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# Introduction to Lithuanian Constitutional Law

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*For those died for democracy and Lithuania's freedom*

Completed in Vilnius, on 25 October 2007,  
the 15<sup>th</sup> anniversary of the Constitution of the Republic of Lithuania

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## Foreward

I would like to thank the Kluwer Legal Publishers and Constantijn Kortmann, Joseph Fleuren & Wim Voermans, the editors of the book “*Constitutional Law of 10 EU Member States. The 2004 Enlargement (Kluwer, 2006)*”, for the opportunity to republish my article on Lithuanian constitutional law.

The idea of republishing the article in Lithuania was born during a conversation with a Croatian professor in 2005, when he asked me to help him find a book on Lithuanian constitutional law in English. Unfortunately, I could not provide him with a short but consolidated text on our constitutional law. Even after my article was published by Kluwer, it was not available in Lithuanian book-stores and libraries.

I, thus, especially want to thank the Vilnius University publishing house (*Vilniaus Universiteto leidykla*) and its director, Leonidas Zabulionis, for agreeing to republish the article as a separate book with the title “Introduction to Lithuanian Constitutional Law”. I would also like to thank Reda Sopranaitė who helped me find appropriate photographs for the book’s illustration. The full text and all the annexes of this book are exactly the same as published in the mentioned Kluwer book in 2006 (see: Vaidotas A. Vaičaitis. *VI. The Republic of Lithuania*). I only added an English translation of the 1992 Lithuanian Constitution, based on the Lithuanian Seimas translation (see: <http://www3.lrs.lt/home/Konstitucija/Constitution.html>) and the ICL translation provided by Martin Scheinin (see: [http://www.servat.unibe.ch/law/icl/lh00000\\_.html](http://www.servat.unibe.ch/law/icl/lh00000_.html)).

\* \* \*

As this article was originally written in 2005, I decided to make some short comments on events in Lithuania's legal and political life during the subsequent two years.

1. The Constitutional Court is gradually changing its earlier position of having a "centralised approach of the interpretation of the Constitution" and moving toward the model of the so called "decentralized interpretation of the Constitution". The Decision of 8 August 2006 of the Constitutional Court [II. 6.2.3.3; 9.2; 22] stated that not only it, but also ordinary and administrative courts in Lithuania may directly interpret and apply the Constitution when they found *lacunae legis* in the text of ordinary legislation and when the administration of justice required such interpretations. I think that this approach is very important in changing the narrow positivistic legal reasoning of Lithuania's ordinary courts toward the so called *constitutional legal mentality* as I pointed out in the article.

In the same decision the Constitutional Court also stressed the importance of judge-made case-law and the phenomenon of *judicial precedent* in order to unify the judicial practice that analogous cases should be decided in a similar fashion. Whether the Court will treat judicial precedent in the *common-law sense* (stressing analogous *facts of the case*) or in the *continental way* (regarding interpretation of the *same statute*) is still not clear, but bearing in mind the predominant Lithuanian legal culture and mentality – we may probably speak of the emergence of the latter concept of *judicial precedent* in Lithuania.

This decision (*sprendimas*) is also important because the Constitutional Court also broadened the concept of its jurisprudence to include not only rulings (*nutarimai*) and opinions (*išvados*), but also – decisions (*sprendimai*) while in my article I had written only about two types of the Court's judgments: rulings (*nutarimai*) and opinions (*išvados*). It should be mentioned here that according to the *Law on Constitu-*

*tional Court* – the decisions (*sprendimai*) should only be adopted on the Court's internal procedural questions: when the Court accepts or refuses to examine a petition; or when it delivers an interpretation of its ruling (without changing its contents) after the request of one of the parties in the case. In other words, the Court's decision (*sprendimas*) is used for more procedural matters while the ruling (*nutarimas*) is the Court's instrument in declaring some piece of legislation void. But in some recent decisions (*sprendimai*) the Constitutional Court decided to broaden the latter's concept (see also the decision of 21 November 2006) by abolishing any real differences between rulings (*nutarimai*) and decisions (*sprendimai*). In other words, the Court's general jurisprudence, including the formulation of new concepts, may be found not only in its rulings (*nutarimai*) and opinions (*išvados*), but also in its decisions (*sprendimai*). This fact may make it more difficult to follow the Court's jurisprudence because it also requires one to take into consideration its decisions (*sprendimai*), the majority of which are of a procedural nature and do not have the same jurisprudential importance as *rulings*.

2. The Constitutional Court in its ruling of 9 February 2007 forced the Parliament to change the *pure political* proportional representation electoral system for municipal Councils established in Lithuania since 1994. According to the former *Law on Elections to Municipal Councils* only residents, included in electoral lists *drawn by political parties*, could be elected to the Council. The Court found that this law to the extent that it provided only for a proportional representation electoral system in municipalities and did not establish the right to vote for a candidate that could be included in the *electoral lists of entities other than political parties*, was in conflict with the Constitution. The Court found that this contradiction arose from the constitutional requirement not to establish any legal regulation by which a person wishing to stand for municipal elections, would be compelled to seek

membership in a political party or to become bound to it. The Court also ruled that according to the *pure political* proportional representation electoral system for municipal councils – the opportunities of permanent residents, who are not citizens of Lithuania, to be included in the electoral lists of candidates drawn by political parties are more limited in comparison with those of citizens of Lithuania because the former according to legislation may not be members of Lithuania's political party. Therefore, the Court called on the Lithuanian Parliament to alter the *Law on Elections to Municipal Councils* to comply its ruling before the 2011 municipal elections.

3. The Constitutional Court in the so called ruling “on dual citizenship” of 13 November 2006 practically prohibited Lithuanian nationals from holding the passport of another country. According to article 12 of the Constitution – “with the exception of cases provided for by law, no one may be a citizen of the Republic of Lithuania and another state at the same time”. In the ruling these “exceptional cases” were interpreted extremely narrowly by the Constitutional Court. Before the adoption of this ruling - the *Law on Citizenship* provided for a difference between foreigners of *Lithuanian descent (origin)* and other foreigners. The former could be granted a Lithuanian passport without the requirement to renounce the citizenship of another state. This provision was found to contradict the mentioned Article 12 of the Constitution.

The *Law on Citizenship* also provided for the President of the Republic to have broad discretion to grant Lithuanian citizenship to *foreigners* “when it is related to public interest or in making the name of the Republic of Lithuania better known” by way of exception - without following the ordinary naturalisation procedure. This provision was also declared void by the Court. According to the Court's reasoning, Lithuanian citizenship may be granted only to those foreigners who not only held some special merits to the Republic of Lithuania,

but had also *established permanent ties with Lithuania and had integrated into its society*. Therefore, the Constitutional Court practically annulled the president's discretion to grant Lithuanian citizenship to foreigners “for special merits to the Republic of Lithuania”, i.e. especially for athletes.

Some groups of society severely criticised this ruling. They affirmed that the Constitutional Court had dissociated from the country many Lithuanians living abroad and holding the citizenship of another country by depriving them of the possibility in the future to have a Lithuanian passport and to participate in the country's political life. Some political attempts already have been begun to organise a public referendum to amend Article 12 of the Constitution and protect the so called “dual citizenship”. Because Article 12 of the Constitution may be amended only by a public referendum, some political initiatives have called for this referendum to be voted during the 2008 parliamentary elections.

4. In the article I also mentioned that the mayors in municipalities are elected not directly by the electorate but by municipal council. It seems likely that the direct elections of mayors will be organised during the 2011 municipality elections as the first vote by the Seimas for amending Article 119 of the Constitution has been already successfully adopted in June 2007 (the parliament still has to approve the amendment a second time with at least a two-thirds majority three months after the first vote).

Vaidotas A. Vaičaitis

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Council of Lithuania (*Lietuvos taryba*) after signing the Act of the Restoration of Independence. Vilnius, February 16, 1918 (photo from the Archives of the Vilnius University Library).

