but also from any administrative sanctions. For instance, the immunity from criminal prosecution accorded to judges and MPs might be lifted by the *Seimas*, but it may not lift the President's immunity while he/she is in office. As the experience with President Paksas' 2004 impeachment shows, this constitutional immunity is a fairly effective tool and can play a very important role in times of political struggle. It means that the police or Prosecutor General may not start a criminal investigation for any deed of the President in office.

89. While in office, the President must suspend his activities in a political party. According to the Law on President, a person who has been elected to the office of 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. For instance, in 2021, besides acting 'President of the Republic', there were also two persons having the title of 'President'. A person who has been removed from the office of President is stripped of these privileges.

The President's Powers in the Formation of the Government

90. After presidential elections, the Government does not need to resign but only has to return its powers to the President, and the latter then has to reappoint the same Prime Minister. If the *Seimas* approves it, the Government may continue its duties. But after parliamentary elections, the Government has to resign and the President has to appoint a new Prime Minister with the consent of the *Seimas* and appoint the members of the Cabinet on the Prime Minister's recommendation. The President, in this case, has considerable powers in the selection of a particular Minister. As a rule, in choosing the candidate, the President must naturally confine his selection to candidates who have been nominated by a majority in the *Seimas*, but he/she has the discretion to reject a particular candidate on grounds of political transparency or because of a possible conflict between the candidate's public and private interests. As has been shown in political practice, a President who enjoys wide popular support may even convince the Prime Minister to resign, although the former does not have de jure legal instruments to force the latter to do so.

The President's Discretion to Dissolve Parliament

91. In the case of a conflict between the *Seimas* and the Government (the Cabinet), the President has the power to dissolve the Parliament. Article 58 of the Constitution specifies two cases of conflict where the President has such discretionary power:

- (i) if the *Seimas* fails to approve the Government's programme for a second time within sixty days;
- (ii) on the Government's motion, after a vote of no-confidence in the Government.

92. After the adoption of the 1992 Constitution, this provision has never been used, although this discretionary presidential power has sometimes been 'recalled' by candidates during a presidential election campaign. The Lithuanian President's discretionary power to dissolve the *Seimas* may have some political consequences for the President herself, since the newly elected Parliament can decide, on a majority of three-fifths of its members, to call for 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 Office of the President

93. The 1992 Constitution does not contain any provisions concerning the office of the Vice President. The President has instead seven principal advisors as the heads of departments. The President is free to appoint around forty civil servants in whom he/she has 'personal (political) confidence'. However, the so-called career personnel is 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 organised within two months. The Speaker of the *Seimas* also assumes that office if the President is temporarily unable to perform the duties of 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.

§4. IMPEACHMENT OF A PRESIDENT

94. The constitutional concept of impeachment of the President revealed itself during the impeachment proceedings of President Rolandas Paksas in 2004.²¹

95. According to the Constitution and the Rules of Parliamentary Procedure, there are six stages in the process of impeaching the President (which is formally the same as for MPs and the higher judiciary):

- (i) the formation of a *Seimas* impeachment committee, which examines the President's actions and formulates the impeachment charges;

21. For more on this, see e.g., Vaidotas A. Vaičaitis, *Impeachment of the President of the Lithuanian Republic: The Procedure and Its Peculiarities*, edited by K. Hobér. The Uppsala Yearbook of East European Law 2004. London: Wildy, Simmonds & Hill Publishing, 2005, 248–282.

- (ii) the preliminary stage of the impeachment process, where the *Seimas* 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;
- (iv) the pleadings of the parties in the *Seimas*;
- (v) the closing statement by the President of the Republic in the *Seimas*; or
- (vi) a vote in the *Seimas* on whether to remove the President from office.

Wrongdoings Serving as the Legal Basis for Impeaching a President

96. The Lithuanian Constitution provides for three formal impeachment charges (Article 74):

- (i) gross violation of the Constitution;
- (ii) breach of the oath of office; and
- (iii) commission of a criminal offence.

97. Prior to the impeachment process of President Rolandas Paksas, legal doctrine in Lithuania made no distinction between impeachment charges against any public official, be it the President, a MP or justices of the higher courts (judges of the Court of Appeal, of the Supreme Court and justices of the Constitutional Court).

98. A formal reading of the text of Article 74, therefore, suggests that any of these three impeachment charges may be used with equal effect for an impeachment procedure against any public official. The impeachment of President Rolandas Paksas showed that, in practice, the third basis for impeachment cannot be used against the President of the Republic, since he/she enjoys constitutional immunity (Article 86). Accordingly, the only entity competent to make a legal conclusion on impeachment charges against the President of the Republic is the Constitutional Court. Pre-judicial investigation bodies (e.g., the police) have no constitutional competence to initiate 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 would not treat the matter as a criminal offence but would interpret it as a gross violation of the Constitution and as a breach of the oath of office.

99. Another point of note here is a certain peculiarity in the list of grounds for impeachment in Lithuania. The violation of the Constitution and high treason is often specified as grounds for impeachment in the constitutions of other countries. However, there are only a 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 linked it

with the other impeachment charge, namely 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.²²

100. A final peculiarity to impeachment grounds in Lithuania is that according to the same ruling of the Constitutional Court, 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. 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, in its 31 March 2004 decision, 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 financial 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 assumed 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 Constitutional 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 Lithuanian citizenship was unlawfully granted, was suspected of having links with Russian secret agencies. Therefore, even though the authors of the Lithuanian Constitution agreed on broader grounds for impeachment and did not include high treason as a ground for impeachment in the text of the Constitution, we, nevertheless, *see* hints of high treason grounds in the Court's ruling in its interpretation of the very idea of impeaching the President.

The Institution with the Power to Impeach the President: The *Seimas* or the Constitutional Court?

101. First, it should be noted that the *Seimas* has the competence to initiate impeachment proceedings and has the power to make the final decision 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 MPs may vote to remove the president from office. Accordingly, the institution with the formal power to impeach the President in Lithuania is the *Seimas*.

102. But another important actor in impeachment proceedings against the President is the Constitutional Court, which according to Article 105, has the competence to present conclusion whether concrete actions of Members of the *Seimas* and State officials against whom an impeachment case has been instituted are in conflict with the Constitution. This is the only court with such competence. According to case law of the Court, Parliament may not remove the President from office if the

22. Valstybės žinios, 2003, Nr. 124-5643.

Constitutional Court is of the opinion that the President acted within the boundaries of his discretion and did not violate the Constitution. Nevertheless, according to Article 107(3), on the basis of the said conclusion of the Constitutional Court, the *Seimas* shall take a final decision on that issue and shall vote for his/her removal from the office by no less than a three-fifths majority.

103. So 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 a President from office. The procedure for the impeachment of the President in the 1992 Constitution could be said to be a compromise between the American congressional model on the one hand and the Austro-German judicial model on the other.

The Parliamentary Majority Required for Removing a President from Office

104. The drafters of the 1992 Constitution established a form of government which can generally be characterised 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 parliamentary draft constitution. Consequently, the parliamentary majority required to remove the President from office is the same as for other senior officials, such as MPs and judges. This majority is three-fifths of all members of the *Seimas*. The Constitution does not follow the standard approach where a majority of two-thirds of the *Seimas* is required to remove a directly elected President from office. Indeed, if the majority required to impeach the President in the Constitution had been two-thirds, President Paksas would not have been removed from office since the decision to remove him from office was succeeded only by a margin of just five votes, reaching the three-fifth’s majority.

Legal and Political Consequences of Impeachment

105. It is important to say 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.

106. Until the impeachment of President Rolandas Paksas, the Lithuanian legal science had no idea what restrictions could 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 then political majority made it clear that an affirmative answer to this question would be contrary to the very idea of the Constitution and, therefore, decided to amend the Law on Presidential Elections to prevent a President who had been removed from office from running in presidential elections for the next five

years. The Constitutional Court, however, in its decision of 25 May 2004, 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. The Court's rationale was that a person who has breached the oath to the Nation and has been removed from office could never again occupy 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.'²³ In this decision, the Court indirectly referred to the 'permanent political disqualification' clause in the United States (US) Constitution and said that the President, once removed from office, may not stand in either future presidential elections or parliamentary elections. Nevertheless, the European Court of Human Rights (ECtHR) in its 6 January 2011 judgment of *Paksas v. Lithuania*, concluded that this permanent disqualification is a disproportionate restriction of the first protocol of the ECHR.²⁴ Despite that judgment of the ECtHR, the said political disqualification of Mr Rolandas Paksas was pending up to 2021.

23. Constitutional Court, Ruling of 25 May 2004, Valstybės žinios, 2004, Nr. 85-3094.

24. *Paksas v. Lithuania* [GC], No. 34932/04, ECHR 2011-I (6 Jan. 2011).

Chapter 3. The Legislature

107. The 16 February 1918 independence declaration already mentioned the ‘*Seimas*’ as the name of the restored future parliament of the country. The *Seimas* is also the name of the historical parliament of the Lithuanian Grand Duchy. In spite of the fact that this historical *Seimas* had been a bicameral body, the modern *Seimas* was re-established (in between the two world wars as well as according to the contemporary 1992 Constitution) as a unicameral parliament.

§1. ELECTORAL SYSTEM

108. 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 stand for election as an MP is subject to certain conditions. He/she has to be a Lithuanian citizen who is permanently resident in the country, 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 by a court as legally incapacitated, may not stand for parliamentary elections (Articles 56 and 141). According to the case law of the Constitutional Court, an MP may not hold a dual mandate; for instance, he/she may not also be a member of a municipal council.²⁵ The Constitutional Court has also held that anyone previously impeached and removed from office while President of the Republic, an MP, or a judge may also not stand for parliamentary elections.²⁶

109. 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). The *Seimas* is to be elected by a ‘mixed electoral system’: half of the MPs (seventy) are to be elected using a proportional system (i.e., voting for political parties or coalitions); and the other half (seventy-one), using a majority system (voting for an individual candidate). Therefore, during parliamentary elections, a voter receives two voting ballots. On the ‘multi-mandate ballot’ (proportional system), the choice is among political parties (or coalitions), and for the ‘one-mandate ballot’ (majority system), a particular candidate from one’s electoral district should be selected. If no one candidate is in one of the seventy-one majority districts receives 50% of the votes (with at least 40% of voters participating) then a second round is to be held in that electoral district within two weeks. It should be noted that only a few districts elect their MP during the first electoral round. For example, in the 2020 parliamentary elections, a second round was held in sixty-eight of the seventy-one electoral districts. In the ‘multi-mandate ballot’ proportional system, the voter also has the possibility of choosing five priority candidates from the list of the political party voted for. A 5% threshold of all votes is

25. Constitutional Court, decision of 24 Dec. 2002, Valstybės žinios, 2003, Nr. 19-828.

26. Constitutional Court, decision of 25 May 2004, Valstybės žinios, 2004, Nr. 85-3094.

required for a political party in order to get into the *Seimas* and a 7% threshold for coalitions of parties.²⁷ In 2006, the *Seimas* adopted the Conception on internet voting, but this Conception was not implemented up to 2021.

110. Although the entire electoral system works more as a proportional one, the element of majority voting in the parliamentary electoral system reduces the fragmentation of the political system and tends to allow domination by the two biggest political parties. On the one hand, after almost thirty years of restored democracy, the modern Lithuanian political system is still rather fragile. This helps newly created populist parties to get into the *Seimas* almost every election. However, the political and electoral system works as a pendulum, where the governing coalition is led successively by a centre-right (conservative) or a centre-left (social democrat) Prime Minister. Only after the 2016 parliamentary elections was the Prime Minister for the first time not chosen from the two biggest parties, but from the Lithuanian Farmers and Greens Union (as referred to above).

111. According to the Law on *Seimas* Elections, in order for parliamentary elections to be valid, at least 25% of all voters in the country must participate (cast votes). After a certain political enthusiasm between 1988 and 1992, parliamentary and other elections no longer draw a large percentage of voters. Participation percentages during *Seimas* elections in Lithuania are now usually around 50%. According to the election legislation (all four electoral laws from the Law on Elections to the *Seimas* to that on elections to municipal councils) all sorts of elections and referendums in Lithuania are to be held on a Sunday. Two days before election Sunday, from Wednesday to Thursday, there are advance polls for those who cannot vote on that Sunday. About 5% of voters in Lithuania make use of advance polling. On Friday and Saturday, senior citizens at least 70 years of age and handicapped voters may vote at home: usually, two members from local electoral commission visit those seniors and handicapped and collect their ballots placed in the envelope. A voter may cast their ballot only in their electoral district. For three days before election Sunday, from Wednesday to Friday, prisoners and those on military service may vote at special post offices.

The Central Electoral Commission

112. The Central Electoral Commission (*Vyriausioji rinkimų komisija*), together with district and local electoral commissions, organises and monitors the process of parliamentary elections. The Law on Administrative Proceedings provides that the Supreme Administrative Court (*Lietuvos Vyriausiosios administracinės teismas*) will hear appeals from the decisions of the Central Electoral Commission or its failure

27. During the 2020 parliamentary elections in the so-called multi-party electoral district (according to the proportional electoral system), Conservatives received 24.86%, Farmers and Greens – 17.43%, Labour Party – 9.43%, Social-democrats – 9.25%, Liberty Party – 9.11%, Liberals Union – 6.79%. As the percentage of received votes in one-mandate (seventy-one) electoral districts was rather similar, the Conservatives with two liberal parties formed a centre-right coalition with their Prime Minister.

to act before the end of voting.²⁸ The Constitutional Court is competent to examine alleged violations of electoral laws within seventy-two hours of the announcement of the official results. A political party or a candidate wishing to bring a complaint to the Constitutional Court must do so through the President of the Republic or through the *Seimas*. Following the 1996, 2004, 2008 and 2012 *Seimas* elections, in response to requests from the relevant political parties and candidates, the President requested an opinion from the Constitutional Court concerning the legality of the *Seimas* elections in a particular electoral district after allegations of fraud occurring in the elections of those years. For example, the Constitutional Court in its 10 November 2012 decision found violations of the electoral laws and this required organising new parliamentary elections in one particular electoral district.

§2. CONSTITUTIONAL STATUS

113. Section V of the 1992 Constitution concerning the *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.

I. Mandate of an MP

Representative Character of a Mandate

114. According to the Constitution, an MP has the title of 'representative of the nation'. Therefore, all MPs have equal status, whether they are elected under the majority system in their electoral district or under the proportional system from the list of a political party. Regardless of the same constitutional status, those MPs elected under the proportional system from a list of candidates do not have an obligation to visit their electoral district, which usually takes place on Fridays. Article 59 of the Constitution also says that an MP should serve the interests of the state and their own consciences, and may not be restricted by any mandate. This means that MPs have to represent not their electoral district or political party but the interests of the entire nation and state.

Duration of a Mandate

115. MPs shall be elected for a four-year term of office. They may be removed only through an impeachment procedure. Pre-elections of the Parliament have never been organised after the adoption of the 1992 Constitution; the *Seimas* has neither shortened its own session nor has the President dissolved it.

28. The 2016 edition of the law published at TAR 2016-16849.

II. Incompatibilities, Immunities and Privileges

116. Article 62 of the Constitution states that MPs, as representatives of the Nation, have immunity from prosecution for criminal offences and may not be detained without the consent of the *Seimas*. Nor may MPs be prosecuted for their votes or speeches in Parliament. Parliamentary immunity is also connected with the constitutional provision that MPs may only be removed from office by means of an impeachment procedure supported by no less than three-fifths of all the Members of the *Seimas* (Article 74). Lithuania has a mixed (judicial and parliamentary) impeachment system, which means that even though a Member of the *Seimas* may have been found guilty of a criminal offence by a criminal court or the Constitutional Court may have concluded that he/she in gross breach of the Constitution, the *Seimas* still has the discretion to retain him/her in office. This mixed impeachment system produced an unsatisfactory outcome in 1998 when an MP, Audrius Butkevičius, was convicted of taking bribes and sentenced to a prison term by a criminal court, but the motion for his impeachment in the *Seimas* did not secure the three-fifth majority required for his removal from office. The same problem had arisen in 2010 when, during the impeachment procedure, after the Constitutional Court in its 27 October 2010 conclusion that MP Aleksandras Sacharukas had grossly violated the Constitution, the voting majority for his removal did not reach the necessary three-fifths majority, and he completed his parliamentary tenure till 2012. However, two MPs in 2018 did decide to resign during or after the impeachment procedure.

§3. POWERS

I. Legislation and Legislative Procedure

117. Legislation is, of course, the most important instrument that 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. This means that the *Seimas* may enact laws regarding any matter in the social, economic and private spheres. Nevertheless, legislation must be consistent with the Constitution, including the jurisprudence of the Constitutional Court.

118. Every MP has the right to initiate legislation in Lithuania, as do the Government and the President. Citizens also have the right of legislative initiative, and the *Seimas* must consider a draft law submitted to it by at least 50,000 Lithuanian citizens (Article 68). Even so, between 1990 and 2021 no legislation has ever been adopted using this popular initiative. The Government, through its various authorities, prepares a large majority of bills and presents them to the Parliament.

119. The ‘three readings’ procedure is used for the enactment of laws in the *Seimas*. The first reading is the presentation of the bill and its acceptance, in principle, in plenary session. After its acceptance, the bill will be ascribed to the principal and auxiliary parliamentary committees. The second stage involves hearings and deliberations on the bill in both committees, where all interested parties may take part.

The third step is the final adoption of the bill in a plenary session of the *Seimas*. A quorum of at least half of the MPs is required in order to adopt legislation. The *Seimas*' Standing Orders (Rules of parliamentary procedure) also provide for an accelerated procedure for the adoption of legislation, where hearings in committees might be omitted.

120. Legislation in Lithuania is divided into two types of statutes: ordinary laws (*įstatymai*) and organic laws (*konstituciniai įstatymai*). The distinction is based on the majority required for the law to be passed. Ordinary laws are enacted by a simple majority of MPs voting in the session. As concerns organic legislation, the *Seimas* is the first to adopt by a three-fifths majority a list of organic laws and then each organic law must be passed with a simple majority of all MPs. This list was passed only in 2012, but concrete organic laws from that list have still not been adopted. Therefore, organic legislation in Lithuania is still practically absent (up to 2021).

121. 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 President vetoes around a dozen statutes in a year. The *Seimas* may overrule the President's veto by a simple majority of votes of all the Members of the *Seimas*. A statute enters into force after its promulgation by the President of the Republic and after it is published in the electronic Registry of Legal Acts (*Teisės aktų registras*) – publication of *Official Gazette* stopped in 2013.

II. Supervision of and Control over the Executive

122. Scrutiny of the Government is another important feature of modern parliamentarism. According to the Standing Orders, it may be executed in different ways: (1) by interpellation and a vote of no-confidence in the Prime Minister, the entire Government, or in a particular Minister; (2) by written or oral questions for Ministers during the 'hours of Government' in the *Seimas* session. Oral answers of Ministers should not be longer than sixty minutes. Not only Ministers but also the Auditor General and heads of other state institutions who are appointed by the *Seimas* or whose appointment is subject to approval of the *Seimas* and other heads of state institutions, except judges, must answer written questions submitted in advance by Members of the *Seimas*. But the main instrument of scrutiny of the Government is executed through corresponding parliamentary committees, which are formed in relation to a particular Ministry. It should be noted that in Lithuania the directly elected President of the Republic is not subject to this type of parliamentary scrutiny.

§4. THE STRUCTURE OF PARLIAMENT

123. The *Seimas* consists of the Board of the *Seimas* (which includes the Speaker of the *Seimas*, five or six Deputy Speakers and the Leader of the Opposition), the Board of Elders (leaders of parliamentary factions), permanent committees, ad hoc commissions, and inter-parliamentary relations groups. The Board of the *Seimas* (*Seimo valdyba*) decides various organisational issues. These include: financing MPs' business trips, possibly reducing (up to one-third) the monthly salary of an MP who fails to attend more than one-half of the parliamentary sittings of that month without justification, deciding matters of MPs' accommodation and reimbursement of expenses, forming when necessary working groups for drafting laws, approving the structure of the Office of the *Seimas*, and so on. According to the Constitution, the Speaker of the *Seimas* is the second-highest public officer (after the President of the Republic). He/she presides over the sittings of the *Seimas* and the Board of the *Seimas*, or may instruct one of his Deputies to carry out this function.

124. The Board of Elders (*Seniūnų sueiga*) consists, as a rule, of leaders of the political factions and members of the Board of the *Seimas*. The principal task of the Board of Elders (leaders of parliamentary factions) is to consider and approve work programmes of the parliamentary session and agendas of sittings, to coordinate 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: the Committee on Foreign Affairs and the Committee on European Affairs. But the *Seimas* founded permanent committees for purposes of parliamentary control to cover existing ministries and other public agencies. There were sixteen permanent committees, ten permanent commissions and seven political factions in 2021.

Chapter 4. The Executive

§1. CONSTITUTIONAL STATUS AND COMPOSITION

125. The Government is mentioned in Article 5 of the Constitution among three main state powers together with the *Seimas*, the judiciary and President of the Republic, who is not a part of the Government. With that, Chapter VII, which follows Chapter VI on the President, is entirely dedicated to the Government, according to which the Government shall manage national affairs and execute legislation. Therefore, according to the Constitution, the Government in Lithuania is a central executive agency.

126. According to Article 91, the Government consists of the Prime Minister and (in 2021 – fourteen) Ministers. According to the Constitution, the Prime Minister and Ministers may not be members of a municipal council but they can keep a mandate as MP. The Constitution does not impose any residential, citizenship or age requirements on candidates for the post of Prime Minister or Minister (in contrast with the office of the President of the Republic and MPs). There is no office of deputy Prime Minister or Minister without portfolio in Lithuania. Therefore, if the Prime Minister is temporarily unable to exercise the powers of office, another Minister will take his/her place (Article 98).

127. The Prime Minister is appointed (generally after parliamentary elections) 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 the President's discretion is limited and constitutional convention dictates that he/she accepts the results of parliamentary elections. A new Government must always receive a vote of confidence from a majority of MPs. Usually, the same Government functions for the entire four-year term of office over the life of a particular parliament. After the 2020 parliamentary elections, the eighteenth Government (after the 1990 restoration of independence) has been sworn in.

128. 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 *Seimas*²⁹ and other Ministers are representatives of the other parliamentary parties who together form a ruling coalition. After the Prime Minister and Ministers are appointed by the President, the former presents a list of members of the Cabinet and the Government's programme for consideration of the *Seimas* within fifteen days of being appointed. The new Government then assumes all its constitutional powers after the *Seimas* has approved its programme by a majority of the votes of the MPs present at the session (Article 92).

29. Nonetheless, after 2016 and 2020 parliamentary elections, Farmers and Greens and later – Conservatives nominated popular politicians to the office of Prime Minister, who formally were not members of their political party.

129. The Government has to have the confidence of 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 until 2021. In reality, a Minister resigns after loss of political confidence. All Cabinet members have to resign if the *Seimas* expresses non-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, which provides that if more than one-half of Ministers change, the Government has to be re-invested with authority by the *Seimas*. But this constitutional provision has never been put into practice up to 2021. 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 to declare his/her loss of confidence in a particular Minister if there is an apparent conflict between his/her private and public interests or on other moral grounds. In this case, the Minister does not have a legal duty to resign, but as a rule, the President has enough powers to push for resignation. Like MPs, members of the Government have legal immunity while they are in office. According to the Constitution, Ministers may not be prosecuted or detained without the consent of the *Seimas* (Article 100).

§2. POWERS

130. The competencies of the Government are regulated by Article 94 which provides a list of its constitutional powers. The Government has the power: (1) to manage national affairs, protect the territorial inviolability of the Republic of Lithuania, and guarantee state security and public order; (2) to execute laws, other acts of the *Seimas*, as well as the decrees of the President of the Republic; (3) to coordinate the activities of Ministries and other governmental agencies; (4) to prepare a draft state budget and submit it to the *Seimas*, and execute the state budget and submit to the *Seimas* a report on the execution of the budget; (5) to prepare legislation and present it to the *Seimas* for consideration; (6) to establish diplomatic ties and maintain relations with foreign states and international organisations.

131. From this (not exhaustive) list, one should grasp that execution of parliamentary legislation is not the only task of the Lithuanian Government. As a rule, the legal basis of the Government's competence is prescribed by an Act of Parliament, but according to the case law of the Constitutional Court, 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 the separation of public powers (Articles 5 and 94).³⁰ In principle, the only limitations in this case are that the Government should not regulate constitutional rights without an appropriate statute, or that governmental regulations should not interfere with the competence of the *Seimas* (as set out in Article 67 of the Constitution) and should not be contrary to parliamentary legislation.

30. Constitutional Court, Ruling of 18 Dec. 2001, Valstybės žinios, 2001, Nr. 107-3885.

132. In practice, the Government drafts the 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. Therefore, the Government exercises its powers primarily through different Ministries and other public agencies.

I. Regulatory Powers

133. Article 95 states that the Government shall decide the affairs of public governance at its sittings by adopting regulations by a majority vote of all the members of the Government. Governmental regulations shall be signed by the Prime Minister and countersigned by the Minister of the respective area.

134. According to the Law on Government, besides the powers mentioned in the Constitution, the Government shall prepare and submit for parliamentary approval: a Strategy for National Development; implement the programme of the Government; approve its annual operational priorities and intended results in the spheres of administration entrusted to the Ministers; co-ordinate the activities of the Ministries and government agencies; prepare a draft law not only on the state budget, but also on municipal budgets and the budgets of the State Social Insurance Fund and the Compulsory Health Insurance Fund; establish a procedure for the State property management; establish and reorganise governmental agencies, and organise the administration of the counties.

II. National Defence

135. The Government implements its large jurisdiction over national defence and foreign affairs through the Ministry of Foreign Affairs. According to the Constitution, the President is the Commander-in-Chief of the military, but in reality the highest military officer is the Commander of the Armed Forces, appointed by the President upon assent of the *Seimas* for a five-year term. According to the Law on the Organisation of the National Defence System, the latter is accountable to the Minister of National Defence, who also appoints the lower military officers. The Minister of National Defence confers military ranks with the exception of colonel (naval captain), general, and admiral, as well as the first military rank after graduation from the Lithuanian Military Academy – when it is done by the President of the Republic. The Minister also establishes the unit tables of the national defence system (taking into account the recommendations of the Commander of the Armed Forces).

136. The Ministry of National Defence is the main part of the national defence system. The Minister of National Defence may appoint a military representative to international organisations or a special attaché after the assent of the Minister of Foreign Affairs. According to the Law on the Organisation of the National Defence

System, the Minister of National Defence must get written approval from the President of the Republic prior to any travel to a foreign country. However, when the President of the Republic travels outside the country, the Minister of National Defence must remain in Lithuania. When the President of the Republic and the Minister of National Defence are both out of the country at the same time, another Minister shall be assigned to act temporarily in the President's place.

III. Foreign Affairs and Treaty-Making Powers

137. According to the Constitution and the Law on Government, the Minister of Foreign Affairs together with the President of the Republic carry out foreign policy and found diplomatic relations and maintain relations with foreign countries and international organisations. Taking into account recommendations of the *Seimas* Committee on Foreign Affairs, that the Minister of Foreign Affairs may submit proposals to the President to appoint diplomatic representatives to foreign states and international organisations or recall them. There is a constitutional convention in Lithuania that the President (and not the Prime Minister) represents the country in the EU, United Nations (UN) and other international organisations, although constitutional Act 'On Lithuania's membership in the European Union' mentions only the Government, but not the President. In any case, the Minister of Foreign Affairs has a large complement of personnel in the Ministry to carry out his duties, while the President has only a couple of advisors.

138. It was already mentioned that the Government (through the Ministry of Foreign Affairs) has competence to establish diplomatic ties and maintain relations with foreign states and international organisations. Accordingly, the Minister of Foreign Affairs has to countersign presidential decrees: (a) for the appointment and recall of diplomatic representatives of Lithuania, (b) for the acceptance of letters of credential and the recall of diplomatic representatives of foreign states, and (c) for the conferral of the highest diplomatic ranks and titles.

139. There are three public officers in Lithuania who may sign an international treaty ex officio: the President of the Republic, the Prime Minister and Minister of Foreign Affairs. All international treaties, as a rule, are drafted and negotiated by the Ministry of Foreign Affairs, but only those international treaties ratified by the *Seimas* shall be a constituent part of Lithuanian legal system and prevail over national legislation in case of conflict.

IV. Powers Regarding Parliament

140. According to the Constitution, the *Seimas* exercises scrutiny over the Government. But in reality (through the party system), the Government also has some powers regarding Parliament. First, as a rule, the Prime Minister is the leader of the ruling party; therefore, he/she has significant power towards ruling a majority in Parliament. Second, the Government drafts major parts of legislation and it may

push the *Seimas* to adopt it, threatening otherwise to resign. Third, in case of conflict with the *Seimas*, when it adopts vote of no-confidence, the Government may ask the President of the Republic to dissolve the *Seimas* (Article 58). But it has never happened since the adoption of 1992 Constitution.

V. No Powers Regarding the Judiciary

141. After the adoption of the 1992 Constitution and up to 1999, the Government used to have some influence over the judiciary. First, the Ministry of Justice through its Department of the Judiciary was the main agency for administrative and financial maintenance of all courts in the country (with the exception of the Constitutional Court). On 21 December 1999, a decision of the Constitutional Court held that all kinds of financial and administrative links between the Government and judiciary were contrary to the principle of judicial independence.³¹ Therefore, in 2002 it was decided to abolish that Department and to establish an independent National Judicial Administration (the director of this agency being appointed by the President after nomination by the Chief justice of the Supreme Court) tasked with the financial and technical maintenance of courts and the training of judges. Second, until that 1999 judgment of the Constitutional Court, the Minister of Justice had the power: to appoint the Chief Justices of the Civil and Criminal Division of the local and District Courts; to select the Chief Justice of the Court of Appeal; and to ascertain the particular number of judges in the courts. He also had the power to determine the rules of allocating cases and to appoint certain members of the Judicial Council, which is the main advisory and governing body of the judiciary. All these powers of the Minister of Justice were abolished after that 1999 judgment. Therefore, for the time being, the President's role regarding the judiciary has been strengthened, while the Government (or Ministry of Justice in particular) does not have any power regarding the national judiciary. The Government only has a competence in nominations of judges for European and international courts (but not for national courts).

§3. THE CABINET

142. According to the *Law on Government*, the Cabinet consists of the Prime Minister and fourteen Ministers. The Ministries represented are: the Ministry of Environment, the Ministry of Energy, the Ministry of Finance, the Ministry of National Defence, the Ministry of Culture, the Ministry of Social Security and Labour, the Ministry of Transport and Communications, the Ministry of Health, the Ministry of Education and Science, the Ministry of Justice, the Ministry of Economy, the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Agriculture. Therefore, there is no difference between the notion of Government and the Cabinet of Ministers in Lithuania. It was already mentioned that according to case law of the Constitutional Court, there is no office of deputy Prime

31. Valstybės žinios, 1999, Nr. 109-3192.

Minister or deputy Minister in the Lithuanian government. Therefore, the Cabinet consists of fifteen members. Normally the Cabinet has its sittings every Wednesday. As a rule, Ministers are nominated by a particular party forming the ruling majority in the *Seimas*, while the Prime Minister is the leader of the biggest political party in the ruling coalition.³²

143. The Cabinet of Ministers functions on the solidarity principle (Article 96), which means that if the Prime Minister resigns or is removed from office, all the Cabinet should be formed anew. According to Article 101, the solidarity of the Cabinet also means that in the case where more than one-half of all Ministers have been replaced (during the tenure of a particular Government), the Government must once again receive its powers from the *Seimas* or resign otherwise. But this constitutional provision has never been applied so far.

32. After 2016, the ruling party of Farmers and Greens and after 2020 elections – Conservatives have nominated to the office of Prime Minister a popular politician from their electoral list respectively, who was not formally a party member.

Chapter 5. The Judiciary

§1. ORGANISATION OF THE JUDICIARY

I. General Introduction

144. The powers of the judicial branch are set out in Chapter IX of the Constitution, which follows immediately after the chapter on the Constitutional Court. According to the Constitution, justice should be administered only by courts. Rulings of the courts should be adopted in the name of the Lithuanian Republic. The Constitutional Court is part of the judicial branch in the broader sense of the term, but it has special status under the Constitution with jurisdiction beyond traditional judicial powers. Some provisions of the Constitution concern both the Constitutional Court and the judiciary in the broader sense, but the Constitutional Court does not take part in the system of judicial self-government under the Law on the Judiciary because it is governed by separate legislation. That is, the justices of the Constitutional Court do not participate in the General Assembly of Judges and they are not members of the Judicial Council, which is the main advisory body for nominations of judges or disciplinary sanctions.

145. Lithuania has a dual judicial system with the ordinary courts having different jurisdiction from the administrative courts in the administration of justice (*see* Article 111). Courts of general jurisdiction deal with civil and criminal cases (including minor misdemeanours, such as breaking the speed limit, etc.), while the administrative courts deal with cases involving the public service, taxation and other cases concerning public administration (person v. public authority).

II. Ordinary Courts

146. 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: first instance, appeal and cassation. There is no jury system in Lithuania nor are there lay judges. All judges, including those of local courts of first instance, are professional jurists. The competence of the local courts (*apylinkės teismas*) is laid down in the Law on the Judiciary and covers minor civil and criminal cases. Cases in local courts are heard by a single judge. After the 2018 administrative reform of judiciary, administration of all fifty local courts of general jurisdiction for efficiency reasons have been joined into thirteen regional courts with larger administrative territory.

147. Five District Courts (*apygardos teismai*) can serve as courts of appeal or as courts of first instance, depending on the amount of money (and certain other circumstances) involved in a civil claim and on the seriousness of the crime in criminal proceedings. Lithuania has only one Court of Appeal (*Lietuvos Apeliacinis teismas*) which, together with the Supreme Court (*Lietuvos Aukščiausiasis teismas*),

is located in the capital, Vilnius. The competence of the Court of Appeal to review the facts of a case as established by the Court of First Instance is restricted according to the so-called partial appeal system. The Court of Appeal has civil and criminal subdivisions and thirty-three judges; it sits with panels of three judges.