## I. Brief constitutional history

### 1. THE GRAND DUCHY OF LITHUANIA AND THE COMMONWEALTH OF TWO NATIONS

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



of Two Nations existed for more than two centuries until 1795, when it was partitioned by Russia, Prussia and Austria.

## 2. THE FIRST WRITTEN CONSTITUTION

Towards the end of the Commonwealth's existence, the parliament, inspired by the French Revolution and the *Declaration des droits de l'homme et du citoyen*, adopted Europe's first written constitution on 3 May 1791. The document's official title was the Law on Government. The constitution did not proclaim a republican form of government but provided for a hereditary rather than an elected monarchy. It was also a victory for the *tiers état*, whose members were for the first time invited to sit in the parliament. Montesquieu's idea of the separation of powers found expression in the text of the constitution of 3 May 1791. The constitution abolished the principle of *liberum veto*<sup>1</sup> in the parliament, the existence of which had played a major role in the fall of the commonwealth. The constitution remained in force for only two years. The Commonwealth of Two Nations finally disappeared from the map of Europe in 1795. After the end of the World War I, the ideas of national sovereignty and the nation state inspired the creation of two separate republics, Poland and Lithuania.

<sup>1</sup> In the parliament of the Commonwealth of Two Nations every single noble (who represented the council of nobles of a particular administrative unit in the parliament) had a right to veto any decision of the parliament, which meant that a single person could destroy the proceedings of the parliament. Historians regard *liberum veto* as an "abuse of democracy" and one of the main reasons for the country's decadence at the end of the eighteenth century.

<sup>2</sup> Attempts to make Lithuania a monarchy at the end of World War I, with Duke Wilhelm Karl von Urach as King Mindaugas II, failed after Germany's defeat. In 1918 the Lithuanian Council (*Lietuvos Taryba*), which was dominated by the political right-wing, invited Wilhem Karl von Urach to become king and the latter agreed to accept the position. This invitation was made when Lithuania was still occupied by German troops. But after Germany's defeat at the end of 1918, any political links with Germany became unpopular. Moreover, the major political forces (Christian Democrats and Social Democrats) elected to the Constituent Assembly in 1920 were pro-republican.

## 3. BIRTH OF THE MODERN STATE:

### THE FIRST LITHUANIAN REPUBLIC

The modern state of Lithuania was created on 16 February 1918 by the Act of Independence, which proclaimed Lithuania an independent state and the successor to the Grand Duchy of Lithuania. After some hesitation about the country's form of government, in 1920 the Constituent Assembly (*Steigiamasis Seimas*) proclaimed Lithuania a democratic republic<sup>2</sup>. The First Lithuanian Republic<sup>3</sup> lasted until 1940, when the Soviet army occupied the country following a secret agreement between Hitler and Stalin. The first Lithuanian democratic constitution was adopted in 1922, declaring Lithuania a republic with a parliamentary form of government. According to the 1922 Constitution, the unicameral parliament (*Seimas*) was the main actor in the political arena. Members of parliament would be elected for a period of three years by a system of proportional representation. Parliament had the right to elect and dismiss the president (by a two-thirds majority). The cabinet of ministers had to receive a vote of confidence from parliament. The president had the power of veto, which could only be overruled by an absolute majority of the members of parliament. The parliament had sole legislative powers, while governmental directives had the status of subordinate legislation and could only embellish laws passed by parliament. Two later constitutions, which were adopted in 1928 and 1938 by the First Lithuanian Republic after a *coup d'état* in December 1926, strengthened presidential powers and left the country subject to an authoritarian regime<sup>4</sup>.

<sup>3</sup> There is some discussion in contemporary Lithuanian political and legal circles as to whether the republican tradition in Lithuania should be regarded as dating from the Commonwealth of Two Nations or from the inter-war republic (1920-1940).

<sup>4</sup> The presidents of the First Lithuanian Republic were Aleksandras Stulginskis, Christian Democrat (1920-1926); Kazys Grinius, Social Democrat (1926); Antanas Smetona, National Party (1926-1940). The latter came to power after a *coup d'état* on 17 December 1926.

#### 4. THE SOVIET OCCUPATION

The secret protocols of the Molotov-Ribbentrop Pact (August-September 1939) ultimately led to World War II. After Germany had occupied Poland and France, Soviet troops entered and occupied Lithuania, Latvia and Estonia in June 1940. Lithuania's president, Antanas Smetona, left the country the very next day. In August 1940 Lithuania and the two other Baltic countries were incorporated into the Soviet Union. On 23 June 1941, before German troops entered the country's territory, a provisional government was formed in Kaunas and proclaimed the restoration of independence. This declaration was never recognized by Hitler, and the provisional government was forced to go underground in August 1941. The Soviet occupation began in 1944 and was to last until 1990. When the Soviet army entered the country in 1944, an armed resistance movement was formed. It existed for almost ten years until 1953, when the head of the resistance movement, General Jonas Žemaitis-Vytautas (who was also known as the fourth

<sup>5</sup> 16 February 1949 Declaration of the Council of Lithuanian Resistance Movement for Freedom (extract): "The Council of Lithuanian Resistance Movement, representing all of the military groups headed by an unanimous leadership within the territory of Lithuania declares: 1. The Council of Resistance Movement [...] shall be the supreme political body of the nation during the occupation period, in charge of the political and military struggle for liberation of the Nation. 3. Lithuania shall be a democratic republic. 4. The sovereign authority of Lithuania shall belong to the Nation. 6. Provisional National Council shall have legislative power from the end of occupation until democratic Parliament will be elected... 14. New Constitution shall be adopted with regard to principles of democracy and human rights and the restoration of the State of Lithuania shall be implemented in accordance with the spirit of the 1922 Lithuanian Constitution... 16. The Communist Party, as dictatorial and being contrary to independence of the Lithuanian state and to fundamental principles of the Constitution, shall be declared illegal... 22. The Council, joining the efforts of other countries to create a permanent peace founded upon justice and freedom, drawing support from full implementation of the principles of democracy grounded in Christian morality and declared by the Atlantic Charter, President Truman's 12 Points, The Universal Declaration of Human Rights and other declarations of justice and freedom, appeals to all democratic world for assistance in implementing its goals" [...].

Lithuanian president), was captured and executed. The Declaration of 16 February 1949<sup>5</sup>, signed by the Council of the Resistance Movement for Freedom (*Lietuvos Laisvės Kovų Sąjūdžio Taryba*), was made part of the current Lithuanian legal system by a law of 12 January 1999<sup>6</sup>.

#### 5. THE 1992 CONSTITUTION

Inspired by signs of the impending collapse of the Soviet empire and a certain political desire to reform the communist party, underground political, social and religious groups began to surface between 1988 and 1990 and new political groups and movements emerged in the country. On 24 February 1990, with their "independence" program, the main social-political movement, the *Sąjūdis*, won the first free elections after the Soviet occupation, gaining more than two-thirds of the seats in parliament. The first session of the parliament was held on 10 March 1990. The very next day, 11 March 1990, the parliament proclaimed the Act of Restoration of the Independence of the Lithuanian State. This act was followed by passing the symbolic *Law on the Reinforcement of the*

<sup>6</sup> The Resistance Movement for Freedom was an armed anti-Soviet organization that existed from 1944 to 1953. About 100,000 partisans joined the armed anti-Soviet resistance movement in the three Baltic states. The small teams of partisans hid themselves in forests and were known to the population as "the forest brothers". Until 1949, all militias in Lithuania were divided into regional groups (*apygarda*) with different district military leaders (each regional group of partisans consisted of two to five corps, which were split up into smaller detachments and squads). For reasons of security, the partisans lived in underground bunkers in small groups of four or five persons. In 1949, nine regional districts finally unified and formed the Council of the Resistance Movement for Freedom. The chairman of the council (Jonas Žemaitis) was elected from among the leaders of the regional resistance districts. Organized anti-Soviet resistance in the country was finally smothered by the Soviet army and KGB agents in the 1950s. During the anti-Soviet struggle, about 20,000 "forest brothers" were killed in Lithuania alone. Another 140,000 people were sent to concentration camps and 118,000 were deported (see *The anti-Soviet Resistance in the Baltic States*. Genocide and Resistance Research Center of Lithuania. Vilnius. Akreta, 2002).