148. The Supreme Court is the highest court of general jurisdiction. It acts as a court of cassation and is competent to review only the application of the law by lower courts. There are thirty-five Supreme Court justices. It too is subdivided into chambers for civil and criminal cases. The Supreme Court sits in panels of three or seven judges or *en banc* in plenary session. The Law on the Judiciary³³ provides that the Supreme Court should publish a journal of judicial practice containing its most important case law. According to the Law on the Judiciary, lower courts of general competence must take into consideration the case law of the Supreme Court in analogous cases. The Chief Justice of the Supreme Court is an ex officio member of the Judicial Council of Lithuania. He/she also has the power (together with the President and Speaker of the *Seimas*) to nominate one candidate for the Constitutional Court. According to the Rules of Parliamentary Procedure, the Chief Justice of the Supreme Court should preside during impeachment proceedings in the *Seimas*. However, his/her influence in Lithuania is overshadowed by the Chief Justice of the Constitutional Court, who is deemed to be the highest officer of the country's judiciary.

III. Administrative Courts

149. Until the judicial reforms of 1999, Lithuania had a unitary judicial system composed only of courts of general jurisdiction, 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 cases between a private person and public entities. The legal basis for this reform was Article 111 of the Constitution. 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 Supreme Court. In 2000, however, a separate Supreme Administrative Court was established as the court of final resort in administrative proceedings. Accordingly, there are now two separate judicial systems and two separate highest courts with competence to develop judicial practice.

150. There are five district administrative courts and one Supreme Administrative Court, which together form the system of administrative courts in Lithuania. As a rule, district administrative courts sit in panels of three judges as a Court of First Instance. The Supreme Administrative Court is the Court of Appeal and court of final instance in administrative proceedings. The Supreme Administrative Court,

33. Valstybės žinios, 1994, Nr. 46-851. <https://www.lai.lt/en>.

which has twenty-one judges, sits in panels of three or five judges or *en banc* in plenary session. There is no cassation in the system of administrative courts, which is explained by the desire to guarantee a more rapid administration of justice than in civil or criminal proceedings.

151. 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 taxpayer versus the tax agency). But 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. The administrative courts are also competent in cases involving a dispute between two public agencies, e.g., a municipality and the central government. Administrative courts do not have internal subdivisions.

152. The Supreme Administrative Court and the district administrative courts also have the power to review the constitutionality and legality of lower executive legal instruments, for example, ministerial decrees or acts of a municipality. These fall outside the review jurisdiction of the Constitutional Court and are with the jurisdiction of administrative courts. A review is initiated upon a request from the ordinary courts or after an abstract request of MPs, ombudsmen, the National Audit Office or a prosecutor. The Supreme Administrative Court also functions as the election disputes court reviewing the decisions of the Supreme Electoral Commission or claims of possible violations of electoral laws before the end of voting. The Supreme Administrative Court has twenty-one judges as of 2021 and publishes a journal of case law containing its most important cases of the preceding year grouped according to subject matter, such as cases on the civil service, tax law, public procurement.³⁴

IV. The Independence of the Judiciary

153. The independence of the judiciary is guaranteed by several constitutional provisions: the principle of the separation of public powers (Article 5); the provision that in adjudicating cases courts should obey only the law (Article 109); the immunity afforded to members of the judiciary and the prohibition of interference with the activities of judges or courts on legal liability (Article 114); the fact that judges remain in office until they reach 65 years of age and their removal from office is constitutionally restricted (Articles 115 and 116); and 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 constitutionally protected and should be regulated by statute only (Article 113). The requirement to take an oath before assuming judicial office is also an element of judicial independence. According to the Constitution (Article 114), judges may not be held criminally liable or be detained, or have

34. See website of the Supreme Administrative Court of Lithuania: <https://www.lvat.lt/en>.

their liberty otherwise restricted, without the consent of the *Seimas* or, in the period between sessions of the *Seimas*, without the consent of the President of the Republic of Lithuania. According to the same Article of the Constitution, interference with the activities of a judge or court by any institution of state power and governance, members of the *Seimas* or other officials, political parties, political or public organisations, or citizens shall be prohibited and shall lead to liability provided for by law.

154. Pursuant to the Law on the Judiciary (*Teismų įstatymas*), in order to guarantee judicial independence on the one hand, and to guarantee some transparency in judicial power on the other, seven independent judicial bodies were established in 2007: (1) the General Assembly of Judges (to be summoned every two years); (2) the already mentioned Judicial Council (elected for four years by the General Assembly, composed of twenty-three judges of different courts with the power to counsel the President of the Republic on judicial nominations and disciplinary sanctions); (3) a Judicial Court of Honour (examining complaints against judges for violations of reputation and having nine judges with a term of four years, nominated by the Judicial Council, the President of the Republic and Speaker of the *Seimas*); (4) the Judicial Ethics and Discipline Commission (four judges and three lay members with four year terms, nominated by the Judicial Council, the President of the Republic and the Speaker of the *Seimas*); (5) an Examination Commission for Candidates for Judicial Office (composed of seven mixed members); (6) a Selection Commission for Candidates for Judicial Office (three judges and four lay members); and (7) a Permanent Commission for the Assessment of Judges' activities (four judges and three lay persons).

Tenure of Appointment

155. Local, district and appellate court judges in Lithuania are to be appointed by the President, while justices of the Supreme Court, by the *Seimas* upon consent of the President. Tenure of office of all judges (with the exception of Justices of Constitutional court) lasts until attaining 65 years (approximately the beginning of pensionable age). Judges may be removed from office by the President (after consent of the Judicial Council) only for grave disciplinary fault, when their conduct brings the judiciary into discredit. Justices of Constitutional Court, Supreme Court and Appellate Court may be removed only by impeachment procedure.

Financial Independence from the Executive

156. According to case law of the Constitutional Court, the remuneration of judges may not be regulated by the executive (Government) but should be established by an Act of the *Seimas*. Judges and justices in Lithuania may only receive salaries from judicial and academic activities (they may work as professors at law school). According to the case law of the Constitutional Court, their salaries should not be reduced even during economic (financial) crisis, but if this does happen, judges should be reimbursed for such a reduction afterwards. In 1999 the Constitutional Court decided that the existing practice of the Ministry of Justice in participation in the judicial council, in the appointment of some members of the

Judicial Council, in the ascertaining of the number of judges and the jurisdiction to approve some of the disciplinary sanctions against them was unconstitutional. Therefore, in 2002, the Judicial Department in the Ministry was dissolved and the independent National Administration of the Judiciary was established instead.

Conflicts of Interest

157. First, members of the judiciary in Lithuania may not receive any remuneration other than a judicial salary and payment for academic and artistic work. Second, they have to take an oath of office that they will follow only the law in administering justice. Judges have to recuse themselves if they have any private interest in a particular case before them. Members of judiciary also have to fill in a declaration on coordination of private and public interests, since they have to declare every year their sources of income and property.

V. Judicial Proceedings

Proceedings Before the Ordinary Courts

158. Proceedings in the ordinary courts differ according to whether it is a civil or criminal case, although both types of proceedings are based mainly on written pleadings by the parties. Civil proceedings could be described as adversarial according to the continental legal tradition, in that the parties are usually represented by professional lawyers and have an opportunity to question each other. In the Lithuanian judicial system, this adversarial component of the proceedings is outweighed by: (a) the predominant role of the written proceedings; (b) the fact that the judge usually has already formed an opinion on the facts of the case, and sometimes even on the question of guilt or liability before coming to the courtroom; and (c) the relatively active role played by the judge (especially in criminal proceedings), asking questions about the facts or points of law and interrupting or even commenting on the legal arguments of the parties during the proceedings.

Administrative Proceedings

159. Although they are courts of first instance, the district administrative courts often sit with a panel of three judges. The presiding judge of the district administrative court appoints a judge rapporteur, who is responsible for delivering a draft ruling. It is a mere formal requirement that all district courts should act in panels of three. In practice, the judge rapporteur is often the only judge of the panel who actually follows the proceedings. This procedure means, in fact, that the final ruling in the case is formulated by the judge rapporteur without much input from the other two judges, and often makes the use of a *collegium* of three a pointless formality. Administrative proceedings in Lithuanian administrative courts have both civil and criminal features. The parties to the proceedings submit their written arguments to the court and have an opportunity to put questions to each other during the hearing.

Much like in criminal law proceedings, judges play a rather active role in administrative proceedings. If either party is dissatisfied with the ruling, they can appeal to the Supreme Administrative Court. Although there is no cassation in administrative proceedings, it is still possible to appeal again to the Supreme Administrative Court on grounds of errors in the application of the law. The Court must then form another panel with different judges, which examines the application of law by their colleagues and delivers its ruling after considering the case behind closed doors (without the participation of the parties). Of course, this happens only very rarely.

§2. CONSTITUTIONAL REVIEW

I. The Meaning of Constitutional Review

160. According to Article 110 of the Constitution, judges may not apply any laws that are in conflict with the Constitution. In cases when there are grounds to believe that a law or another legal act to be applied in a concrete case is in conflict with the Constitution, the judge shall suspend consideration of the case and apply to the Constitutional Court for a ruling on whether the law or other legal act in question is in compliance with the Constitution.

161. But the Constitutional Court in Lithuania does not have the sole prerogative to review the constitutionality of legal instruments. Rather, this Court has the power to review parliamentary legislation, presidential decrees, governmental regulations and international treaties (before or after ratification). Judicial review of the constitutionality and legality of legal executive instruments of lower rank, such as legal acts of Ministers and of other executive and municipal bodies, is the task of the administrative courts.

II. The Constitutional Court

162. The Lithuanian Constitutional Court was established in 1993 pursuant to the 1992 Constitution and the 1993 Law on Constitutional Court. It is composed of nine justices appointed for a single, non-renewable term of nine years. It is difficult to overestimate the influence of the Constitutional Court in the Lithuanian legal and political system. Although societal confidence towards the judiciary in Lithuania is rather low, the Constitutional Court is among the most popular public institutions, regardless of its occasional judicial activism. The Constitutional Court represents, therefore, the most prestigious judicial office in the country.

A. The Substance of Constitutional Review

163. The so-called *abstract review of constitutionality* refers to cases where the Constitutional Court is asked by a political authority (MPs, the Government or President) to answer an abstract (formal) question concerning the constitutionality

of a legal act outside the context of specific litigation. In the case of abstract judicial review of constitutionality, the Constitutional Court has not only the legal but also the political task of settling a dispute between the Government and the opposition – or even to solve a political crisis. The political elite sometimes use 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 (an amendment to the Criminal Code) but by a decision of the Constitutional Court on the constitutionality of the death penalty. An example of a case where the Constitutional Court resolved a political crisis was the impeachment process involving the removal of President Rolandas Paksas in 2003–2004. Although controversial, the Constitutional Court also played a very significant role during the financial crises of 2009–2012 when it barred the Government's austerity measures (especially those reducing public salaries and old-age pensions).

164. The so-called *concrete constitutional review* appears when the judicial authorities (the ordinary and administrative courts) refer a matter to the Constitutional Court in cases where they are uncertain about the constitutionality of a statute or governmental regulation which they have to consider. In such cases, the court submits the question to the Constitutional Court and adjourns the proceedings before it 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. 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.

165. The so-called *individual constitutional complaint* was introduced in Lithuania only by the Amendment to the Constitution in 2019. According to the amended Articles 106 and 107, every person shall have the right to apply to the Constitutional Court concerning the acts of the Seimas, President or Government, if a decision of ordinary or administrative court adopted on the basis of these acts has violated his/her constitutional rights or freedoms and he/she has exhausted all legal remedies. The decision of the Constitutional Court that the legal provision is in conflict with the Constitution constitutes a basis for reconsidering this case anew in an ordinary or administrative court respectively. Up to 2021, only a few decisions of the Constitutional Court have been adopted after such constitutional complaint, therefore, it is too early to say how important will this legal instrument be.

B. Proceedings Before the Court

166. A Majority of requests for constitutional review are granted by the ordinary and administrative courts, or by the parliamentary opposition (no less than one-fifths of the Members of the *Seimas*). In practice, the Government and President

apply to the Constitutional Court only rarely. The President may contest the constitutionality of Governmental regulations only and may not question the constitutionality of legislation (he/she may only veto it also on grounds of supposed unconstitutionality).

167. The Constitutional Court issues three types of judgments: ‘decisions’, ‘conclusions’ and ‘rulings’. Decisions (*nutarimai*) are the main legal instrument of the Court, by which it may declare the unconstitutionality of a particular legal act. The Court issues from ten to twenty decisions every year. According to the Constitution, there are only four instances when it has to deliver conclusions (*išvados*) at the request of the *Seimas* or the President: (1) on possible violations of election laws during the elections of the *Seimas* or the President; (2) on the state of health of the President which may not allow him to continue to hold office; (3) on the constitutionality of international treaties (normally, before their ratification in the *Seimas*); and (4) on whether public officials against whom an impeachment case has been initiated (the President, MPs or high judiciary, including justices of Constitutional Court) have breached the Constitution. Until 2021, the Court has delivered eleven conclusions: five conclusions on possible violations of parliamentary elections (it has never investigated presidential elections), five conclusions on impeachment (one regarding the President and four on MPs) and one conclusion on the constitutionality of the European Convention of Human Rights before its ratification in the *Seimas*. Rulings (*sprendimai*) of the Constitutional Court relate mostly to internal organisational matters, but also include interpretations of previous rulings upon request of the *Seimas*, the President or another public agency when a legal party in case under interpretation. From 1993 to 2021, the Court has rendered more than thirty such rulings.

168. Proceedings before the Constitutional Court are regulated by the Law on the Constitutional Court, which was adopted in 1993. The Court’s hearings shall be open, and may be attended by the public as well as by the press and other public mass media. Persons who are in the courtroom may make audio recordings, short-hand notes or records of the hearing from their seats. Taking photographs, filming, and making video recordings or television or radio broadcasts of the hearings are permitted only with the consent of the Constitutional Court.

169. There are no divisions or chambers in the Court; therefore, all judgments are to be adjudicated and decided by a majority of justices participating in the sitting with a two-thirds quorum (six of nine) requirement. Concurring or dissenting opinions are possible, but up to 2021 these appear only rarely. According to the Law, consideration of the case must be finished and the final ruling issued or conclusion adopted within four months from the day that the petition or enquiry was received by the Court (with a possibility to extend this limitation period). But if the Court fails to meet the limitation period, nothing happens because no one can attach blame to the Court. In reality, the delivering of some rulings may even take up to two years. However, according to the Law on Constitutional Court, conclusions on a possible breach of electoral laws, on impeachment, on the state of health of the

President and on the constitutionality of an international treaty subject to ratification should be delivered in a speedy way.

170. The adversarial procedure is very weak in the Constitutional Court's proceedings, but introduction of the individual constitutional complaint in 2019 may gradually change this situation, because parties to a civil or criminal case under investigation now may plead their case before the Court, if their individual constitutional complaints are to be accepted in the Court. The adversarial procedure is also strong during impeachment cases, when the parties argue in-person and witnesses are heard. In other cases, both parties before the Constitutional Court are representatives of the *Seimas*, for instance, the petitioner is the representative of the opposition contesting legislation, while the other party might be the representative of the ruling party together with some legal personnel of the *Seimas*.

171. The Constitutional Court may request a preliminary ruling from the European Court of Justice (ECJ) (it has happened only twice), and it may also request an advisory opinion from the ECtHR on interpretation of the rights and freedoms defined in the European Convention (it has never done so).

C. Composition of the Court and Appointment of Justices

172. 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 nominated by the President of the Republic, a second by the Speaker of the *Seimas* and a third by the Chief Justice of the Supreme Court. The *Seimas* also appoints the Chief Justice of the Constitutional Court on the President's nomination. The *Seimas* may reject a candidate and this happened for the first time in 2020, where all three nominated candidates were rejected. The latter rejection resulted in the situation that some of the sitting justices remained in place for almost ten years instead of nine, and one of them for even longer. This was criticized by some scholars because according to Article 108, 'the powers of a justice of the Constitutional Court shall cease upon the expiration of the term of powers'.

173. The justices have immunity and may not be detained or prosecuted for criminal offences without the consent of the *Seimas*. They can only be removed from office through impeachment proceedings before the *Seimas*. 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.

174. Ordinary legislation provides that, as a rule, prospective justices will be selected from among university 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 ordinary courts, who had been trained and had practised in the narrow-minded Soviet judicial system, would not have been able to adapt in the immediate

aftermath of the Soviet occupation in the 1990s to the new legal concepts of democratic states under rule of law with effective protection for human rights.

Chapter 6. Independent Advisory or Supervisory Bodies

§1. THE LITHUANIAN CENTRAL BANK

I. General

175. The Lithuanian Central Bank is probably the main prototype for all national public independent institutions. The Central Bank (*Lietuvos bankas* – the Bank of Lithuania) has a separate chapter (Chapter XI. Finances and the State Budget) in the 1992 Constitution. After accession to the EU, the Bank of Lithuania became an integral part of the European System of Central Banks and was to pursue the objectives and carry out the tasks of the European System of Central Banks in accordance with the guidelines and instructions of the European Central Bank. It means that the Bank functions not only under national legislation, but its competence regulates the Treaty on the Functioning of the EU and the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed to the said Treaty. Accordingly, in the event of a conflict between Lithuanian legal acts and the European or international treaties, the latter treaties shall prevail with exception of the Constitution.