12 May 1938 *Lithuanian Constitution*<sup>7</sup> and the *Provisional Basic Law*, which served as a transitional constitution. The validity of the 1938 Constitution was suspended on the same day. This Constituent Assembly (*Atkuriamasis Seimas*) completed its task by adopting the 1992 Constitution, after it had been approved in a popular referendum.

Article 150 of the 1992 Constitution also provides that two Constitutional Acts, which were adopted before the constitution itself and which represent the main constitutional foundations of the constitution, are constituent parts of the constitution.

On 11 February 1991, the parliament adopted the Constitutional Law "On the State of Lithuania", which provided that "the state of Lithuania is a democratic and independent republic", basing itself on the results of a plebiscite. The positive outcome of this referendum was very important since the Soviet authorities accused the parliament of usurping public power in Lithuania<sup>8</sup>.

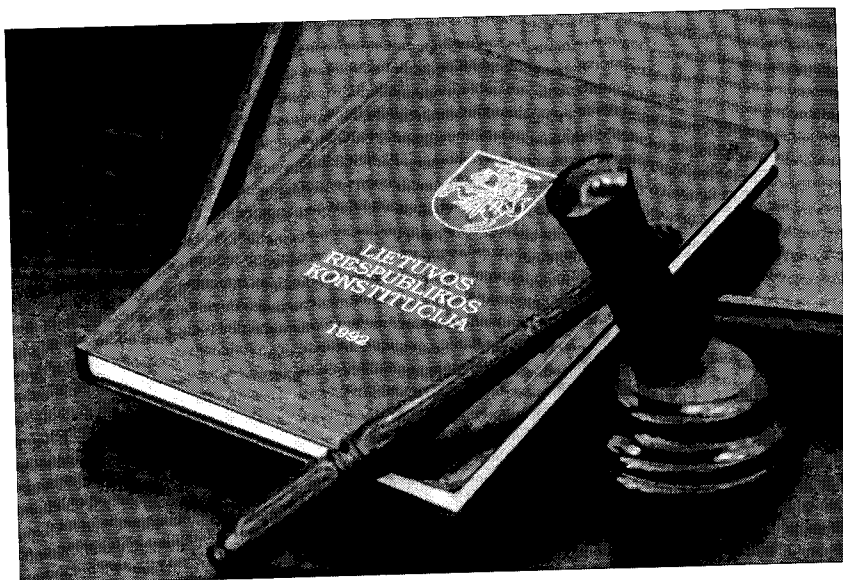
On 8 June 1992, in response to external attempts to incorporate Lithuania into the Commonwealth of Independent States (a form of political union of former Soviet republics dominated by Russia), the parliament adopted the Constitutional Act "On Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Alliances". This Constitutional Act was later approved in a plebiscite. The act provides that (i) Lithuania intends to maintain good mutual relations with all countries that were part of the Soviet Union, (ii) any activities designed to incorporate Lithuania into new alliances formed on the basis of the

<sup>7</sup> On 11 March 1990, the Parliament symbolically restored the validity of the 1938 Constitution in the country in order to show that the Lithuanian state had *de jure* never ceased to exist. On 11 March 1990, the 1938 Constitution was valid for just one hour until the Provisional Basic Law was passed.

<sup>8</sup> The Soviet Union started an economic blockade of Lithuania after the proclamation of the restoration of independence on 11 March 1990.

former Soviet Union are illegal and (iii) troops of the Russian army should not remain in the territory of Lithuania. This latter provision was very important from the perspective of constitutional law since it gave constitutional status to the unlawfulness of the presence of the Russian army in the territory of Lithuania<sup>9</sup>.

<sup>9</sup> The last Russian troops did not withdraw from Lithuanian territory until 31 August 1993.



The Constitution of the Republic of Lithuania (photo from the Archives of the Constitutional Court of the Republic of Lithuania).

## II. Basic elements and principles of the 1992 constitution

According to Article 150, as amended, the constitution formally consists not only of the fourteen sections in the main text of the constitution itself but also of four other constitutional acts: (i) the Constitutional Act “On the State of Lithuania” (1991), (ii) the Constitutional Act on the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions (1992), (iii) the Law “On the Procedure for the Entry into Force of the Constitution” (1992)<sup>10</sup> and (iv) the Constitutional Act “On Membership of the Republic of Lithuania in the European Union” (2004)<sup>11</sup>.

During the thirteen years of its existence up to 2006, the 1992 Constitution has been amended nine times. The main text of the Constitution consists of a short preamble<sup>12</sup> and fourteen chapters:

<sup>10</sup> This law was adopted at the same time as the Constitution.

<sup>11</sup> The Constitutional Act “On Membership of the European Union” was adopted by parliament as a separate Constitutional Act on 13 July 2004 (after approval in a plebiscite), using the procedure for amending the constitution.

<sup>12</sup> “The Lithuanian Nation, having established the State of Lithuania many centuries ago, having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania, having for centuries staunchly defended its freedom and independence, having preserved its spirit, native language, writing and customs, embodying the natural right of the human being and the Nation to live and create freely in the land of their fathers, and forefathers – in the independent State of Lithuania, fostering national concord in the land of Lithuania, striving for an open, just and harmonious civil society and State under the rule of law, by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this Constitution.”

1. The State of Lithuania
2. The Human Being and the State
3. Society and the State
4. National Economy and Labour
5. The *Seimas* (Parliament)
6. The President of the Republic
7. The Government of the Republic of Lithuania
8. The Constitutional Court
9. The Court
10. Local government
11. Finances and the State Budget
12. National audit office
13. Foreign Policy and National Defence
14. Alteration of the Constitution.

The main constitutional principles laid down in the Lithuanian constitution include democracy (Art. 1), equity and justice (Arts. 29, 31 and 109), the subservience of state institutions to the people (Art. 5), the sovereignty of the Nation (Arts. 2, 3, 4 and 9), representative democracy (Arts. 4 and 33), separation of state powers (Art. 5), constitutionalism (Arts. 6, 7 and 110), the protection of human rights as natural rights (Art. 18), the right of association (Art. 35), the principle of free elections (Arts. 34 and 55) and the independence of the judiciary (Art. 109). In its case law, the Constitutional Court has also developed other constitutional principles, which include adherence to the rule of law and the principles of proportionality, legal certainty, defence of legitimate interests, etc.

One of the main features of the Constitution is that it takes precedence over any other national legal act. This is provided for in Article 7, which states that any statute or other legal act is invalid if it conflicts with the Constitution. It is the task of the Constitutional Court to review the constitutionality of parliamentary legislation, directives of the gov-

ernment and decrees of the president (Art. 102). Judicial review of the constitutionality of "lower" executive directives (e.g., those of ministers) is assigned by ordinary law to the administrative courts. Although the *ratio* of Article 7 of the Constitution implies that international treaties and agreements must also conform to the Constitution, it is debatable whether the Lithuanian Constitution always takes precedence over ratified international treaties, for example the Treaty on European Union. The answer to this question depends on which bench is considering it. If we consider it from the perspective of national law (especially that of the Constitutional Court), we can say that the Constitution prevails over any legal act, including international treaties. But from the perspective of European law, the judges of the European Court of Justice, in particular, might arrive at a different conclusion, for example on the basis of the international principle *pacta sunt servanda*.

Another very important feature and principle of the Constitution is its *direct effect*. According to Article 6, the Constitution is directly applicable law. This means that every person may protect their rights in a court of law simply by invoking the provisions of the Constitution without having to wait for an appropriate act of parliament or governmental directive to be passed.

However, this raises another question. Is the principle of direct application of the Constitution only relevant for the Constitutional Court or does it also extend to other courts and legal subjects? I would adopt the latter view, although recent case law of the Constitutional Court refers to "centralized" application and interpretation of the Constitution. In my view, the constitutional principle of the direct effect of the Constitution could be severely weakened if the ordinary courts in Lithuania cannot directly apply the Constitution if, for example, the issue of the constitutionality of legislation has not been raised or when a statute is evidently unconstitutional.