176. After a 2004 Amendment, the Constitution regulates only the appointment of the President of the Board of the Central Bank. He/she shall be appointed for a five-year term by the *Seimas* upon nomination by the President of the Republic. According to the Law on the Lithuanian (Central) Bank, the Board shall be comprised of a President, two Deputy Presidents and two other members. EU law (which is fully implemented into Lithuanian legislation) guarantees a wide scope of independence for the President of the Board and its other members. It includes the right of the Board President of the Bank of Lithuania to apply to the Court of Justice of the EU to review attempts at his/her dismissal from office prior to expiration of the term of office on the grounds that such a move was in breach of the Treaty on the Functioning of the EU. Since the adoption of 1992 Constitution, the President of the Board of the Central Bank has never been dismissed from office prior to the expiration of his/her term.

II. Powers

177. Article 125 of the 1992 Constitution originally provided for the Central Bank's exceptional right to issue currency in Lithuania, but this constitutional provision was repealed by the 2006 Amendment to the Constitution after Lithuania's accession to the EU. Now the Bank of Lithuania, under the supervision of the Central European Bank, takes part in the organisation issuing Euro banknotes and coins in compliance with the requirements of the Treaty on the Functioning of the EU.

178. According to the Treaty on the Functioning of the EU, the primary objective of the Central Bank shall be to maintain price stability in the country. Accordingly, the Bank of Lithuania supports the economic policy of the Lithuanian Government so far as it meets the objectives of the European Central Bank and of the European System of Central Banks.

179. The powers of the Central Bank are regulated by the Law on the Bank of Lithuania, according to which the Bank exercises financial market supervision, including supervision of commercial banks and other credit institutions operating in Lithuania. In doing so, first of all, it may adopt recommendations regarding the activities of the financial market participants. But this administrative supervision power over commercial banks (and other credit institutions) was broadened after the 2008 financial crises and now includes a competence to issue various compulsory directives, discretion to levy monetary penalties and a right to obtain particular needed information from credit institutions under supervision.

§2. THE NATIONAL AUDIT OFFICE

I. General

180. The National Audit Office (*Valstybės kontrolė*) has a long tradition of institutional independence in Lithuania. It was established by the 1922 Constitution, and under the 1938 Constitution it had a separate chapter. Under the 1992 Lithuanian Constitution, it also has a separate chapter according to which it shall supervise the lawfulness of the possession and management of state-owned property and execution of the national budget. According to the Constitution, the National Audit Office shall be headed by the Auditor General, who shall be appointed in the very same manner as the President of the Central Bank, also by the *Seimas* upon nomination by the President of the Republic for a five-year term. Therefore, the independence of office and of its head are guaranteed by the highest legal act in the country, which completely corresponds to international standards. Accordingly, the Auditor General is a rather prestigious office in the country. According to the Law on Supreme Audit Office, the *Seimas* or the President of the Republic may declare non-confidence in the Auditor General, but since the adoption of the 1992 Constitution, this has never happened.

II. Powers

181. While the main powers of the Office are guaranteed by the Constitution, the specific competences of the Office are laid down by the Law on National Audit Office. According to the Law, besides the said supervision of the lawfulness (and effectiveness) of the management of state property and execution of the national budget, the Office has to promote a positive and effective impact on public finance management and to perform the monitoring of national budget policy.

182. The Office may perform an audit of any public agency which uses state property and funds from the EU or from the national budget, including the budget of the National Social Insurance Fund, Health Insurance Fund and municipalities. The public audit carried out by the Office consists of financial and efficiency auditing.

183. The National Audit Office, as with any other public agency, has an internal audit service which has to carry out an internal audit of itself. As concerns the public financial audit of the Office, it shall be carried out by a private audit agency appointed annually by the *Seimas*. The National Audit Office shall submit annually to the *Seimas* not only its report on the consolidated national budget but also a report on the public debt and a report of the National Audit Office budget.

184. After the public audit is finished, the Office shall publish the public audit report and public audit opinion. These documents should be considered as soft law recommendations; therefore, the main influence of the Office is publicity. The National Audit Office is completely independent in determining its annual agenda of monitoring of public agencies, but the *Seimas* holds the right to request a public audit of a public agency if some misuse of the national budget or of EU funds were to be revealed. The *Seimas* exercises parliamentary scrutiny over the National Audit Office, primarily through its permanent Audit Committee.

185. Since 1993, the Lithuanian National Audit Office is a member of International Organization of Supreme Audit Institutions and the European Organization of Supreme Audit Institutions.

Chapter 7. The State and Its Subdivisions

§1. THE STRUCTURE OF THE STATE

I. Basic Principles

186. There is not so much about territory and the structure of the state in the Constitution. Article 10 states only that the territory of Lithuania shall be integral and shall not be divided into any ‘semi-state formations’. This provision tries to prevent the creation of any territorial autonomy in the country. The Constitution lacks any mention of historic regions or of the international boundaries of the country, but it does provide that the boundaries of the state may be altered by an international treaty only after it is ratified by four-fifths of all the Members of the *Seimas*. The division of the country into administrative units is for the legislature. Articles 120–121 of the Constitution also paved way for the autonomy of municipalities. In 1994, the Law on Territorial Administrative Entities was passed, according to which the territory of the country was divided into ten counties and fifty-six (later sixty) municipalities. Pursuant to Article 123 of the Constitution, the county (*apskritis*) administration should have been appointed by the Government. In any event, the office of county administration has now been repealed in the 2010 administrative reforms, leaving, therefore, the sixty local governments as the only territorial administrative entities in the country, while counties being only territorial structures without administrative functions.

II. (De)centralised Authorities

187. Lithuania is rather a centralised country. Since 2010, the regional counties (*apskritis*, the larger territorial administrative entities) exist only as territorial entities without any administrative powers. Therefore, the only decentralised administrative entities in the country are municipalities or local governments. Smaller administrative entities (*seniūnija*) exist; yet, although being independent public entities, the head of the *seniūnija* is a career civil servant appointed by the Director of Municipal Administration and is, therefore, not a directly elected officer.

188. In Lithuania there are sixty municipalities. The territories in Lithuania under a local government administration are also large and populous, each counting approximately 60,000 inhabitants on average (e.g., from 3,000 in Neringa to 600,000 in Vilnius).³⁵ The National Association of Local Authorities represents the common interests of municipalities in the government other state institutions and international organisations. There are also ten Agents of Government (*Vyriausybės atstovai*), residing in the biggest cities of each of the ten counties with jurisdiction, for the administrative supervision of municipal powers, but they have only modest powers as moderators between a particular municipality and central government.

35. Reference to all municipalities in the website of the National Association of Local Authorities in Lithuania: <http://www.lsa.lt/en/alal-members/>.

§2. THE MUNICIPALITIES

189. According to Article 119, local or municipal elections in Lithuania have to be held every four years and are based on a proportional system. Starting from 2011, not only political parties but also independent citizen committees may participate in these elections. Participation in local elections usually does not reach 50%.

190. The proportional electoral system generates a rather diverse composition to municipal councils and different kinds of coalitions in all sixty municipalities. If at the national parliamentary level, conservatives and liberals do not work together in a coalition with social democrats (and with the Labour Party), yet at the local level, all kinds of coalitions are possible.

I. Municipal Jurisdiction *Ratione Materiae*

191. The Law on Local Self-Government establishes *autonomous* and so-called *delegated* (by the state) competences of a municipality. The first type of municipal competence shall be derived directly or indirectly from the Constitution and may not be restrained by the legislature, while the second type of competence comes from legislation.

192. Therefore, the Constitution and legislation provide that autonomous municipal competences shall include: the planning and approval of a municipal budget; setting of local fees and charges; management, use and disposal of the land and other property owned by the municipality; organisation of pre-school education and compulsory education under 16 years of age and non-formal education; the fostering of ethnic culture; social integration of the disabled; primary personal and public healthcare; employment policy; territory planning; supervision of construction works; sport and physical training, recreation and their infrastructure; organising publicly supplied heating in Lithuania and drinking water; development of municipal waste management; maintaining, repairing, and surfacing of municipal roads and streets; organisation of local public transport; setting of sanitary and hygiene rules and compliance controls; establishment of the procedure for providing trade and other services in marketplaces and public places; the development of business and tourism in the municipality; issuance of permits (licences) in cases and manner prescribed by law; compliance controls over the prohibition or restriction of public out-of-doors alcohol and tobacco advertising; ensuring burial services and maintenance of cemeteries; and certain other functions.

193. According to the Law on Local Self-Government, delegated competences include: the registration of acts of civil status; fire and radiation protection; participation in the management of national parks; payment of social benefits; management, use and holding in trust of state land and other state property assigned to a municipality; management of archival documents; protection of statistical data; assistance in organising elections and referendums; protection of the rights of children and youth, and certain other functions.

194. According to the Law on Local Government, the biggest part of the financial resources of municipalities (approximately 90%) comes from certain share of (general) individual income taxes, collected through the National Treasury. Other sources for the municipal budget consist of: income received from local fees and charges; income from municipal property and services; income from administrative fines; and some state budget subsidies.

II. Municipal Institutions

195. Municipal institutions are the mayor, the municipal council, the municipal administration and various municipal entities providing public services.

A. The Mayor

196. Mayors of municipalities started to be directly elected only since the 2015 local elections, according to the law on elections of municipal councils. Before then, a mayor was elected by members of the municipal council. Elections of mayors are held along with elections for the municipal council. According to the Law on Local Self-Government, the mayor has to be a citizen of Lithuania. An elected mayor automatically becomes a member and the head of the municipal council. A mayor's term of office extends over that of the municipal council, and is four years. A lack of constitutional provisions on the office of mayor resulted in the mayor being the head of a municipality and head of the municipal council, being accountable to the council; and sharing his/her powers with the Director of Municipal Administration. But such a lack of constitutional direction still does not let a mayor increase his/her powers. The Director is appointed by the council. The mayor plans activities, schedules meetings of the municipal council and represents the municipality with other municipalities during meetings of regional development council, with state authorities and international institutions. A mayor appoints and supervises the activities of the heads of municipal institutions, establishments and undertakings (other than career civil servants of municipal administration), including how they implement the laws and decisions of the Government and the municipal council. He/she also grants licenses for certain kinds of activities in the territory of municipality. The office of vice mayor also exists, which is usually occupied by the representative of the majority faction in the municipal council. In the case of a majority coalition, each coalition partner may have a vice mayor.

197. Direct elections of the mayor along with elections of the municipal council can result in the mayor and majority of the municipal council (having a right to appoint the vice mayor and the Director of Municipal Administration), being representatives of different political parties or electoral committees. By the decision of 19 April 2021, the Constitutional Court ruled that the provisions of electoral law on

direct elections of mayor contradicted the Constitution (because of lack of appropriate provision of the Constitution) and gave the Seimas a period of two years (till the next municipal elections) to adopt a corresponding Amendment to the Constitution.

198. The mayor may be removed only after a special procedure in the municipal council, one which resembles the presidential impeachment procedure at the national level. Proceedings to remove a mayor may be initiated by not less than one-thirds of the members of the council for breach of the oath of office, or for not fulfilling duties prescribed by legislation. In the case of a council's confirming these charges, it has to address the issue to the Supreme Administrative Court. The municipal council may remove the mayor (by a three-fifths majority) only after an affirmative ruling by the court.

B. The Municipal Council

199. According to the Constitution, municipal councils should be elected directly by permanent residents of the respective municipality for a term of four years. The tenure of municipal councils was extended two times: first by the 1996 Constitutional Amendment for a term of three years (instead of two) and again by the 2002 Amendment for a term of four years. Municipal electoral legislation sets out a proportional election system wherein not only political parties (as it is the case for parliamentary elections) but also local electoral committees (since 2011) can participate.

200. The Lithuanian Constitution mentions only one municipal institution: the Municipal Council. According to the Constitution (Article 119), voters for the municipal council shall not only be Lithuanian or EU citizens but also all residents of the respective municipality. However, the possibility for those other than Lithuanian citizens to contest in municipal elections as a candidate was rather limited because the legislation on political parties giving the right to citizens of other EU Member States to establish a political party in Lithuania was adopted only in 2019.

201. The number of members on a municipal council varies from fifteen in Neringa (the smallest municipality) to fifty-one in the capital, Vilnius (the biggest municipality). A municipal council shall have permanent committees and ad hoc commissions. The sittings of the council shall be organised ordinarily once a month. As a rule, the most important decisions of a municipality shall be adopted or approved by the municipal council, and not by the mayor alone. The municipal council appoints the vice mayor and Director of Municipal Administration and may remove those officers after a vote of no-confidence. As was said, the council also may remove the mayor by a three-fifths majority, only after rather complicated procedure.

C. The Municipal Administration

202. According to the Law on Local Government, the municipal administration is a municipal entity which consists of organisational units and civil servants working therein. The structure of the municipal administration, its regulation of activities and wage fund shall, on the proposal of the Director of Municipal Administration and the recommendation of the mayor, be approved and changed by the municipal council.

203. The Director of Municipal Administration shall be nominated by the mayor and appointed by the municipal council for the duration of the council's term. He/she appoints career civil servants for the municipal administration. The municipal administration in Lithuania is part of the public administration. Therefore, the Director's primary duties are to render municipal administrative services to residents of the particular municipality, to provide the means for the activities of the municipal council and its committees and to provide the means for the activities of the municipal auditor who organises audits on the legality and efficiency of municipal budget spending.

204. The Director shall be directly and personally responsible for the implementation of the laws and regulations of the government and legal acts of the municipal council regarding the issues assigned to his competence within the territory of the municipality. He/she shall organise the work of the municipal administration, approve rules of conduct of its structural units (sections, departments), organise the execution of the municipal budget and administer municipal property. The lack of constitutional provisions on legal status of mayor results that the powers of the director of municipal administration are very important and sometimes even compete with appropriate powers of the mayor.

Part III. Human Rights, Citizenship and Status of Foreigners

Chapter 1. Citizenship

205. Constitution (Article 12) mentions that citizenship shall be acquired by birth and on the other grounds established by law, not specifying what those other grounds are. Article 84(21) also says that the President of the Republic has the power to grant Lithuanian citizenship on the basis of ‘those other grounds’. Finally, the Constitution (Article 12) also states that one may only be a citizen of both the Republic of Lithuania and another state at the same time only in ‘separate cases provided for by law’.

§1. ACQUISITION OF LITHUANIAN CITIZENSHIP

206. The Law on Citizenship was adopted in 1989 when Lithuania was still in transition from Soviet occupation to the restoration of independence. The rationale of this law, as re-adopted in 1991, was that all residents of the territory of Lithuania (with the exception of Soviet military officers) legally residing in the country as from 1989 could opt for either Lithuanian or Soviet citizenship. This law, relying on principles of non-recognition of the Soviet occupation and on the continuity of the Lithuanian interwar Republic, established that the main corpus of citizens of the reborn Lithuanian State were descendants of the interwar Lithuanian Republic. However, it also meant that those residents who had come into the territory of Lithuania during the Soviet period could acquire a Lithuanian passport (if they so wished) without any naturalisation procedure as it was the case in other two Baltic states.

207. The Law on Citizenship (as amended in 2016) provides for five cases regarding acquisition of Lithuanian citizenship: by birth, through naturalisation, by a simplified procedure for those persons of Lithuanian descent, for meritorious service to the Republic of Lithuania, and on the grounds established by international treaties.³⁶

36. The Law on Citizenship also specifies a sixth case of granting citizenship, which is the *restoration* of Lithuanian citizenship for those who have lost it.

208. The same law does not recognise a pure *ius soli* principle in acquisition of citizenship in Lithuania. Not every child born within the country's territory counts as a Lithuanian citizen, but only those for whom one or both parent are citizens, irrespective of whether one was born inside or outside of the territory of the Republic.

209. Concerning naturalisation, one has to have resided legally and permanently in Lithuania for the last ten years and with a legal means of subsistence. He/she has to pass an examination on the Lithuanian language and on the Fundamentals of the Lithuanian Constitution. A period of naturalisation for a person married to a Lithuanian citizen and legally and permanently residing together with his spouse in the Republic is shortened up to seven years. At the conclusion of the naturalisation procedure one must take a public and solemn oath of allegiance to the Republic of Lithuania.

210. Lithuanian citizenship may be granted without naturalisation procedure to persons of Lithuanian descent. According to the law, a 'person of Lithuanian descent' means a person whose parents or grandparents or one of them are or were Lithuanians and further who considers himself/herself as Lithuanian and declares it by written statement.