Themis, sculptor Juozas Kalinauskas,  
photo Ramūnas Krupauskas.

### III. The sources of constitutional law

A distinction can be made between historical and actual legal sources of constitutional law. The main historical sources of Lithuanian constitutional law, which do not have legal effect, are the Lithuanian Statutes (*Lietuvos Statutai*) of the sixteenth century, the Constitution of 3 May 1791, the Declaration of Independence of 16 February 1918 and the Constitutions of the First Lithuanian Republic (in particular the Constitution of 1922). The actual legal sources of Lithuanian constitutional law are the Declaration of the Council of the Resistance Movement of 16 February 1949, the Act of Independence of 11 March 1990 and the Constitution of 1992, including the Constitutional Acts of 1991 and 1992 (the Preamble to the Constitution also has a normative character and is used by the Constitutional Court as a source in developing constitutional principles), constitutional principles (especially those developed by the Constitutional Court), the jurisprudence of the Constitutional Court, international treaties and agreements that have been ratified by the *Seimas* and organic and ordinary legislation.

Another important source of constitutional law in Lithuania is European law, in particular the European Convention on Human Rights and the case law of the European Court of Human Rights on the one hand and the founding treaties of the EC and EU (one could also include the EU's

Charter of Fundamental Rights), secondary European legislation and the case law of the European Court of Justice on the other.

Legal doctrine can also be regarded as a source of Lithuanian constitutional law, but the Constitutional Court is fairly reluctant to quote scholarly opinion in its judgments. Decrees of the president and directives of the government are not regarded as sources of constitutional law.

The question of international law was already raised in the previous chapter.

According to Article 138 of the Constitution, only international treaties that have been ratified by the parliament become a part of the Lithuanian legal system. In ratifying international treaties or agreements, the parliament has to pass a Statute (an Act of Parliament). From this we can see that the relationship between the Lithuanian national legal system and international law contains elements of both the monistic and dualistic models.

According to the Law "On international treaties", international treaties and agreements that have been ratified take precedence over ordinary and organic legislation. Any international treaty that impinges on the sphere of parliamentary legislation has to be ratified. According to the jurisprudence of the Constitutional Court, international treaties that have not been ratified by the parliament must conform not only to the Constitution but also to parliamentary legislation.

The final text of the 1992 Constitution was predominantly influenced by three separate drafts. The first was a draft prepared by the *Sąjūdis* coalition, the second was produced by the Liberals, which included a model with a semi-presidential form of government, and the third was the draft constitution prepared by the LDDP (the former Communist Party), which suggested a parliamentary model of government. The authors of the Liberal Party's draft constitution were of the opinion that the new constitution should be a modified version of the 1938 Constitution, while

the other two groups prepared completely new documents. It was ultimately decided to adopt a new Constitution, but the final text of the 1992 Constitution could be described as a compromise between these three draft versions<sup>13</sup>.

<sup>13</sup> For example, the idea of direct presidential elections came from the *Sąjūdis*; the provisions concerning the relations between the state and the church were taken from the Liberals' draft and the idea of organic legislation was taken from the LDDP draft.



President Valdas Adamkus commissioning cadets to the first rank of officer  
(photo by Alfredas Pliadis).

## IV. The state

### 1. THE NATION, TERRITORY AND STATE

*National sovereignty* is one of the basic principles of the Lithuanian legal and political system. The idea of the *Nation* as the founder of the state of Lithuania is enshrined in all contemporary basic legal documents, from the Act of Independence of 1918, the Constitutions of the First Lithuanian Republic, the Declaration of 16 February 1949, the Act of Restoration of the Lithuanian State of 11 March 1990 and the Constitutional Act of 1991 up to and including the 1992 Constitution. The concept of the Lithuanian Nation is traditionally understood in an ethnic sense; a monogenic ethnic group of people is regarded as the historic founder of the state of Lithuania. We also find this ethnic concept in the text of the 1992 Constitution itself, in the Preamble, in Article 14 (the establishment of the Lithuanian language as the official state language), in Article 32 (“everyone who is Lithuanian may settle in Lithuania”) and in Article 78 (the President of the Republic must be a Lithuanian citizen “by origin”). Nevertheless, modern legal science in the country is trying to change this ethnic attitude and adopt a more liberal idea of the Nation as the civil society living together peacefully in the country<sup>14</sup>.

<sup>14</sup> For example, see Egidijus Jarašiūnas, “*Valstybės konstitucinėje teisėje*” in Lietuvos Konstitucinė teisė. LTU, 2002, pp. 486-488.



The principle of national sovereignty is embodied in the 1992 Constitution: first, in the context of internal sovereignty, with the Nation being regarded as the highest political body in the country in several provisions of the Constitution. For instance, "The State of Lithuania shall be created by the Nation. Sovereignty shall be vested in the Nation" (Art. 2); "The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives" (Art. 4); "The most significant issues concerning the life of State and the Nation shall be decided by referendum" (Art. 9).

The Constitution also refers to external sovereignty, where the Nation represents the State in the international sphere. Article 3, for example, provides that "The Nation [...] shall have the right to resist anyone who encroaches on its independence." These concepts of internal and external sovereignty of the Nation are closely interrelated, but constitutional law is traditionally concerned with the internal sovereignty of the nation.

*Territory* is another basic element of the state. According to Article 10 of the Constitution, "the territory of the State shall be integral and shall not be divided into any state-like formations. The State boundaries may be altered only by an international treaty of the Republic of Lithuania after it has been ratified by 4/5<sup>ths</sup> of all the Members of the *Seimas*." The text of the Constitution contains no provisions concerning the territories that form the Lithuanian State. It should be noted that the Republic of Lithuania has inherited its actual territorial borders not only from the First Republic of Lithuania, but more especially from the so-called Lithuanian Soviet Socialistic Republic, whose borders were established by Stalin after the second Soviet occupation. Lithuania has never asserted any claims concerning its state boundaries since the Act "On the Restoration of Independence" of 11 March 1990. The state boundaries of the Republic of Lithuania

are regulated by international treaties between Lithuania on the one hand and Belarus, Latvia, Poland and Russia on the other.

As already mentioned, according to the Constitution, supreme State power is vested in the Nation. But the State of Lithuania is a representative republic. This means that the Nation exercises its powers through democratically elected bodies. According to Article 5 of the Constitution, State powers are divided amongst the parliament (*Seimas*), the president, the government and the judiciary. But a contemporary democratic state should not be seen only in the context of the traditional concept of the "tripartite" separation of state powers. In other provisions of the Constitution, we find that public powers are also exercised by the National Audit Office, the Bank of Lithuania, local authorities, the European Union, etc. In other words, in contemporary Lithuania the separation of powers is multi-layered.

## 2. UNITARIAN STATE AND CENTRALIZATION

Lithuania has no tradition of federalization, or even decentralization. The Kingdom of Lithuania in the thirteenth century, the Grand Duchy and the First Republic were unitarian and fairly centralized states. Only the Commonwealth of Two Nations (from the sixteenth to the eighteenth centuries) was something of a cross between a federation and a confederation. According to the 1992 Constitution, Lithuania is a unitarian state.

But is it a centralized or decentralized country? The text of the Constitution does not provide a clear answer to that question, but the weight of evidence suggests it is more of a centralized state. Decentralized State power in Lithuania is exercised at two levels: by municipalities (*savivaldybes*) and counties (*apskritis*). Only municipalities have directly elected representatives, while the governor of a region is appointed by the central government (Art. 123). Accordingly, re-

gionalization in Lithuania should be regarded as de-concentration of central public power, for counties do not have any legislative competence and could be described as *préfectures* in French legal tradition. Although municipalities have the constitutional right to their own separate budget, autonomous from central government, under ordinary legislation they have no right to collect taxes. Almost all financial resources for the municipal budget, therefore, come from the central government, which redistributes all national income. In that sense it is difficult to speak of real autonomy of local government and decentralization of state power in Lithuania up to now.