211. According to the law, the President of the Republic may grant Lithuanian citizenship to foreign citizens for outstanding meritorious service to the Republic of Lithuania. Nevertheless, after the ruling of the Constitutional Court of 13 November 2006,³⁷ the law in Lithuania requires that even such foreigners of outstanding merit for the Republic of Lithuania 'have to be integrated into the Lithuanian society'. The previous wide presidential discretion to grant citizenship 'for merits to the Republic of Lithuania' was repealed and a requirement to be integrated into Lithuanian society was introduced. The Court's ruling of 30 December 2003 is also relevant here. In this case the Court cancelled the Lithuanian citizenship of Yuri Borisov, a financial supporter of the then newly elected President Rolandas Paksas, granted by President Paksas for reasons of alleged financial support of aviation sport in Lithuania and some charity activities. The Constitutional Court ruled that the President, even in case of granting Lithuanian citizenship for 'merits to the Republic of Lithuania', does not have unfettered discretion and could not grant it to persons who are not integrated into Lithuanian society. Borisov, for example, did not speak Lithuanian. Consequently, the Law on Citizenship now specifies that 'outstanding merit' for the Republic of Lithuania shall be any activities of a foreign citizen which significantly contribute to the consolidation of the statehood of the Republic of Lithuania, as well as to the strengthening of its power and authority in the international community. Under the same Law, a foreigner shall be considered as having 'integrated into the Lithuanian society', if that person is a permanent resident of the Republic or he/she is able to communicate in Lithuanian and there are 'other tangible proofs of integration into the Lithuanian society'. All of these results in a considerable limitation on the Lithuanian President's competence in granting Lithuanian passports to foreign athletes (as is the case in many other countries).

37. Valstybės žinios, 2006, Nr. 123-4650.

According to the law, the granting of citizenship for merits to the Republic of Lithuania shall not *ipso facto* entail any legal consequences for the spouse, child or other family members of a person who has so acquired citizenship of the Republic of Lithuania.

212. The Law on Citizenship specifies that citizenship of the Republic of Lithuania shall not be granted to persons who have attempted to commit or have committed crimes against the Republic of Lithuania or international crimes, such as aggression, genocide, crimes against humanity or war crimes. Likewise are excluded those who were sentenced to imprisonment for any crime which is a grave crime under laws of the Republic of Lithuania,³⁸ or who are not otherwise entitled to obtain a document attesting to the right of permanent residence in the Republic of Lithuania.

§2. DUAL CITIZENSHIP IN LITHUANIA

213. As was already mentioned, Article 12 of the Constitution specifies that ‘with the exception of separate cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time’. Regardless of such a negative constitutional attitude towards dual citizenship, rather liberal legislation on dual citizenship existed in Lithuania prior to the 13 November 2006 decision of the Lithuanian Constitutional Court.

214. In that ruling, the Constitutional Court overruled previous legislation and declared that according to Article 12, only those Lithuanian nationals who were forced to leave Lithuanian territory before the 1990 restoration of independence (i.e., deported and displaced persons, political refugees) and their descendants may hold foreign passports, but not those who left the country after 1990 (the so-called economic emigrants). Therefore, the Law on Citizenship now lists the cases where a Lithuanian citizen may also be a citizen of another state. The cases are as follows: where a person has acquired Lithuanian citizenship and a foreign citizenship at birth (e.g., when child was born in the United Kingdom or US from Lithuanian parents); where he/she is a person who was exiled from or otherwise left the occupied Republic of Lithuania before 11 March 1990 or is a descendant of one; when by virtue of marriage to a citizen of another state, he/she has *ipso facto* acquired citizenship of that state; if he/she is a person who was adopted by a foreign citizen; where a foreigner has acquired Lithuanian citizenship for outstanding merit to the Republic of Lithuania; and where he/she has acquired Lithuanian citizenship while having refugee status in the Republic of Lithuania.

38. Lithuanian Criminal Code provides classification of crimes into four categories: non heavy, heavy, grave and very grave.

Chapter 2. Fundamental Rights and Liberties

§1. GENERAL

I. Definition

215. Articles 26 and 135 of the Constitution refer to ‘fundamental rights and freedoms’ as being fundamental constitutional values. The 2004 Constitutional Act on Membership of the Republic of Lithuania in the EU (which forms a supplementary part of the Lithuanian Constitution) also acknowledges that the EU respects fundamental human rights and freedoms and that Lithuanian membership in the EU will contribute to the more efficient securing of human rights in the country. Despite those provisions, the Constitution does not specify which constitutional human rights should be considered fundamental nor does the Constitutional Court provide a list of fundamental human rights.

216. Because of the wording of Article 18 of the Constitution (‘human rights and freedoms shall be natural (innate)’), the Constitutional Court is much more familiar with the expression ‘natural human rights’. First, explaining the constitutional concept of natural human rights, the Court has stressed the universal character of human rights, namely that they shall not be limited to a specific territory, nation or national legal system.³⁹ Besides that, the Court links in its jurisprudence natural and fundamental human rights to so-called first generation human rights, specified in section II (Articles 19–37) which includes the rights to life, dignity, ownership, fair trial, freedom of conscience and religion, equality before the law and also includes privacy rights, a right to health,⁴⁰ a right to information and even cultural rights (i.e., freedom of creative activities and freedom of access to cultural values).⁴¹ However, the jurisprudence of the Constitutional Court does not show any difference between ‘fundamental’ or ‘natural’ rights mentioned in the Constitution and other constitutional rights. Therefore, the main criteria in differentiating levels of protection for particular human rights depends on whether they are constitutional rights (mentioned in the Constitution) or were created by the legislator or the executive.

II. Sources and General Rules

217. The main source of human rights in Lithuania is the Constitution. Other sources include the Universal Declaration of Human Rights, the ECHR, other international treaties and agreements, ordinary legislation and executive regulations, case law, especially the jurisprudence of the Constitutional Court, is also a very important source of human rights protection.

39. See e.g., the decision of 9 Dec. 1998 where the Court, relying primarily on the concept of natural rights (Art. 18), overruled provisions on the death penalty in the Criminal Code.

40. Decision of 16 May 2013, *Valstybės žinios*, 2013, Nr. 52-2604.

41. Decision of 8 Jul. 2005, *Valstybės žinios*, 2005, Nr. 87-3274.

III. Restrictions on Human Rights, and Remedies for Breach of Rights

218. The Constitution specifies some restrictions on human rights. First, the application of one human right might be limited by another or, put another way, one person's rights are limited by another person's rights. According to Article 28, while fulfilling one's rights and freedoms, everyone must not restrict the rights and freedoms of other people. Second, the Constitution also justifies other constitutional values related to the constitutional order: protection from crime, security of the state and society, public order, the health or morals of people (Article. 26), and the administration of justice (Article 32). Ordinary courts also refer to restrictions on human rights applied by the ECtHR. Those restrictions have to be provided by the Constitution or legislation, necessary in a democratic society and be proportional. It means that any restrictions on human rights should be provided in an Act of Parliament. Therefore, the government may regulate human rights only after the appropriate legislation has been passed. From this perspective the 1994 regulation by the Health Ministry on abortion procedures seems to be very controversial, because formally it contradicts the Constitution. Various restrictions on human rights introduced by the Government and Health Minister during the 2020–2021 quarantine (e.g., on freedom of movement, right to work, right to health etc.) seem to be even more controversial.

219. Article 30 of the Constitution provides that a person whose constitutional rights or freedoms are violated has the right to apply to a court and claim damages for material and moral injury. The Civil Code specifies the legal proceedings through which one may claim damages. Human rights violations may also lead to criminal liability.

IV. The Principle of Equality

220. Article 29 of the Constitution provides that all persons shall be equal before the law, courts, other state institutions and officials, and that human rights may not be restricted nor privileges granted on the grounds of sex, race, nationality, language, origin, social status, belief, convictions, or views. It has to be said that Article 29 with its equality principle is one of the most cited constitutional provisions in the jurisprudence of the Lithuanian Constitutional Court. Thus, the equality principle may be regarded as part of the principle of the rule of law as well as part of human rights.

221. The Constitutional Court has held that the constitutional equality principle includes the obligation to treat analogous facts legally in the same manner. However, this does not deny the possibility of establishing differentiated legal regulations with regard to certain categories of persons who are in different situations. Therefore, the constitutional principle of the equality of persons does not deny the possibility of treating persons differently by taking account of their status and situation and after assessing whether the peculiarities of legal regulation are established

reasonably.⁴² However, the constitutional principle of equality of all persons before the law would be violated where a certain group of people subject to a particular legal norm were treated differently, when compared to other addressees of the same legal norm, even though there would be no differences in character or extent between these groups such that an uneven treatment would be objectively justified.⁴³

222. It is also worth mentioning that, in its ruling of 6 May 1997 the Court justified legal differentiation of persons on two bases: due to objective differences (sex, age, etc.); or because it was required by the public interest (e.g., citizenship). But the Court further declared that provisions in the Law on Public Service which prohibited public servants from being the owners of personal enterprises, or partners in a partnership, or shareholders holding more than 10% in one enterprise contradicts the constitutional principle of equality of persons (public servants as against persons working in the private sector).

223. The Constitutional Court also relied upon the constitutional equality principle in its decision of 21 October 1999 where it justified a prohibition against names in foreign languages (not Lithuanian) in Lithuanian passports.⁴⁴ Another interesting case is its decision of 4 July 2017, where the Court ruled that provisions in the Law on National Conscription exempting clergymen of traditional religious communities from mandatory military service was also in conflict with the constitutional equality principle.⁴⁵ It should also be noted that the principle of non-discrimination is treated as part of the constitutional equality principle in the Lithuanian legal system.

§2. FUNDAMENTAL AND POLITICAL RIGHTS

I. The Right to Life and Human Dignity

224. Article 19 of the Constitution provides that the right to life shall be protected by law. Article 21 protects human dignity in a very similar manner. This article also specifies that human dignity shall be related to protections against torture and degrading treatment. The right to life and human dignity as fundamental constitutional values are also mentioned in Articles 24 and 25. According to the jurisprudence of the Constitutional Court, the right to life and right to human dignity are natural (innate) or fundamental rights, the concept of which was developed in its decision of 9 December 1998 on the constitutionality of capital punishment as it then existed under the Lithuanian Criminal Code.⁴⁶ The Court based its ruling

42. Constitutional Court, Decision of 30 Oct. 2008, *Valstybės žinios*, 2008, Nr. 126-4816.

43. Constitutional Court, Decision of 2 Mar. 2009, *Valstybės žinios*, 2009, Nr. 25-988.

44. *Valstybės žinios*, 1999, Nr. 90-2662.

45. TAR, 2017-07-04, Nr. 11471.

46. *Valstybės žinios*, 1999, Nr. 109-3004.

(declaring capital punishment unconstitutional) also on Article 19 (right to life), saying that provisions of this article do not admit of any restrictions on the right to life as is the case with other articles of the Constitution. The Court also said that the death penalty in criminal law means that the state devalues human life, and such devaluation of life influences the whole of society, making it more brutal. However, the Constitutional Court also noted that human life and dignity are distinguishable from others because both these human rights constitute the integrity of a personality and they denote the essence of an individual life and dignity are inalienable values and may not be treated separately. Therefore, the Court ruled that the death penalty contradicts one's right to life (Article 19) together with one's right to human dignity (Article 21) under the Lithuanian Constitution.

II. Freedom of Expression

225. The Lithuanian Constitution does not have a separate 'freedom of expression' article; rather, Article 25 provides generally a 'freedom to express one's convictions'. In a broader sense, freedom of expression includes not only a right to have one's convictions but also a right to information, freedom of press and freedoms of thought, religion and conscience (the latter three being specified in Article 26). It is worth mentioning that, according to the jurisprudence of the Constitutional Court, the right to information should be treated as natural (innate) human right.

226. In its decision of 20 April 1995, the Court mentioned that freedom to express one's convictions is tied not only to freedom of the press and a right to information but also especially to the constitutional value of democracy.⁴⁷ In this ruling, the Court held that the right of the Board of the National Broadcaster to regulate broadcasting and, at the same time, to compete in broadcasting on the Lithuanian market contradicts *inter alia* one's constitutional right to information. The same conclusion was reached in its 13 February 1997 ruling where the Court was dealing with the complete ban of alcohol and tobacco advertising.⁴⁸ In its decision of 10 March 1998, the Court also held that requirements for (career) public servants to resign after their public disagreement with government's policy contradict a constitutional right to have independent (political) convictions.⁴⁹

227. Of course, the Lithuanian Constitution provides some limits to freedom of expression. On the one hand, it may be limited when this is necessary to protect human health, dignity, privacy, morals, or to defend the constitutional order (paragraph 3, Article 25). However, this right is incompatible with criminal acts such as incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination as well as defamation and disinformation (paragraph 4, Article 25). Therefore, in a decision of 19 December 1996, the Court decided that the existence of commercial, military and other state secrets do not contradict the constitutional

47. Valstybės žinios, 1995, Nr. 34-847.

48. Valstybės žinios, 1997, Nr. 15-314.

49. Valstybės žinios, 1998, Nr. 25-650.

right to information. In a decision on 23 October 2002, the Court held that legal provisions to the extent that journalists, producers and owners of mass media have the right to preserve the confidentiality of sources of information even in cases where necessary to disclose it upon a decision of the court due to vitally important interests of society, and being an attempt to ensure that the constitutional rights and freedoms of persons be protected, and to see that justice be administered was in conflict with the principle of the rule of law and constitutional values mentioned in paragraphs 3 and 4 of Article 25. In a decision of 9 June 2011, the Court justified the right of legal counsel to get private information from a Registry if it was needed to defend the rights of person under his/her representation.⁵⁰ The biggest challenge for human rights restrictions so far were the various limitations introduced by the Government during the 2020–2021 pandemic of COVID-19. The judiciary still has to evaluate the constitutionality of these restrictions.

III. Freedom of Education

228. Freedom of education is mentioned in different Articles of the Constitution. For example, ‘education in public [primary and secondary] schools shall be free of charge’ (paragraph 2, Article 41); ‘religion in public schools shall be taught at the request of parents’ (paragraph 1, Article 40); ‘citizens who are good at their studies shall be guaranteed education at public schools of higher education free of charge’ (paragraph 3, Article 40) and ‘ethnic minorities shall independently manage the affairs of their ethnic culture and education’ (paragraph 1, Article 45).

229. Soviet ‘heritage’ predetermined the fact that there are very few private schools in the country. Pupils have rather similar (egalitarian) access to general secondary education in the country despite their residence location or the social status of their parents. According to the Law on Education, there exist Lithuanian, Russian and Polish public schools in the country. This means that members of the Polish and Russian speaking minorities have the right to educate their children in their respective language in public schools free of charge including kindergarten, primary, secondary and high schools (gymnasium). Only courses in public universities are taught in Lithuanian.

230. Students in public schools have to choose between classes in religion or secular ethics. Parents have to choose the appropriate subject for pupils under fourteen years. Programmes of religious instruction in public schools are, as a rule, arranged by the respective traditional religious community: by the Catholic Church (in public schools with instruction in Lithuanian or Polish), by the Orthodox Church (in public schools with instruction in Russian), or by the Jewish religious community.

231. In Lithuania, almost all universities (up to 2021) are public universities. Interpreting constitutional provisions that higher education is accessible free of

50. Valstybės žinios, 2011, Nr. 156-7405.

charge for those students ‘who are *good* at their studies’, the Constitutional Court ruled that the Constitution does not guarantee higher education covered by state funding to all citizens who are good at their studies but only to those who are admitted at public universities in order to satisfy the state-established need for specialists in relevant areas (fields). Second, the state or university may not *a priori* decide any quota of future ‘good students’ who could have a right to study free of charge. Third, the criteria for being ‘good at studies’ may take into account specific aspects of a particular study programme but should be established in advance by law on rational grounds. Fourth, the status of students being ‘good at studies’ should be re-assessed at least once a year. Interestingly, there are many more Constitutional Court decisions on higher education than on secondary education in Lithuania.⁵¹

IV. Freedom of Assembly and of Association

232. Article 35 of the Constitution guarantees the right of citizens to freely form associations and political parties, while Articles 26 and 50 the right of residents to form and participate in religious communities and trade unions respectively. According to the Law on Associations, a minimum three residents of at least 18 years old can establish an association. The Law on Trade Unions also guarantees a right to establish a trade union not only for Lithuanian citizens but also for any resident of the country who is employed legally. While, the Law on Political Parties requires that any political party be established only by Lithuanian and other EU citizens residing in the country and have at least 2,000 members. According to the Law on Religious Communities, any religious community may be registered as legal entity if it has no less than fifteen Lithuanian citizens being at least 18 years old.

233. A right for citizens to assemble in unarmed and peaceful meetings is guaranteed by Article 36. The Law on Meetings provides that the right to organise a meeting extends not only to Lithuanian citizens but also to nationals of other EU Member States, foreigners residing permanently in the country and legal entities registered in Lithuania. According to the Law, a meeting may not be held inside and closer than 25 m from a public building. Concerning the buildings housing the *Seimas*, the President’s and the Government’s offices and the courts, this distance should be extended up to 75 m. The same Law provides that this right does not extend to: (i) any violation of the Constitution or laws of the Republic of Lithuania through speeches delivered, posters, slogans, audio-visual materials and other actions; (ii) any violation of ethical and moral principles; and (iii) any usage of Nazi and Soviet symbols.

234. The Law sets out requirements for information and coordination regarding meetings, marches or other public events with the local government administration.

51. See e.g., Decision of 13 Jun. 2000, where the Constitutional Court ruled against broadening religious education in public schools. *Valstybės žinios*, 2000, Nr. 49-1424.

Although the Law uses the term ‘coordination’ (as opposed to ‘authorisation’ procedures), local government may, in fact, refuse to ‘coordinate’ an appropriate meeting with organisers, who then have the right to file a judicial complaint. The Constitutional Court in its decision of 7 January 2000 held that if a municipality decided to refuse coordinating a particular march or meeting on constitutional grounds, it should specify with particulars how the meeting might violate constitutional values listed in Article 36: social safety and public order, health, morals or rights of others.⁵² In its decision of 7 May 2010, the Supreme Administrative Court decided that the refusal of the Vilnius municipality ‘to coordinate’ with organisers a ‘Baltic Pride’ march on the Gediminas Avenue (the capital’s principle street) on the grounds of public safety was contrary to the constitutional right of assembly, and it obliged the municipality to reverse its decision and to secure the safety of participants in the march. The Court also stated that this right extended to those whose opinions were considered unpopular or who represented minorities.

V. The Right to Address Petitions

235. The right to address petitions is mentioned in Article 33 of the Constitution, and according to the Law on Petition, this right belongs to Lithuanian citizens or other persons permanently living in Lithuania who are at least 16 years old. Applicants may deliver their petitions to the *Seimas*, the government or a municipality respectively, each of which has to form a permanent petitions commission in their respective institutions. Applicants may demand or propose the resolution of the following issues: the protection or implementation of human rights and freedoms; the reform of government institutions and administration; or other issues important to the public, self-government or the state. The Law also provides that no later than one month from the date of receipt of the notification about the decision not to recognise the application as a petition or to refuse to accept a petition for consideration, the applicant may lodge a complaint in the administrative court.

236. Upon having accepted the petition, the *Seimas* Petitions Commission shall present to the *Seimas* conclusions related to meeting the demands and proposals put forward in that petition, including a draft of an appropriate legal act or a proposal to create a commission or a working group to prepare a draft of such legal act. Very similar procedures and proposals on accepted petition shall be drafted in the Government Petitions Commission and Municipal Petitions Commissions respectively.

VI. The Right to Respect for Private and Family Life

237. According to Article 22 of the Constitution, private life, including personal correspondence, telephone conversations and other communications is inviolable. The same article also states that information concerning the private life of a person

52. Valstybės žinios, 2000, Nr. 3-78.

may be collected only upon a justified court decision and only according to the procedures provided in legislation, and that legislation and the courts shall protect everyone from arbitrary or unlawful interference with their private and family life. The Constitution also states that persons who commit the crimes or who infringe the rights of others should not have legal expectations of defending privacy rights.

238. Privacy rights are very complex human rights. In its 19 September 2002 decision, the Constitutional Court held that the private life of an individual is the personal life of an individual including his way of life, marital status, living surroundings, relations with other persons, the views, convictions, habits of the individual, the individual's physical and psychological state, health, honour, dignity, and so on.⁵³ The Court also said that the right to privacy includes family life, a right to peaceful dwelling, the physical and psychological inviolability of the individual, his/her honour and reputation, the secrecy of personal correspondence and data, and a prohibition on disclosure of received or acquired confidential information. According to the Court, privacy rights as provided in Article 22 are guarantees against the unlawful interference to one's privacy by the state and other persons.

239. The right to privacy acquired even more protection after the European Regulation on personal data of 27 April 2016 (EU, 2016/679) came into force. But already in its 19 September 2002 decision, the Constitutional Court had considered provisions of the then Law on Telecommunications and held the following to be in conflict with the constitutional right to privacy: that (i) telecommunication operators must store all data on telecommunication events and their participants more than is necessary to ensure the economic activity of the telecommunications operators; and (ii) telecommunication operators and other legal entities must, under the procedure established by the Government (without appropriate legislation and court decisions), supply information to the state intelligence agency or prosecutor's office (for restraint, investigation and resolution of crimes) about objects of operational activities which are necessary for investigation.

240. In its decision of 26 February 2015, the Court recognised that provisions of the Code of the Enforcement of Punishments, insofar as it prohibited correspondence between detainees even if not related by family ties, was in conflict with the constitutional right to privacy.⁵⁴ In its 8 May 2000 decision, the Constitutional Court found that privacy rights of politicians and other public officials may be less protected than the rights of those who are not public persons.⁵⁵

241. According to Article 38 of the Constitution, the family shall be the basis of society and the state. Therefore, family life does not only form part of privacy rights, but it is also a constitutional value as such (*per se*) according to Lithuanian Constitution. According to the same article, marriage is possible only between man and woman. In a decision of 28 September 2011 on the 'State concept of family

53. Valstybės žinios, 2002, Nr. 93-4000.

54. TAR, 2015-02-27, Nr. 3023.

55. Valstybės žinios, 2000, Nr. 39-1105.

policy’, the Constitutional Court ruled that the constitutional concept of family means not only married couples and their children but also those couples of man and woman whose relations are based on ‘mutual responsibility between family members, understanding, emotional affection, assistance and similar relations, common education of child as well as on the voluntary determination to take on certain rights and responsibilities, i.e., the form of expression of these relationships has no essential significance’.⁵⁶ The Court also stated that marriage ‘is a historically established family model that undoubtedly has an exceptional value in the life of society and which ensures the viability of the Nation and the state as well as their historical survival’. This jurisprudence on family concept was further developed in decision of 11 January 2019, where the Court, relying on the ECJ case law, held that constitutional family concept is ‘gender neutral’ and that same-sex couples, when one partner is Lithuanian citizen and another one is national of a third country, who are married in other EU Member State, should be recognised under family reunification in Lithuania, according to Lithuanian Constitution.⁵⁷

VII. The Rights of the Child

242. Paragraph 2 of Article 38 of the Constitution states that childhood shall be under the protection and care of the state. Article 26 provides for the right of parents to educate their children according to their religious and moral convictions. Thus the Lithuanian Constitution does not mention the rights of the child as a separate human right but treats it as being part of family rights.

243. Lithuania being a party to the 1989 UN *Convention on the rights of the child*, in 1996 adopted the *Law on Protection of the Rights of the Child* according to this international treaty. According to a 2018 amendment to the Law, parents and other persons may not use physical punishment against children at all. The Law establishes the principle of priority of the child’s interests in divorce proceedings and other family dispute resolution matters. It is worth mentioning that the Law establishes the right of the child to develop physically and mentally not only after but also prior to his/her birth. This is the only place, where Lithuanian legal act mentions child’s right prior to his/her birth, because in Lithuania, abortion is legal before the second trimester. The right of the child to be heard shall be guaranteed for any child who is already capable of expressing his/her own opinion, if this is not contrary to the child’s interests. According to the Law, the main social sphere of child shall be his/her biological family, which means that a child may be removed from the biological family only in exceptional cases.

244. The main public legal entity responsible for the protection of children’s rights is the State Child Rights Protection and Adoption Service under the Ministry

56. Valstybės žinios, 2011, Nr. 188-5564.

57. TAR, 2019-01-11, Nr. 439.

of Social Security and Labour, which has branches in ten regional counties and some other municipalities. In 2000, a Children's Rights Ombudsmen Office in Lithuania was also established.

VIII. Due Process Rights

245. According to Article 30 of the Constitution, a person whose constitutional rights or freedoms are violated shall have the right to address the court, while in Article 31 it is stipulated that a person shall be presumed innocent until proved guilty by an effective court judgment, and that a person charged with committing a crime shall have the right to a public and fair hearing of the case by an independent and impartial court. This article also provides that punishment may be imposed or applied only on the grounds established by law; that no one may be punished twice for the same offence; and that a person suspected of committing a crime, as well as one so accused, shall be guaranteed from the moment of detention or first interrogation the right to defence, as well as the right to legal counsel. All these constitutional provisions of Article 31 are specified in the Codes of Criminal and Civil Procedure as well as in the Law on the Courts, which provides that everyone shall be entitled to a fair public hearing by an independent and impartial court established by law and that the court must ensure the hearing of cases to be fair and public with judgments being issued within a reasonable time. According to the jurisprudence of the Constitutional Court, the principle of due process should also include: the equality of persons (Article 29), one's right to have legal counsel in court, a speedy process, a right of appeal to higher judicial instance, and a requirement that judicial decisions be just and reasoned.

246. The constitutional principle of due process is one of the most applied constitutional provisions in the case law of the Lithuanian Constitutional Court. For example, the Court in its ruling of 1 October 1997 held that provisions of the Criminal Procedure Code, to the extent that a person's right to address the court against a judicial decision to confiscate his or her property (in his/her criminal case) is denied, contradicts the constitutional principle that everyone whose rights presumably have been infringed has a right to address the court (Article 30).⁵⁸ Later on, the Court in a 5 February 1999 decision decided that that provisions of the same Code, to the extent that a court may requalify the acts of an accused under another provision of the Criminal Code (with more severe penalties), contradicts the constitutional principle of due process.⁵⁹ In its decision of 19 September 2000, the Court also ruled that provisions of that Code, to the extent they do not guarantee the right of the accused to question anonymous witnesses or victims, conflict with the constitutional principle of due process.⁶⁰ According to the Constitutional Court's decision of 10 June 2003, provisions of the Lithuanian Criminal Code were in conflict with the due process principle to the extent that they restricted the right of a

58. Valstybės žinios, 1997, Nr. 91-2289.

59. Valstybės žinios, 1999, Nr. 15-402.

60. Valstybės žinios, 2000, Nr. 80-2423.

court to impose a punishment milder than the one specified by the Criminal Code.⁶¹ And finally, in a decision of 15 November 2013, the Court decided that the courts have a discretion to change the factual circumstances of particular criminal case as formulated in the indictment of the prosecutor's office.⁶²

IX. Peaceful Enjoyment of Possessions

247. Property rights are guaranteed in the Article 23 of the Constitution, which says that property shall be inviolable and that it may be nationalised only for the public interest according to procedures established by parliamentary legislation and then shall be justly compensated.

248. During the Soviet occupation, almost all private immovable property of Lithuanian citizens had been confiscated or nationalised; therefore, after restoration of independence, the Law on Restoration of the Rights of Ownership was adopted. This restitution policy (restoration of nationalised property rights) faced the fact that formerly private property was occupied by other persons or adapted to public purposes. Therefore, restoration of property *in natura* was not always possible. The interests of those former owners had to be balanced with the interests of the current, factual users of this property. All this resulted a large number of judicial cases during the first decade after the restoration of independence (in 1990), including cases before the Constitutional Court.

249. For example, contrary to the constitutional right to ownership were provisions of the said Law saying that restoration to former owners or their heirs of ownership *in natura* of nationalised private houses was possible only if the tenants occupying those houses agreed to move to other residential premises allotted to them, or if not more than 60% of the main construction had been replaced. Similarly, in a ruling of 2 April 2001, the Court voided provisions of the Law limiting restoration of property *in natura* to cases where the real property interests were not encumbered; where the heirs had a residence adjoining the land previously held, even though no particular public need for this land existed; or where the heirs had already ownership rights restored over other real property.⁶³ However, the Court ruled that provisions of the Law on Museums, regarding cultural valuables seized in the period of the occupation (1940–1990) not being subject to return to their former owners, does not contradict Article 23 of the Constitution for public interest reasons.

61. Valstybės žinios, 2003, Nr. 57-2552.

62. Valstybės žinios, 2013, Nr. 119-6005.

63. Valstybės žinios, 2001, Nr. 29-938.

250. It is also interesting to mention that in its decision of 25 November 2002,⁶⁴ the Court ruled that the right to old-age pension should be protected by ownership rights provided in Article 23, which (ownership rights) later were extended even to state pensions for public officials.⁶⁵

251. Ownership rights were also examined by the Constitutional Court in the context of the Law on Hunting. The Court has ruled that some provisions of the Law contradict Article 23 of the Constitution on ownership rights, where owners of land or forest lots did not have to be informed directly that their land or forest was intended to be used for hunting and that they did not have a right to prohibit hunting on their property.⁶⁶ The Court also voided the possibility for municipalities to keep a towed-away vehicle until the infringer paid the fine imposed.⁶⁷ Similarly, the Court also ruled that provisions which did not adequately ensure the possibility of recovering the impounded vehicle once the obligation to pay the costs involved was fulfilled disproportionately limited one's property rights.⁶⁸

§3. SOCIAL, ECONOMIC AND CULTURAL RIGHTS

I. Labour Rights

252. According to paragraph 1 of Article 48 of the Constitution, everyone may freely choose a job or business and shall have the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment. Article 49 states that every employee shall have the right to rest and leisure, as well as to annual paid leave, while Article 50 guarantees to participate in and be a member of a trade union, and Article 51, a right to strike.

253. In a decision of 14 March 2002, the Constitutional Court found as unconstitutional certain provisions of the Law on Pharmaceutical Activities which limited the right of persons without higher pharmaceutical education to possess pharmacies by right of ownership, being in conflict with Article 48, paragraph 1.⁶⁹ In its decision of 13 December 2004, the Court held that completely excluding the right of civil servants to work also in private entities and to receive other remuneration, as provided for in the then Law on Public Service, contradicts Article 48.⁷⁰ It is worth

64. Valstybės žinios, 2002, Nr. 113-5057.

65. For example Constitutional Court, Decision of 4 Jul. 2003. Valstybės žinios, 2003, Nr. 68-3094.

66. Constitutional Court, Decision of 13 May 2005. Valstybės žinios, 2005-05-19, Nr. 63-2235.

67. Constitutional Court, Decision of 10 Apr. 2009. Valstybės žinios, 2009-04-16, Nr. 42-1624.

68. Constitutional Court, Decision of 20 Dec. 2013. Valstybės žinios, 2013-12-21, Nr. 133-6792.

69. Valstybės žinios, 2002, Nr. 28-1003.

70. Valstybės žinios, 2004, Nr. 181-6708.

mentioning also that in a decision of 1 July 2013, the Court held that, during an economic crisis, the legislature may reduce public salaries, but only proportionally and not progressively (i.e., salaries of those earning more may not be reduced progressively more).⁷¹

II. Social Rights

254. According to Article 52, the state shall guarantee its citizens the right to receive old-age and disability pensions, as well as social assistance in the event of unemployment, sickness, the death of a spouse, the loss of the breadwinner, and other cases provided for by law. Implementing this constitutional provision included establishing the Social Insurance Fund and the National Health Insurance Fund. The former provides forms of social insurance: old-age and disability pensions, as well as other social cover (unemployment relief and child allowance). The latter provides major medical services free of charge for all employees. According to the Law on State Pensions, in Lithuania there are also various state pensions funded out of the state budget and paid to former prominent statesmen, public figures and sportsmen, judges and other public officers, and to victims of the Soviet regime. Therefore, it is possible for some persons to receive both social security and state pensions.

255. The Constitutional Court has developed very comprehensive case law on social rights, especially during and after economic (financial) crisis of 2008–2012. Generally speaking, the main rationale of the Court's case law on this issue was focused much more on the idea of a social state not linking this idea with the state's economic (financial) ability.

256. As was noted, the Court had already adopted the position in a 25 November 2002 decision that one's right to an old-age, disability or state pension is a property right and if reduced should be compensated.⁷² For example, on 3 December 2003, it ruled that certain provisions of the Law on State Social Insurance Pensions reducing social insurance pensions if a person has other income contradict not only Article 52 (right to pension) but also Article 23 (property rights) and Article 48 (right to choose a job or business).⁷³ The same rationale was confirmed by the Court, when dealing with reduced pensions during economic crises for those pensioners having other incomes.⁷⁴ In a 4 July 2003 ruling, it also held that legal rules which provide that public officers convicted of intentional criminal acts should be stripped of their state pension contradicted Articles 52 (right to pension) and 23 (property rights).⁷⁵ In a ruling of 20 April 2010 and a decision of 29 June 2010, the

71. Valstybės žinios, 2013, Nr. 103-5079.

72. Valstybės žinios, 2002, Nr. 113-5057.

73. Valstybės žinios, 2003, Nr. 115-5221.

74. Constitutional Court, Decision of 6 Feb. 2012. Valstybės žinios, 2012, Nr. 109-5528.

75. Valstybės žinios, 2003, Nr. 68-3094.

Court stated that reductions in social security and state pensions (including pensions of judges) should be compensated for even if they were reduced during economic crises due to reduced social security funds and state budget.⁷⁶

III. Cultural Rights

257. Cultural rights are rather rarely examined in the case law of the Constitutional Court. Because the right to education has been already analysed above in the chapter on civil and political rights, here the right to academic freedom will be addressed. According to Article 42, culture, science and research, and teaching shall be free; the state shall support culture and science, and shall take care to protect Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects. Interpreting this article, the Constitutional Court has ruled that autonomy of University has the purpose of removing teachers and researchers from the influence of political power and of providing ‘the right independently to determine and establish the University’s organisational and governmental structure, its relations with other partners, the order of research and studies, the academic syllabus, the order of student enrolment, to resolve other related questions’.⁷⁷ This idea was further developed in its decision of 8 July 2005 finding that the constitutional freedom of culture includes: (1) the freedom of creative activity which, in its turn, comprises the right of every person freely to create material and spiritual cultural values (freedom of the process of creation) and the right to spread or distribute in any other way the material and spiritual cultural goods created (freedom of spreading products of creative activity); (2) the freedom of accessibility to cultural values (i.e., freedom of every person to use created cultural goods).⁷⁸ In a decision of 28 October 2009 the Court stated that science and research may not be made a political or ideological issue; the scientist may not be forced to accept any scientific views and values and that scientists or researchers may not be discriminated against on the basis that the sphere or subject area of their scientific research is not in line with certain political or ideological views. The Court also mentioned that freedom of culture (under Article 42) is interlinked with other human rights, especially with the right to have one’s own convictions and freely to express them and the right to information (Article 25).⁷⁹

258. In that 8 July 2005 ruling, the Court also decided that the privatisation of the ‘House of Artists’ (the building in Vilnius for offices of various artistic associations) is not allowed because, according to the Constitution, the state should support the system of cultural institutions.