To sum up, to date the Republic of Lithuania has been a unitarian and fairly centralized state.

### 3. POLITICAL REGIME AND FORM OF GOVERNMENT

Since regaining independence from the totalitarian Soviet Union in 1990, the Lithuanian State has been very sensitive about the issue of the political regime<sup>15</sup>. In acts passed on 11 March 1990, the new government announced its commitment to establishing a democratic state. A Constitutional Act of 1991, which was approved in a popular referendum, stipulates that the statement that "Lithuania is an independent and democratic Republic" is a constitutional rule and a fundamental principle of the state, which may be amended only by a majority of no less than three-quarters of the Lithuanian electorate. This principle of democracy was enshrined in Articles 1 and 148 of the 1992 Constitution and has been endorsed in the jurisprudence of the Constitutional Court on numerous occasions.

<sup>15</sup> This sensitivity was also influenced by the experiences with the First Lithuanian Republic, which turned into an authoritarian regime after a *coup d'état* in 1926.

Form of government is not a strictly legal matter but rather a political issue. Nevertheless, legal science has something to say about it. The text of the 1992 Constitution is something of a compromise between the different models of a parliamentary regime and a semi-presidential regime. The final text of the Constitution includes elements of both models. On the one hand, the government must have the confidence of parliament and has to resign after parliamentary elections (Arts. 92 and 101), but on the other hand, the President of the Republic is elected directly by the people. The president's tenure in office does not correspond with that of the parliament. The president appoints the prime minister and ministers, and the government has to "return its powers" upon the election of the president (Art. 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, allow us to refer to Lithuania's form of government as what in French legal and political literature is called *parlementarisme rationalisé*.

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 relationship with the parliamentary majority. The political regime of the Second Lithuanian Republic can generally be described with the French term *cohabitation*, except for the period from 1993 to 1996 when president Algirdas Brazauskas and the parliamentary majority were from the same Labour Democratic Party (former communists). The interpretation of the form of government by the left-wing president can be said to have corresponded with the draft parliamentary-model constitution of the former communists. This interpretation meant that between 1993 and 1996,

Algirdas Brazauskas, as 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. It is too early in the political life of the country to say whether conservatives or liberals (or other centre-right political parties) would adopt a semi-presidential interpretation of the Constitution if they held the post of president and enjoyed a majority in the parliament.

There was a political crisis relating to the interpretation of the country's form of government in 1998 when the independent, liberal candidate Valdas Adamkus was elected to the office of president. President Adamkus was of the opinion that the government had to resign once the new President of the Republic had been elected. Conservatives and Christian Democrats, which together formed a majority in the parliament 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 supported this parliamentary approach, reasoning that the 1992 Constitution had established a "parliamentarian form of government with some semi-presidential features" and that the government does not have to resign after presidential elections if it receives a new vote of confidence from the parliament. After some academic attempts to criticize the Court's judgment that the country had a parliamentary form of government<sup>16</sup> and an unsuccessful experiment when president Rolandas Paksas (2003-2004) tried to concentrate political power in his own hands without the support of a majority in the parliament, it has now been

<sup>16</sup> For example, see Egidijus Kūris. *Politinių klausimų jurisprudencija ir Konstitucinio teismo obiter dicta ...*// POLITOLOGIJA, 1998. No.1. pp. 3-94.

settled that the constitutional form of government in the country is a "rationalized parliamentary regime" and it is difficult to imagine any new change in thinking on this subject in the near future.



The Seimas (Parliament) during the opening of its 2007 fall session (the Seimas Archives, photo by Olga Posaškova).

## V. The parliament (*Seimas*)

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

### 1. THE ELECTION OF MEMBERS OF PARLIAMENT

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

impeachment procedure may also not stand for parliamentary elections<sup>17</sup>. However, if this provision of the Act “On *Seimas* Elections” is enforced, it might be reviewed by the European Court of Human Rights.

## 2. PARLIAMENTARY ELECTIONS AND THE COMPOSITION OF THE PARLIAMENT

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 (Art. 57) on the basis of universal, equal and direct suffrage by secret ballot (Art. 55). Universal suffrage means that every adult Lithuanian citizen aged 18 or older is entitled to vote in parliamentary elections, with the exception of those who are mentally incapable. Equal suffrage means that all voters have one vote, and direct suffrage means that every voter must vote directly and may not transfer or delegate their vote to anyone else.

Legislation provides that half of the members of parliament (71) are elected by a majority system and the other half (70) by a proportional representation electoral system. This mixed electoral system has already been used four times, starting with the elections in 1992. Accordingly, the country is divided into 71 electoral districts for parliamentary elections. Voters receive two ballots and have to elect one representative in each of the districts and also cast a vote for a political party or coalition. Although the intention in adopting the mixed electoral system was to enjoy the advantages of both systems, in practice the effect of this system is

<sup>17</sup> This provision was enacted after a ruling by the Constitutional Court on 25 May 2004, in which the Court, dealing with the possibility of a President of the Republic who has been removed from office standing in future presidential elections, said that if the aforementioned officer breaks the oath of the office he may (never) take the oath of office again, “as a reasonable doubt would always exist, which would never disappear [...], whether an oath repeatedly taken by this person to the Nation would not be fictitious”.

that votes are distributed according to the proportional system, while the majority system does not play an important role at the end of the day.

The Central Electoral Commission (*Vyriausioji rinkimų komisija*), together with district and local electoral commissions, organizes and monitors the process of parliamentary elections. Legislation provides that the High Administrative Court will hear appeals against decisions of the Central Electoral Commission or its failure to act before the end of voting. The Constitutional Court is competent to examine alleged violations of electoral laws within 24 hours of the announcement of the official results. A political party or a candidate that wishes to bring a complaint to the Constitutional Court must do so through the President of the Republic or through the *Seimas*, which for their part are obliged to forward this complaint to the Constitutional Court. Following the 1996 and 2004 parliamentary elections, in response to requests from the relevant political parties and candidates the president requested a conclusion of the Constitutional Court concerning the election of a particular member of parliament in a particular electoral district. The Constitutional Court, found that although there had been minor violations the electoral laws had not been violated in the relevant electoral districts<sup>18</sup>.

## 3. PARLIAMENTARY IMMUNITY AND THE IMPEACHMENT PROCEDURE

Article 62 of the Constitution states that members of parliament, as representatives of the Nation, have immunity from prosecution for criminal offences and may not be detained without the consent of the parliament. Nor may members of parliament be prosecuted for their votes or speeches in parliament. They may, however, be declared liable for acts of personal insult or slander.

<sup>18</sup> See the conclusions of the Constitutional Court on 23 November 1996 and 5 November 2004.

Parliamentary immunity is also connected with the constitutional provision that members of parliament may only be removed from office by means of an impeachment procedure supported by no less than three-fifths of all the members of parliament (Art. 74). Lithuania has a mixed judicial and parliamentary impeachment system, which means that even though a member of parliament may have been found guilty of a criminal offence by a criminal court, parliament still has the discretion not to vote for his or her removal from office. This mixed impeachment system produced an unsatisfactory outcome in 1998 when a member of parliament, Audrius Butkevičius, was convicted of taking bribes and given a prison sentence by a criminal court but the motion for his impeachment in parliament did not secure the three-fifths majority required for his removal from office. The same problem could arise in the case of an impeachment process against the President of the Republic<sup>19</sup>.

#### 4. POWERS OF THE PARLIAMENT

##### A. Legislation

Legislation is, of course, the most important instrument the *Seimas* possesses to exercise its powers, which are set out in Article 67 of the Constitution. The *Seimas* has “general competence” in the legislative process (by contrast, for example, with the French parliament under the 1958 constitution). This means that the *Seimas* may enact laws regarding any matters in the social, economic and private sphere. Following the (continental) European constitutional tradition, the Lithuanian constitution does not contain a clause similar to the First Amendment of the US Constitution forbidding Parliament from passing certain kinds of legislation.

<sup>19</sup> The impeachment procedure does not apply for the removal of the prime minister or a minister. According to Article 101 of the Constitution, a minister must resign if more than half of all the members of Parliament support a vote of no confidence in him or her.

Naturally, this does not mean that the Lithuanian legislature has *carte blanche* in the legislative process. Legislation adopted by the *Seimas* must be consistent with the Constitution, including the jurisprudence of the Constitutional Court, the jurisprudence of the European Court of Human Rights and, since Lithuania's accession to the EU, with European legislation, including the jurisprudence of the European Court of Justice.

*Legislative procedure.* Every member of parliament has the right to initiate legislation in Lithuania, as have the government and the president. Citizens also have the right of legislative initiative, and the *Seimas* must consider a draft law submitted to it by at least 50,000 Lithuanian citizens (Art. 68). The government, through its various authorities, prepares a large majority of bills and presents them to Parliament. There are three steps in the procedure for the enactment of laws in the *Seimas* but they do not follow the traditional practice of *three readings*. The first step is the presentation of the bill and its acceptance *en principe* in a plenary session. The second stage involves hearings and deliberations on the bill in a parliamentary committee. The third step is the final adoption of the bill in a plenary session of the Parliament. The *Seimas'* Standing Orders also provide for an accelerated procedure for the adoption of legislation. Legislation in Lithuania is divided into two types of statutes: ordinary laws (*įstatymai*) and organic laws (*konstituciniai įstatymai*). The distinction is based on the number of members of parliament required to vote in favour for the law to be passed. Ordinary laws are enacted by a simple majority of the votes of deputies participating in the session. Organic laws can only be enacted by a majority constituting no less than three-fifths of the votes of all members of Parliament (Art. 69). According to the Rules of Parliamentary Procedure (the Standing Orders), a quorum of no fewer than half of all members of Parliament is required to pass legislation.

Organic legislation involves laws intended to flesh out the provisions of the Constitution. An original feature of Article 69 of the Constitution

is that it provided that one of the first legislative tasks of the *Seimas* was to adopt “the list of organic laws”. But the adoption of a list of organic laws would have imposed certain legislative restrictions on the Parliament since a qualified majority would be required for the adoption of the laws included in the list. The *Seimas* therefore decided not to constrain its future legislative competence and has never adopted such a list. Consequently, it is, in practice, very difficult to adopt an organic law in Lithuania. The Constitutional Court has accepted that organic legislation can only be adopted in implementing the provisions of an amendment of the Constitution. Up to 2006, only two organic laws have been adopted in Lithuania, and one of them was declared void by the Constitutional Court (ruling of 24 December 2002) simply because the enactment of this organic law was not provided for in a particular amendment to the Constitution<sup>20</sup>.

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

<sup>20</sup> According to the amendment of Article 47 of the Constitution of 23 January 2003, foreigners in Lithuania may purchase land, interior waters and forest under a procedure prescribed by organic law. On 20 March 2003, the *Seimas* adopted a corresponding organic Law “On implementation of amendment of Article 47 paragraph 3 of the Constitution” with a three-fifths majority (Art. 69 (3) of the Constitution). This is the only valid organic law to date.

### B. Parliamentary scrutiny

One of the main traditional functions of the parliament is to control the government’s activities. In Lithuania, the parliament’s powers of scrutiny extend to the cabinet of ministers (the government) and other executive agencies but not to the President of the Republic (who is not a member of the government). Government scrutiny is, of course, not always effective since the government is formed by the parties that constitute a majority in parliament and, as a rule, enjoys their confidence. If it wishes, however, there are a number of ways in which the parliament can show that the government has lost this confidence. It can pass a vote of no confidence in the government or it can refuse to approve the annual State budget presented by the government. Although the parliament can use these legal instruments in its scrutiny of the government, the principal means by which the parliament exercises control over the government is through parliamentary committees and at what are known as “the government’s hours” during the parliament’s plenary sittings.

Parliamentary committees in Lithuania correspond with the appropriate ministries, and the relevant committee is entitled to receive all information from the ministry and to invite the minister concerned to the sittings of the committee. The Audit Committee deserves special mention here. The remit of the Audit Committee is not only to control how the government and its agencies administer public property but also to scrutinise the National Audit office (*Valstybės kontrolė*), which is itself responsible for supervising the legality and efficiency of the administration of public property and the implementation of the State budget.

The “government’s hours” is an instrument for scrutinizing the executive and gives members of parliament, especially those in the opposition, the opportunity to publicly submit questions to the prime minister or other ministers about the government’s actions or omissions. The fact

that the government's hours are usually held every week during plenary sessions of parliament and are fairly well covered in the national mass media makes it a fairly popular instrument of control.

### *C. Other powers of the parliament*

Other traditional areas of competence of the parliament in Lithuania are the power to set taxes and to approve the annual state budget. The *Seimas* also has the discretionary power to call elections for the President of the Republic and municipal elections. Only the *Seimas* can establish administrative units in the country and ministries of the central government. The *Seimas* also has the power to ratify and renounce international treaties and agreements. An international treaty that has the effect of changing the state's boundaries must be ratified by a four-fifths majority of the members of Parliament (Art. 10). As a rule, the Parliament organizes plebiscites. The *Seimas* exercises almost all of its powers through legislation, i.e., by enacting an appropriate Statute (*įstatymas*)<sup>21</sup>.

The parliament, acting alone or in collaboration with the president, nominates senior State officials and civil servants. It has the power to approve or reject the candidate nominated by the president for the post of prime minister. It also appoints justices of the Constitutional and Supreme Courts and other senior public officers from candidates

<sup>21</sup> Parliamentary scrutiny, the appointment of officials, the impeachment procedure and some other parliamentary procedures do not require the enactment of a Statute (*įstatymas*) but another kind of legal act (e.g., *Seimo nutarimas*).

<sup>22</sup> The impeachment procedure in Parliament has been used twice: in 1999 and in 2004. The first case involved the impeachment of a member of parliament and the second case involved the President of the Republic. In 1999, despite being convicted of a crime (bribery) in a criminal court, for purely political reasons, the MP was not dismissed from office. However, in 2004 the President of the Republic, Rolandas Paksas, was removed from office in impeachment proceedings after a conclusion of the Constitutional Court.

submitted to it by the president. The parliament has sole power to appoint the head of the National Audit office, the President of the Bank of Lithuania, ombudsmen and members of the Central Electoral Commission. The Parliament may also remove persons appointed by it to an office by a majority vote of all its members, with the exception of those officials who may only be removed from office by an impeachment procedure (Art. 75).

Only the parliament has the power to remove senior public officials from office through the impeachment procedure. These senior officials are listed in Article 74 of the Constitution and they are the President of the Republic, members of parliament, the justices of the Supreme Court and the Constitutional Court and the judges of the Court of Appeal. The article also lists the grounds for impeachment, which are gross violations of the Constitution, breaches of the oath of office and commission of a criminal offence. The latter ground may be not invoked against the President of the Republic, in view of his immunity<sup>22</sup>.

### 5. THE *SEIMAS* OMBUDSMEN (*Seimo kontrolieriai*)

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



to investigate a specific matter on the basis of information they have received, the ombudsmen receive the majority of complaints directly from citizens.

The *Seimas* ombudsmen could be called “maladministration ombudsmen” since, according to Article 73, their task is to examine complaints from citizens about bureaucratic intransigence and abuse of authority by public officials. According to the Law “On the *Seimas* Ombudsman Institution”, ombudsmen have the power to examine complaints concerning any public officials with the exception of the President of the Republic, members of parliament, the prime minister or judges. The institution of ombudsman is regarded as a non-judicial agency (as opposed to a “pre-judicial institution”), since decisions of the ombudsmen may not be appealed to the courts. Although decisions of an ombudsman concerning a particular public official could be described as recommendations, public bodies tend to follow them. According to the Constitution, the *Seimas* ombudsmen may not initiate a review of the constitutionality of legal acts they are reviewing. Since the powers of the *Seimas* ombudsmen are limited to controlling bureaucracy and abuses of power, the offices of the ombudsman for Equal Opportunities and for Child Rights Protection were established as separate institutions in 1998 and 2000, respectively.