76. Valstybės žinios, 2010, Nr. 134-6860.

77. Constitutional Court, Ruling of 5 Feb. 2002. Valstybės žinios, 2002, Nr. 14-518.

78. Valstybės žinios, 2005-07-19, Nr. 87-3274.

79. Valstybės žinios, 2009, Nr. 130-5652.

§4. MINORITY RIGHTS AND NON-DISCRIMINATION

I. General

259. According to Article 10 of the Constitution, the territory of the State of Lithuania shall be unitary and whole and shall not be divided into any quasi-state formations. Therefore, any substate territorial autonomy (including those based on ethnicity) is forbidden by the Constitution. However, cultural autonomy for ethnic minorities is guaranteed by the Constitution. Article 37 provides that citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs, while Article 45 says that the state has to provide support for ethnic communities, who shall independently manage the affairs of their ethnic culture, education, charity, and mutual assistance.

260. The Polish minority group is the biggest ethnic minority in the country, forming around 7% of the population (approx. 162,000 persons in 2016). The largest Polish diaspora lives in the city of Vilnius, the Vilnius region, including the municipality of Šalčininkai (in this municipality Poles constitute 77% of residents). The Russian speaking community (approx. 6% in all the country) is concentrated in the capital, Vilnius (13%), the port of Klaipėda (28%), and the municipality of Visaginas (56%), which during Soviet times was built for workers at the Ignalina Nuclear Power Plant. Other ethnic minorities do not form more than 1% of the population. It has been noted above that there are Polish and Russian public kindergartens and secondary schools in areas where those ethnic minorities are concentrated. However, Lithuanian is an official language in higher education, military service and other public spheres. Official documents are written in Lithuanian, but civil servants may answer orally in the language in which they were addressed (if they know it too). On the buildings of Šalčininkai and the Vilnius rural municipality, information plates are bilingual.

261. Fifty years of Soviet occupation resulted in the main foreign language spoken in Lithuania being Russian, which was the *lingua franca* in the Soviet Union. This historic feature influenced the existence of Article 14 of the Constitution reading, '[T]he official language shall be Lithuanian.' Application of this provision led to some tension among certain ethnic groups, especially the Poles. At the end of the 1990s, the Vilnius District Court dealt with a case where a Lithuanian citizen sought to use Polish diacritics, which do not exist in the Lithuanian alphabet, in a Lithuanian passport he was trying to have legitimised. The case was decided by the Constitutional Court which, on 21 October 1999, rejected such a possibility saying that according to Article 14, a Lithuanian passport (being an official document) could not tolerate foreign letters.⁸⁰ But the same Court, in a 6 November 2009 decision,⁸¹ adopted a softer position, where competence to decide on the use of foreign letters (e.g., in the Lithuanian alphabet the letters 'w' and 'q' do not exist) or diacritics was

80. Valstybės žinios, 1999, Nr. 90-2662.

81. Valstybės žinios, 2009, Nr. 134-5859.

passed to the National Commission of the Lithuanian language.⁸² After this change of official interpretation to Article 14, ordinary courts in Lithuania started to oblige civil registry offices in municipalities to permit foreign letters in Lithuanian passports, especially in cases of marriage to foreign citizens.

262. Another controversy is with street signage in Šalčininkai and other towns and villages in the Vilnius rural municipality. In both municipalities, a majority of residents are Poles; therefore, these two municipalities decided to allow bilingual street signs. But the Supreme Administrative Court decided that such practice is contradictory to the constitutional status of an official language as interpreted by the Lithuanian Constitutional Court. Those municipalities have refused to comply fully with that decision of the Court. Until 2021, this issue has still not been resolved. There are no legal consequences/sanctions flowing from this ‘civil disobedience’.

II. The Principle of Non-discrimination

263. According to Article 29 of the Constitution, all persons shall be equal before the law, the courts, and other public institutions and officials; no one may be granted any privileges on the grounds of sex, race, nationality, language, origin, social status, belief, convictions, or views. It was already said that the Lithuanian Constitution does not have specific provisions on anti-discrimination; therefore, the Lithuanian Constitutional Court treats the latter principle as part of the constitutional equality principle.

264. In a decision of 7 May 2010, the Supreme Administrative Court obliged the Vilnius municipality ‘to coordinate’ with organisers of the ‘Baltic Pride’ march on Vilnius’ Gediminas Avenue (the capital’s principal street). This decision was partially based on EU Recommendation CM/Rec (2010)5 of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity.

82. According to the Law on National Commission of the Lithuanian Language, one of the main tasks of the Commission is to establish the directions of regulating the Lithuanian language, to decide the issues of standardisation and codification of Lithuanian language. Valstybės Žinios, 2001, Nr. 102-3628.

Chapter 3. Rights and Status of Foreigners

265. Major human rights in the Lithuanian Constitution are guaranteed for all individuals regardless of their citizenship. However, political rights are usually tied to nationality. For instance, voting rights and rights to contest election extend to foreigners only for elections to municipal councils and the European Parliament (in the latter case, elections may take part only for the EU citizens permanently residing in Lithuania). But some other political and social rights, such as the rights of petition, to criticise the government, ... , to some services of medical care free of charge, and to old-age and disability pensions are granted only to Lithuanian citizens by the Constitution.

266. According to the Law on the Legal Status of Aliens, the residence of aliens in the Republic of Lithuania shall be controlled by the police, the Migration Department (under the Ministry of the Interior), and the State Border Guard Service (also under the Ministry of the Interior) in association with state and municipal institutions and agencies of the Republic of Lithuania. An alien to whom a visa-free regime is applied shall have the right to enter the Republic of Lithuania and stay in the Republic of Lithuania without a visa. But he may stay in the Republic of Lithuania and any other Schengen State for a maximum of 90 days in a 180-day period. The same entry and residence rights apply to aliens who are not citizens of an EU Member State but who are nonetheless in possession of a valid EU residence card issued by one of the EU Member States.

267. Where a non-resident alien lodges an application for asylum in the Republic of Lithuania, the decision on admission into the Republic of Lithuania or refusal is taken by the Migration Department. A decision to refuse admission into the Republic of Lithuania is made by the State Border Guard Service. The State Border Guard Service controls the entry of aliens into the Republic of Lithuania on the external borders as well as internal borders of the EU (during a temporary reintroduction of border control).

268. The Law on the Legal Status of Aliens provides that there are two types of residence permits for foreigners: a temporary and a permanent residence permit. A residence permit for the Republic of Lithuania may be issued or renewed to a foreigner if that person: (1) fulfils the conditions of entry set out in the Schengen Borders Code; (2) is in possession of a valid document evidencing health insurance coverage; (3) has sufficient means of subsistence and/or in receipt of regular income sufficient for his stay in the Republic; (4) has suitable residential premises in the Republic; (5) is permitted to work or study in Lithuania; and (6) delivers sufficient personal data and a list of visits and stays in foreign states, if required.

269. According to the Law on Refugee Status in the Republic of Lithuania,⁸³ a foreigner has a right to apply for asylum in Lithuania. An application for asylum

83. Valstybės žinios, 2000, Nr. 56-1651.

may be lodged at border crossing points into the Republic of Lithuania or within the territory of the Republic of Lithuania (where the border legal regime is valid with the State Border Guard Service, with a territorial police agency or with the Foreigners' Registration Centre). The applicant also has a right to apply for refugee status. Refugee status will be granted to an asylum applicant who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of citizenship and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a citizenship of and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

270. According to the Law, a foreign citizen may be relocated to Lithuanian territory from another EU Member State after an appropriate decision of the Government. The Migration Department has to make the decision concerning every foreign citizen to be relocated into Lithuanian territory. The Law provides various means of integrating foreigners into the political, social, economic and cultural life of Lithuania.

271. An alien shall be expelled from the Republic of Lithuania where: (1) the person failed to comply with the obligation to leave the Republic of Lithuania within a specified time limit or failed to leave voluntarily within the time limit stipulated in a decision to return him to a foreign state; (2) the alien has unlawfully entered the Republic of Lithuania or is staying there illegally and there are no mitigating factors; (3) the alien's stay in the Republic of Lithuania represents a threat to national security or public policy; or (4) a decision has been taken to expel the alien from another state pursuant to Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

272. The Law likewise specifies the cases in which foreigners may be expelled from Lithuanian territory: (a) the person failed to comply with the obligation to leave the Republic of Lithuania within the specified time limit; (b) the person has unlawfully entered the Republic of Lithuania; (c) the person's stay in the Republic of Lithuania represents a threat to national security or public policy; (d) a decision has been taken to expel the alien from another state pursuant to Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

273. Matters concerning the application of provisions of the Law on the Legal Status of Aliens are heard by the administrative courts.

Part IV. Specific Issues

Chapter 1. National Defence, Foreign Affairs and Treaty-Making Powers

§1. NATIONAL DEFENCE

274. According to the Constitution, no weapons of mass destruction and no foreign military bases may be on the territory of the Republic of Lithuania. Article 139 of the Constitution provides that the defence of the State of Lithuania against a foreign armed attack shall be the right and duty of each citizen of the Republic of Lithuania; citizens of the Republic of Lithuania must perform military or alternative national service according to procedures established by law. As of 2008, compulsory military service was suspended in the country, but in 2015, it was reinstated because of changes to the geopolitical situation in Eastern Europe. Regardless of the constitutional provision however, no alternative national service in Lithuania has yet been established. In a 4 July 2017 ruling, the Constitutional Court refused to grant any exemption to clergy of the Jehovah's Witnesses, saying that not only their clergy but also the clergy of traditional religions should also not be exempt from the constitutional duty to perform military service.⁸⁴

275. Article 140 of the Constitution says that the main issues of national defence shall be considered and coordinated by the State Defence Council, which consists of the President of the Republic (as Head of the Council), the Prime Minister, the Speaker of the *Seimas*, the Minister of National Defence, and the Commander of the Armed Forces.

276. Article 142 of the Constitution says that the *Seimas* shall announce state of war, mobilisation or demobilisation, or adopt the decision to use the armed forces when the need arises to defend the country or fulfil the international obligations. Moreover, in the event of an armed attack threatening the sovereignty of the state, the President of the Republic may immediately adopt a decision on defence against the armed aggression, announce state of war, mobilisation, and submit these decisions for approval at the next sitting of the *Seimas*. The *Seimas* shall approve or overrule the decision of the President of the Republic.

84. TAR, 2017-07-04, Nr. 11471.

§2. FOREIGN RELATIONS

277. Already in the Act of 11 March 1990 ‘On Re-Establishment of Independence’ it was stated that ‘Lithuania stresses its adherence to universally recognised principles of international law’. The same point was made by Article 135 of the 1992 Constitution according to which, in implementing foreign policy, the Republic of Lithuania shall follow universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice.

278. As noted above, according to Article 84 of the Constitution, the President appoints and recalls diplomatic representatives of the Republic of Lithuania to foreign states and international organisations, upon submission by the Government, and confers the highest diplomatic ranks and special titles. The President also receives the letters of credentials and recall of diplomatic representatives of foreign states. According to the Law on the Office of President, decrees of the President concerning the appointment and recall of diplomatic representatives of the Republic of Lithuania to foreign states and international organisations shall be co-signed by the Prime Minister, and decrees concerning the conferment of highest diplomatic ranks and special titles, by the Minister of Foreign Affairs.

279. Neither the Constitution nor legislation specifies who shall represent Lithuania in the European Council of the EU. But following the practice of the last decade, this is usually the President of the Republic.

§3. THE TREATY-MAKING POWER

280. According to Article 138 of the Constitution, international treaties ratified by the *Seimas* shall be a constituent part of the Lithuanian legal system and according to the 1999 Law on International Treaties, ratified international treaties and agreements should have direct effect and also priority over national legislation. The Constitutional Court has approved this priority principle of ratified international treaties in its jurisprudence, stressing nevertheless that international treaties should not contradict the Constitution. According to the 2004 Constitutional Act ‘On Lithuania’s Membership in the EU’ (which is a part of the 1992 Constitution itself), where it concerns the founding treaties of the EU, the norms of EU law shall be applied directly, and in the event of a conflict of legal norms, these shall have supremacy over the laws and other legal acts of the Republic of Lithuania. However, this priority of the EU law does not extend to the Constitution itself according to the case law of the Constitutional Court.⁸⁵

281. In this context, it should be said that a ‘ratification’ procedure in the Lithuanian legal system means that the *Seimas* needs to adopt a formal ratification act (a

85. Constitutional Court, Ruling of 14 Mar. 2006. Valstybės žinios, 2006, Nr. 30-1050.

statute), but one not necessarily including the text of particular international treaty itself. The text of that international treaty/agreement which is to be ratified by the *Seimas* is as a rule subsequently published in the Registry of Legal Acts (sometimes this can last for several years). Therefore, according to the Constitutional Court, there is a distinction between ratified and unratified international treaties.⁸⁶ The Court ruled that only ratified international treaties have priority over national legislation (subject to not contradicting the Constitution), while treaties unratified but acceded to may not contradict not only the Constitution but also parliamentary legislation. The Court here also distinguished between international treaties and agreements concluded by officials *ex officio* having authority to do so in the name of the State of Lithuania (the President, Prime Minister and Minister of Foreign Affairs) and those international agreements of various public agencies concerning cooperation with relevant foreign partners, which might not necessarily be directly applied by the courts.

282. Although the Constitutional Court has competence to review international treaties before and after their ratification, nonetheless in its practice over twenty-five years, it has adopted only one conclusion on such a question, and this regarding the constitutionality of the ECHR before its ratification by Parliament.⁸⁷ After ratification of the ECHR, the Constitutional Court has tended to interpret the Constitution in the light of ECtHR judgments, to ensure that Lithuanian legislation is in conformity with the minimum standards of European human rights set out in ECtHR case law. Nevertheless, there has been at least one ECtHR judgment where the latter Court found a violation of the Convention by a rule settled down by the ruling of Lithuanian Constitutional court.⁸⁸ In this judgment the ECtHR decided that the permanent disqualification from election of impeached President Paksas violated the principle of proportionality under Article 3 of Protocol No. 1. of the ECHR.

283. Article 138 of the Constitution might be read as encouragement to apply international legal instruments to case law. According to Article 456 of the Code of Criminal Procedure, a decided case might be reopened if the UN Human Rights Committee decides that sentencing by a national court violates the International Covenant on Civil and Political Rights and its Additional Protocols or when the ECtHR decides that a national judgment breaches the ECtHR and reopening the case is the only way to redress those violations. This does not apply to judgments of the Constitutional Court.⁸⁹

86. Constitutional Court, Ruling of 17 Oct. 1995. *Valstybės žinios*, 1995, Nr. 86-1949.

87. Constitutional Court, Conclusion of 24 Jan. 1995. *Valstybės žinios*, 1995, Nr. 9-199.

88. *Paksas v. Lithuania* [GC], No. 34932/04, ECHR 2011-I (decision of 6 Jan. 2011) concerning the Constitutional Court, Ruling of 25 May 2004.

89. For the application of international law in Lithuanian legal system *see further*, e.g., Vaidotas A. Vaičaitis. *Country Report – Lithuania*. In: *International Law Through the National Prism: The Impact of Judicial Dialogue*, edited by Wyrozumska, A. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, 2017, pp. 105–134. (http://dspace.uni.lodz.pl:8080/xmlui/bitstream/handle/11089/24599/Wyrozumska_Transnational_Judicial_Dialogue.pdf?sequence=1&isAllowed=y).

284. The President, the Prime Minister or Minister of Foreign Affairs may conclude international treaties *ex officio*, but most important international treaties are ratified by the *Seimas* in order to be effective. Therefore, according to Article 138 of the Constitution, the *Seimas* shall ratify the following international treaties: (i) on the alteration of the boundaries of the State of the Republic of Lithuania; (ii) on political cooperation with foreign states, mutual assistance treaties, and treaties related to the defence of the state; (iii) on the renunciation of the use of force or threatening of force, as well as peace treaties; (iv) on the presence and status of the armed forces of the Republic of Lithuania on the territory of foreign states; (v) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations; and (vi) on multilateral or long-term economic treaties. Laws may also provide for other cases of ratification. In application of this constitutional provision was the ECHR thus ratified by the *Seimas* in 1995. In 2004, the *Seimas* ratified the North Atlantic Treaty Organization as well as the Treaty on Accession to the EU, but the latter only after an affirmative referendum result. In 2018, the *Seimas* ratified the Convention on the Organisation for Economic Co-operation and Development.

Chapter 2. Taxing and Spending Power

285. According to Article 95 of the Constitution, the Government shall draw up a draft state budget and present it to the *Seimas* not later than seventy-five days before the end of the budget year, and the *Seimas* has the power to approve the annual state budget and impose state taxes. The Constitution also says that decisions concerning state loans shall be adopted by the *Seimas* upon the proposal of the Government. The powers of the *Seimas* and Government in preparation and approval of the state budget are thus delineated. Consequently, the Constitutional Court has overruled a legislative provision obliging the Government in drafting the budget to take account of the opinion of the *Seimas* on the size of expenditure desired for the *Seimas* chancellery.⁹⁰ However, the Court has also ruled that the Government's decision to organise a special auction of Government securities without discussion in the *Seimas* contradicts the Constitution.⁹¹ Further, it also held that certain provisions of the Law on the Approval of the 1998 State Municipal Budgets, which granted the right to the Government to change approved (by parliamentary statute) appropriations of the state budget following the reassignment of certain functions of Ministries, counties and state services, contradict the constitution.⁹²

286. The budgetary system of the Republic of Lithuania consists of the independent state budget and independent municipal budgets. According to the Constitution and the Law on Local Government, municipal councils have the right to establish local levies and provide tax concessions (e.g., for land tax) at the expense of their own budgets. Despite the latter constitutional provision, the *Seimas* has the last word on the size of expenditure in municipal budgets when it approves the so-called consolidated budget. For example, in a ruling on 4 December 2004 the Constitutional Court decided that some legislative attempts to decentralise wages of public servants (by establishing differences among various municipalities) contradicted the Constitution. The Court also annulled a legislative provision which limited the competence of municipal councils to establish tariffs of land tax, in a 7 December 2016 ruling.

287. The Constitutional Court has also ruled that the measures and methods of state economics, including the aspect of reasonableness, cannot be a reason to question the constitutionality of that legal regulation even if it turns out later that there were better alternatives for the economic policy.⁹³

288. According to the Constitution (Article 127), revenue for the State Budget shall be raised from taxes, compulsory payments, levies, income from state-owned property, and other income. The Law on Tax Administration specifies particular

90. Constitutional Court, Ruling of 11 Jul. 2002. Valstybės žinios, 2002, Nr. 72-3080.

91. Constitutional Court, Ruling of 17 Jun. 1997. Valstybės žinios, 1997, Nr. 58-1351.

92. Constitutional Court, Ruling of 9 Jul. 1999. Valstybės žinios, 1999, Nr. 61-2015.

93. Constitutional Court, Ruling of 2 Mar. 2009 Valstybės žinios, 2009, Nr. 25-988; Constitutional Court, Ruling of 11 Jun. 2015. TAR, 2016-01-01, Nr. 1.

principles of state taxation: equality of taxpayers, fairness and universal obligations, clarity of taxation, and precedence of content over the form of taxation. The same Law provides a list of the types of state taxes: (1) value-added tax, (2) excise duties, (3) personal income tax, (4) immovable property tax, (5) land tax, (6) state natural resources tax, (7) petroleum and gas resources tax, (8) tax on environmental pollution, (9) consular fees, (10) stamp duty, (11) inheritance tax, (12) compulsory health insurance contributions, (13) contributions to the Guarantee Fund, (14) state-imposed fees and charges, (15) lottery and gaming tax, (16) fees for the registration of industrial property objects, (17) corporate income tax, (18) state social insurance contributions, (19) tax on a surplus amount in the sugar sector, (20) production charge in the sugar sector, (21) customs duties, (22) deductions from income under the Law of the Republic of Lithuania on Forestry, (23) tax on the use of state property, and (24) social tax (a financial measure of the government to tax companies in order to compensate some of the social needs of society).

Chapter 3. Emergency Laws

289. The Lithuanian Constitution has some provisions concerning a state of emergency. First, according to Article 144, when a threat arises to the constitutional system or public order, the *Seimas* may declare a state of emergency. Second, the period of the state of emergency shall not exceed six months (the *Seimas* may adopt a decision to extend this period after its expiration). Third, upon declaration of a state of emergency, some human rights and freedoms may be limited temporarily. In particular, the Constitution specifies Articles 22 and 24 (private life, including the means of personal communication and private dwelling), 25 (freedom of speech, freedom of expression, and a right to information), 32 (freedom of movement and settlement), and 35 and 36 (freedom of assembly and association). Fourth, a decision to declare the state of emergency should be adopted by the *Seimas*, but in cases of urgency the President of the Republic has the right to declare one, which later shall be approved or overruled by the *Seimas*. Fifth, courts with extraordinary powers may not be established during a state of emergency. Sixth, a state of emergency does not preclude the organisation of elections. Seventh, during a state of emergency or state of war, the Constitution may not be amended.

290. In 2002, the Lithuanian Law on a State of Emergency was passed according to which a ‘commandant’s head-quarters for the protection of public order’ may be established. According to this Law, certain preventive measures may be implemented during the state of emergency. These include the use of state monetary reserves, special protection of publically important entities and objects, special protection of state borders, limitations on the issue of firearms licenses, limitations on public transport, the introduction of curfews and other restrictions, and the detention of people without charge.

291. The Constitution also provides that the *Seimas* may announce state of war, mobilisation or demobilisation, or decide to use the armed forces when the need arises to defend the country or to fulfil international obligations. In the event of an armed attack threatening the sovereignty of the state or its territorial integrity, the President of the Republic shall immediately adopt a decision on the defence against armed aggression, impose martial law, or announce mobilisation, and then submit these decisions for approval of the *Seimas* at its next sitting, or immediately convene an extraordinary session in the period between sessions of the *Seimas*. Similarly, with a state of emergency, the *Seimas* has the discretion to approve or overrule this decision of the President of the Republic. Along with restrictions on human rights specified for the state of emergency, electoral rights may also be suspended. Therefore, if a regular election must be held in time of war, either the *Seimas* or the President of the Republic can adopt the decision to extend the term of powers of the *Seimas*, the President of the Republic, or municipal councils. Military courts may only be established during state of war, and these will function alongside ordinary courts. Their competence may extend to crimes against humanity, war crimes, crimes against the independence and integrity of the Lithuanian State, crimes against the Lithuanian Military Defence system and other crimes committed by military staff.

292. Lithuanian Law on State of Emergency and other laws further particularises provisions of the Constitution. The Lithuanian Constitutional Court has not heard any cases concerning a state of emergency or war. Since the retrieval of independence in 1990, no state of emergency of martial law has ever been put into practice in Lithuania. During the beginning of the COVID-19 crises, in February 2020, an extreme situation was announced by the Government (according to the Law on Civil Safety⁹⁴), which was used to fight with the pandemic alongside with quarantine legal regime, which was introduced by the Government in March 2020 (according to Law on Infectious Disease⁹⁵). As both special legal regimes drastically limited constitutional human rights (privacy, personal data protection, freedom to movement, assembly, association, work, education etc.), they were criticised by some legal scholars for their inconsistencies by legal form (these limitations were introduced mostly by governmental decrees, but not by parliamentary statute; some of them even being not published in the official gazette) and for being even more severe than those provided in the Constitution for state of emergency.⁹⁶

94. *Čivilinės saugos įstatymas*. Valstybės žinios, 1998, Nr. 115-3230.

95. *Zmonių užkrečiamų ligų profilaktikos ir kontrolės įstatymas*. Valstybės žinios, 1996, Nr. 104-2363.

96. Vaidotas A. Vaičaitis. *Specialieji teisiniai režimai Lietuvos teisinėje sistemoje*. Teisė, 2020, t. 117, pp. 79–98.

Chapter 4. The Constitutional Relationship Between Church and State

§1. INTRODUCTION

293. Lithuania is traditionally a predominantly Catholic country (about 80% of actual inhabitants). Russian Orthodox believers constitute around 4% in the country; other religious communities each constitutes about 1% of believers. Although officially only 10% are non-believers in Lithuania, the recent atheist ‘Soviet heritage’ and contemporary consumerism has resulted in Lithuania being largely a secular society.

294. The Lithuanian Grand Duchy was finally Christianised (from paganism) only in 1387, when the Lithuanian Grand Duke Jogaila (*pol. Jagiello*) decided to accept the Polish crown after being baptised. After the Reformation in the sixteenth century, a majority of the Lithuanian nobility (in the modern territory of the country) became members of the Evangelic Reformed Church. But due mainly to the influence of Catholic Poland (and its Catholic royal court), a majority of them reconverted to Catholicism by the end of the seventeenth century. The eastern territories of the Grand Duchy (the modern Belarus and Ukraine) remained Orthodox, but in 1595 under the Union of Brest, part of Orthodox Church in these territories accepted the authority of the Roman Pope and established what is now called the Greek Catholic Church. The Western part of modern Lithuania, which until the First World War belonged to Eastern Prussia, was predominantly Lutheran (from the beginning of the sixteenth century up to the Second World War).

295. During the Soviet occupation (1945–1990), an atheist ideology was the only officially recognised philosophical worldview in the country. Churches and members of religious communities were persecuted; leaders of these communities were deported to Siberia or even murdered; a large part of the churches (especially in the cities) were closed and their property nationalised. Therefore, just after the restoration of independence in 1990, the Lithuanian Parliament adopted the Act of Restoration of the Status of the Catholic Church. This Act recognised the canonical autonomy of the Catholic Church and promised to compensate the damage done to it by the Soviet regime. Major provisions of the Act later were included into the text of the 1992 Constitution.

§2. FREEDOM OF RELIGION

296. Article 26 of the Constitution reads as follows:

1. Freedom of thought, faith and conscience shall not be restricted.
2. Everyone shall have the right to freely choose any religion or faith and, either alone or with others, in private or in public, to profess his religion, to perform religious ceremonies, as well as to practise and teach his belief.

3. No one may compel another person or be compelled to choose or profess any religion or belief.
4. The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person.
5. Parents and guardians shall, without restrictions, take care of the religious and moral education of their children and wards according to their own convictions.

297. Freedom of religion was one of the most neglected human rights during the time of the Soviet occupation. It is interesting that Article 26 begins with ‘freedom of thought, faith and conscience’ and ends with ‘freedom of religion’, which shows that these concepts are interrelated. On the one hand, freedom of thought, faith and conscience is the broader notion; but on the other, freedom of religion is not only an individual, but also a collective, right. This collective aspect of the freedom of religion is clearly articulated in paragraph 2 of Article 43, which speaks of right to perform religious (collective) ceremonies. Thus, freedom of religion under the Lithuanian Constitution is revealed as an individual right stemming from the freedom of thought and conscience, including one’s right to have a personal philosophical worldview. However, freedom of religion (especially in its traditional conception) is indispensably related to the freedom of association and other collective rights (in order to be put in practice).

298. Thus, the 2000 Lithuanian Penal Code first protects commitments, not against an individual freedom of faith, but against the collective aspect of the freedom of religion. For example, the title of Article 171 of the Code is ‘Disturbance of religious ceremonies or religious celebrations’. This article was applied only once since its adoption. On 15 August 2018, three actors two dressed as priests and the third as pope entered a Catholic Church in Turgeliai (a village in the municipality of Šalčininkai) just before the Mass and, in front of the assembled parishioners, performed a prepared invitation to a later artistic commercial event without the permission of the priest. Moreover, this event was recorded by one member of the artistic group and shared on social media later on. The Supreme Court in its 27 April 2021 judgment decided to uphold the guilty verdict of lower courts regarding these actors and their director for unlawful interference in the religious service in the church (Article 171 of the Penal Code).⁹⁷

299. In this context, the decision of the Supreme Administrative Court on 25 April 2014 should be mentioned, where symbols of Jesus and Mary were used in the advertising of a jeans brand. The Court ruled that this advertising did not conform to good morals and to the principles of respecting the values of the Christian

97. Lietuvos Respublikos Aukščiausiasis Teismas. Baudžiamoji byla Nr. 2K-56-511/2021.

faith and its sacred symbols, and that, therefore, the advertisements breached provisions of the Law on Advertising.⁹⁸ Nevertheless, later on, the ECtHR held that Lithuanian authorities in this case failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other hand, the applicant company's right to freedom of expression and found a violation of Article 10 of the Convention.⁹⁹

§3. OFFICIAL RECOGNITION OF A RELIGION AND ITS EFFECTS

300. If in modern democratic models, the constitutional relationship between Church and State might be divided into three categories of a strong separation (e.g., France), an established church (e.g., Greece), and cooperation, then the contemporary Lithuanian State should belong to the latter model.

301. This idea of cooperation stems from different constitutional provisions. First, State and Church cooperate in the registration of marriage. Article 38 (paragraph 4) says, 'the State shall recognize the church registration of marriages', which means that couples do not need any civil marriage if they prefer a religious ceremony. In the latter case, a church official has to inform the particular municipality within a week about the act of marriage performed and registered in that church or religious community. A second sphere of cooperation is education. According to Article 40, public schools shall provide religious instruction at the request of parents. This means that there are religion teachers available at public schools who are paid by the municipality in the same way as other teachers. Pupils in Lithuanian public schools have to follow instruction in ethics, which is divided into secular ethics or religion. In Lithuanian and Polish public schools, this is as a rule Catholicism, and in Russian schools, Russian Orthodoxy. Programmes of religious education are prepared by the respective religious community. Finally, according to Article 43 (paragraph 5), the status of a particular church or religious community in the state shall be established not only by law but also by mutual agreement. Realising upon this constitutional provision, three international treaties between the Lithuanian State and the Holy See were concluded in 2000: (1) one concerning the juridical aspects of the relations between the Catholic Church and the state; (2) one on 'Co-operation in Education and Culture' and (3) one concerning the pastoral care of Catholics serving in the army. Religious communities other than the Roman Catholic Church do not have officially concluded mutual agreements with the Lithuanian State. Their legal status is regulated by the Law on Religious Communities.

98. Despite this decision, the ECtHR (Fourth section) in a judgment of 30 Jan. 2018 (No. 69317/14) held that application of this Lithuanian judicial decision violated Art. 10 of the EConvHR (right to freedom of expression).

99. ECtHR judgment of 30 Jan. 2018 *Sekmadienis LTD v. Lithuania* (Application No. 69317/14).

302. There are a couple of constitutional provisions in Article 43, which are important in the context of State and Church relations (besides the already mentioned recognition of a certain parity between State and Church). First, there should be no state-established church: the state recognises ‘traditional’ and other churches and religious communities having a base in society. Second, churches and religious communities have canonical autonomy in proclaiming their teachings, performing their rites, their training and charity organisations.

303. As was clear from previous paragraph, although there is no state-established church in Lithuania, the Constitution does not treat all religious communities in the same way. Article 43 establishes a concept of ‘traditional and other recognized’ churches and religious communities. According to the Law on Religious Communities, there are nine ‘traditional religious communities’ in Lithuania: six Christian churches and three other religious communities present on Lithuanian soil from at least the seventeenth century. The six traditional churches are the Roman Catholic, Greek (Ukrainian) Catholic, (Russian) Orthodox, (Russian) Old believers, Lutheran and Reformed churches. The Jewish religious community, the Sunni Muslims (Tatars) and the Karaites as well have the status of a ‘traditional religious community in Lithuania’ according to the Law. The Law also stipulates that those religious communities functioning at least for twenty-five years in the country (after their registration), having a basis in society and whose teaching does not contradict the laws, may request state recognition.¹⁰⁰ Until 2020 the *Seimas* has granted the status of ‘recognized religious community in Lithuania’ to only three churches: the Union of Evangelical Baptists, the Seventh-Day Adventists and the New Apostolic Church.¹⁰¹

304. Traditional churches and religious communities have some privileges regarding other religious communities: according to the legislation, they can teach their religion in public schools at the request of parents; they can have some time at the national broadcast; they can receive financial support from the state and municipal budgets for restitution of the formerly nationalised property and maintaining their religious schools; they can register a church marriage; they can have official chaplains at universities, hospitals, military, prisons and some other public entities; their priests have social security also in the case where they never have been

100. Constitutionality of requirement of functioning for twenty-five years of particular religious community in the country was upheld by the 7 Sep. 2021 decision of the Constitutional Court. TAR, 2021-09-07, Nr. 18922.

101. ECtHR in its judgment of 8 Jun. 2021 Ancient Baltic religious association *Romuva v. Lithuania* (Application No. 48329/19) decided that Lithuanian Seimas by not providing sound arguments for not granting status of ‘state recognized religious community’ to the Baltic religious association *Romuva* has violated Art. 14 in conjunction with Art. 9 of the Convention.

otherwise employed; and clergymen of traditional and the recognised religious communities do not perform compulsory military or alternative service.¹⁰²

102. In this regard, it should be reminded that a deacon of the Jehovah's Witnesses in 2017 (there are about 3,000 members of this religious community in Lithuania up to 2018) tried to challenge (on equality grounds) the constitutionality of a provision of the Law on National Conscription, which exempted from general military or alternative service only clergymen belonging to traditional and recognised religious communities in Lithuania. The Lithuanian Constitutional Court in its Ruling of 4 Jul. 2017 (TAR, 2017-07-04, Nr. 11471) held that the provision did violate not only the constitutional equality principle but also the constitutional requirement that 'the citizens of the Republic of Lithuania must perform military or alternative national defense service' (Art. 139). According to the Court, the latter general constitutional duty to serve the country does not tolerate any exemptions from military or alternative service, regardless the legal status of religious community. With alternative service, it is possible to harmonise this duty with one's freedom of thought, conscience and faith. After this Ruling Ministry of Defence decided to apply not an exemption but a temporary *adjournment* for clergymen of traditional and state-recognised religious communities.

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