## 6. DISSOLUTION OF PARLIAMENT

The President of the Republic has the power to dissolve parliament but this power has never been used in the thirteen years since the adoption of the 1992 Constitution. The president’s discretionary power is actually fairly weak since it can only be used in two cases: (i) if the *Seimas* fails to approve the government’s programme within 60 days of its presentation or (ii) on a proposal by the government, if the *Seimas* expresses no confidence in the government (Art. 58.). However,

the president’s power is limited not only by the fact that it is confined to these two instances and that it actually depends on the will of the government, but also by the fact that after dissolution, a newly elected parliament may declare new elections for the office of President of the Republic (Art. 87). The president is therefore only likely to use this discretionary power in the event of a serious political conflict between the government and the *Seimas* and if there is the assurance of sufficient public support for this risky political act.

## 7. AMENDMENT OF THE CONSTITUTION

The Lithuanian Constitution of 1992 could be described as a rather rigid document in terms of the ability to amend it. The Constitution was first adopted by the Constituent Assembly (*Atkuriamasis Seimas*) and later approved in a popular referendum. Two bodies have the power to amend the Constitution: the Nation and the parliament. The most significant provisions of the Constitution – those of Chapter I “The State of Lithuania” and Chapter XIV “Alteration of the Constitution” – can only be changed by the Nation in a referendum. All other provisions of the Constitution can be changed either by popular referendum (Art. 9) or by a double vote of the *Seimas*, with no less than three months elapsing between the two votes, if at least two-thirds of the deputies vote in favour of the amendment each time (Art. 148). However, the political reality is that in thirteen years all nine constitutional amendments have been adopted by a vote in Parliament. The 2004 Constitutional Act “On Membership of the Republic of Lithuania in the EU” was drafted and adopted by Parliament after the people of Lithuania voted in favour of EU membership in a referendum.

An initiative to amend the Constitution requires the support of no less than a quarter of the members of parliament or no fewer than 300,000 members of the electorate (Art. 147). Once it is adopted, the

president cannot veto a constitutional amendment and must sign and promulgate it. The amendment then enters into force not earlier than one month after its adoption (Art. 149).

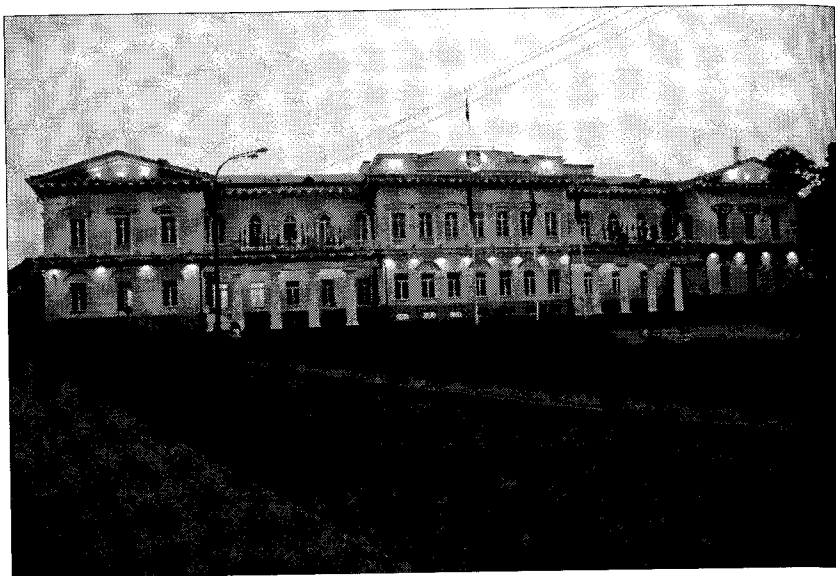
The 1992 Constitution has been amended nine times in thirteen years. The first amendment of the Constitution in 1996 changed Article 47. The original idea behind this article was to ensure that land in Lithuania could be owned either by private persons – Lithuanian nationals – or by the State. But in 1996 this provision was changed to allow companies to own land, but only land that is not used for agriculture (for instance, the land under their buildings). In 2003 this provision was altered again by removing all constitutional restrictions on the ownership of land<sup>23</sup>.

Another constitutional provision that has been amended twice is Article 119 (2). According to the original provision, members of a municipal council were to be elected every two years. Under an amendment in 1996, their tenure was extended to three years, and in 2002 the term of office was extended to four years. Their term of office is now the same as that of members of Parliament.

Two articles (Arts. 84 and 118) were amended on 20 March 2003, strengthening the powers of the President of the Republic by giving him the power to appoint the Prosecutor General with the assent of the parliament. Before the amendment, ordinary legislation assigned the power to appoint the Prosecutor General to the *Seimas*. Another amendment of 13 July 2004 fixed the date of parliamentary elections,

which are now held on the second Sunday of October (Art. 57). The separate Constitutional Act “On Membership of the Republic of Lithuania in the European Union” was also adopted in 2004 using the procedure for alteration of the Constitution (Art. 148) and is now a part of the Constitution. On 25 April 2006, Article 125 concerning the competence of Lithuania’s central bank was amended to bring it into line with EU law.

<sup>23</sup> Since the amendment of 23 October 2003, Article 47 (3) reads: “In the Republic of Lithuania foreign entities may acquire ownership of land, internal waters and forests according to an organic law.” A constitutional law adopted on 20 March 2003 stipulates a transitional period of seven years for ownership of agricultural land and forests by foreign subjects, including subjects of EU member states. No legislation concerning ownership of land by national legal persons had been passed up to 2006.



Presidentūra – the office of the President of the Republic of Lithuania in Vilnius (photo by Vladimiras Gulevičius).

## VI. The head of state

Between 1990 and 1992, before the adoption of the new Constitution, the Speaker of the Parliament (*Aukščiausiosios Tarybos Pirmininkas*) was the country's most senior official and assumed the role of head of state in the national and international arena. The 1992 Constitution restored the office of the President of the Republic but, by contrast with the 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.

### 1. ELIGIBILITY

The Constitution provides that the head of state is the President of the Republic. To participate in presidential elections, candidates may not be younger than 40 years of age, must 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 by the concept of *ius sanguinis*. One interpretation may be that the candidate has to be a descendant of Lithuanian citizens of the First (inter-war) Lithuanian Republic. For instance, it may be the case that Soviet emigrants, to whom Lithuanian citizenship was granted after the restoration of independence in 1990, may not stand for presidential elections under the Constitution. But does the same apply to their descendants who were

born in the territory of Lithuania during the Soviet occupation or after 1990? Does the Constitution forbid members of the Polish minority who were born and live in the country from standing for election as president? Does the provision allow a descendant of Lithuanian parents who was born abroad to stand for the presidency if he or she moves to Lithuania? All of these questions can only be answered in time if any of these examples occur in practice.

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

Another requirement is that candidates must not be bound by an oath or pledge to a foreign state (Art. 56). This provision can be seen as erecting a barrier against persons who used to work for a foreign secret service during the Soviet occupation. In practice, this restriction can be used against persons who have obtained foreign citizenship through naturalization, i.e., by swearing an oath of allegiance to the state concerned. For instance, Valdas Adamkus had to renounce his American citizenship (acquired through the naturalization procedure) when he was elected to the office of President of the Republic of Lithuania.

## 2. PRESIDENTIAL ELECTIONS

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

There were four elections for the office of the President of the Republic between 1993 and 2006<sup>24</sup>. The term of office of the President is five years, while members of Parliament are elected for four years. The President of the Republic may be re-elected for a second term.

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

## 3. IMMUNITY AND PRIVILEGES

The President of the Republic enjoys immunity from criminal or administrative liability, i.e., the president may not be detained or have his freedom otherwise curtailed while in office (Art. 86). As President Paksas' impeachment shows, this constitutional immunity is a fairly effective tool, which can play a very important role in times of political struggle.

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

## 4. POWERS OF THE PRESIDENT

The principal powers of the president under the Constitution lie in the sphere of foreign affairs and national defence. The president decides basic issues of foreign policy, represents the country in foreign relations, signs international treaties and agreements, appoints ambassadors, awards diplomatic ranks and titles and receives letters of credential from diplomatic representatives of foreign states. The president is the commander-in-chief

<sup>24</sup> In 1993, 1998, 2003 and in 2004 after President Rolandas Paksas was removed from office in impeachment proceedings.

of the armed forces (Art. 140). With the assent of parliament, the president appoints the commander-in-chief of the army and the head of the security service, confers the highest military ranks, presides over the State Defence Council<sup>25</sup> and, in the event of an armed attack, can impose martial law and declare a mobilization of forces (Art. 142). In practice, however, the president does not have sufficient power to compete with the ministries of foreign affairs and national defence in the sphere of external relations and national security. The ministries have large numbers of staff and various departments to deal with the relevant matters. In the sphere of foreign affairs, for instance, the President of the Republic is (with some exceptions) the actor of last resort, while the initiative for taking action is left entirely in the hands of the government and the minister of foreign affairs. The same can be said in the context of national defence. The minister of national defence has all the levers in hand as far as military matters are concerned. In Lithuania, therefore, the President of the Republic is the primary source of national policy in the sphere of foreign affairs and national defence but acts in concert with the government.

As head of state, the President of the Republic has the power to grant citizenship, to confer state awards and to grant pardons to convicted criminals. According to Article 85 of the Constitution and ordinary legislation, there are only four instances when presidential decrees have to be countersigned by the appropriate minister. The minister of foreign affairs has to sign decrees for the appointment and recall of diplomatic representatives of the Republic of Lithuania, the acceptance of letters of credential and the recall of diplomatic representatives of foreign states, and the conferral of the highest diplomatic ranks and titles. The minister of national defence must countersign decrees conferring the highest military ranks. Decrees granting Lithuanian citizenship must be coun-

<sup>25</sup> According to Article 140 of the Constitution, the main issues of national defence are considered and coordinated by the State Defence Council, which consists of the President of the Republic, the prime minister, the Speaker of the parliament, the Minister of National Defence and the Commander of the Armed Forces.

tersigned by the minister of interior affairs, and the prime minister has to countersign a decree declaring a state of emergency. In all other cases listed in Article 84 of the Constitution, the president has complete discretion and may act alone.

*Formation of the Government and the appointment of senior civil servants and officials*

In practice, the main powers of the president centre on the formation of the national government and the nomination of senior civil servants and public officials, including members of the judiciary. After parliamentary elections, the president appoints the prime minister, with the consent of parliament, and the members of the cabinet on the prime minister's recommendation. Nevertheless, the President of the Republic is not a "formal" head of state as in the case of pure parliamentary regimes. Because he is directly elected and enjoys popular support the president provides a certain balance between different public institutions and political actors. For instance, the president has considerable powers in the selection of a particular minister. As a rule, in choosing the candidate, the president must naturally confine his selection to candidates that have been nominated by a majority in parliament, but he has the discretion to reject a particular candidate for ethical reasons, on grounds of political transparency or because of a possible conflict between the candidate's public and private interests<sup>26</sup>. As has been shown in practice, a president who enjoys wide popular support may even convince the prime minister to resign, although he does not have *de jure* legal instruments to force him to do so<sup>27</sup>. Subject to the approval of the parliament, the president appoints the

<sup>26</sup> For instance, after the parliamentary elections in 2004, the president rejected one candidate for the post of minister of education when it emerged that he had earlier signed a certain spurious document when he was a senior official.

<sup>27</sup> In 1998 after a public speech by President Valdas Adamkus in which he declared a lack of confidence in the prime minister, Gediminas Vagnorius, the latter decided to resign even though he had received a vote of confidence from Parliament a couple of days before.

Procurator General, the Commander of the Army and the Head of the Security Service. The president (after receiving the advice of the independent Judicial Council) appoints judges of local, district and specialised courts and nominates candidates for appointment by parliament as justices of the Supreme Court and the Constitutional Court.

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

Secondly, the president has a right of *suspensive veto* over bills that have been passed by the parliament, which can only be overruled by an absolute majority of the members of parliament<sup>28</sup>. The terms of the presidential veto in the Lithuanian Constitution allow the president (i) to refer the law back to the parliament for reconsideration, accompanied by relevant reasons but with no specific legislative proposals, or (ii) to present his own amendments with regard to the law. It should be noted, however, that the presidential veto is fairly weak and the parliament can usually overrule it quite easily. Accordingly, presidents have not used this instrument very often; the number of statutes that have been vetoed is quite low, and the number of vetoes that have been accepted by parliament is even lower.

Thirdly, until a ruling of the Constitutional Court on 19 June 2002, the President of the Republic sometimes used what is known as a "*pocket veto*". This involved expressing disagreement with a particular bill by refusing to sign it within the ten-day period prescribed by the Constitution without giving any reason. In that case, according to the Constitution, the

<sup>28</sup> The Lithuanian Parliament has 141 MPs, so 71 votes are enough to overturn the President's veto for ordinary legislation, while 85 votes (three-fifths of the total) are required to overturn the President's veto for organic laws (there is practically no legislation of the latter type in the Lithuanian legal system).

bill can be signed into law by the Speaker of the *Seimas* without the president's signature (Art. 71). In its ruling, the Constitutional Court virtually abolished the president's power of "pocket veto" by saying that a veto must always be accompanied by specific reasons and legal arguments.

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

#### *The president's discretion to dissolve parliament*

In the case of a conflict between the parliament and the government (the cabinet of ministers) the president has the power to dissolve parliament. Article 58 of the Constitution specifies two cases of conflict where the president has such discretionary power:

- i) if the parliament fails to approve government's program for a second time within sixty days;
- ii) on the government's proposal, after a vote of no confidence in the government.

During the thirteen years in which the 1992 Constitution has been in force, this provision has never been used. It has sometimes been "re-called" by candidates during an election campaign. The Lithuanian president's discretionary power to dissolve parliament could also be described as fairly weak, since the newly elected parliament can decide, with a majority of three-fifths of its members, to call new presidential elections (Art. 87). Of course, it is conceivable that in practice the president could use his discretion in the event of a political stalemate.

*The president's relations with the Government  
(the Cabinet of Ministers)*

The wording of Article 5 of the Constitution describes the President of the Republic and the government as the executive branch. In contrast with the 1922 Constitution, however, the 1992 Constitution distinguishes between the government and the president. The government here means only the Cabinet of Ministers and is formed by the will of a majority of the members of parliament, while the directly elected President of the Republic is a separate institution, and as head of state has not only executive but also other competences and powers<sup>29</sup>. The president enjoys discretion in choosing the prime minister and other ministers, but constitutional tradition dictates that the prime minister is chosen from the parliamentary majority since the government has to receive a vote of confidence from the parliament. As a rule, the president does not participate at meetings of the government or in its activities, but instead assumes a position of moral authority and maintains a balance between the different State authorities. In matters relating to foreign affairs, the president's is a coordinating role for he generally acts in consultation with the prime minister and the minister of foreign affairs in this domain.

## 5. LEGAL ACTS OF THE PRESIDENT

The President of the Republic has only one form of legal instrument for exercising presidential powers. This is the presidential decree (*Prezidento dekretas*). As a rule, decrees of the Lithuanian President have no legislative or normative character. Some, but not all, presidential decrees have to be countersigned by a minister (Art. 85). By virtue of the Constitution and ordinary legislation, presidential decrees granting Lithuanian citizenship have to be countersigned by the minister of interior affairs; de-

<sup>29</sup> The competence of the president is sometimes described by Lithuanian legal scholars as "mixed", because it includes some signs of legislative (e.g., veto) and even judicial competence (e.g., right of pardon). See, e.g., Egidijus Šileikis. *Alternatyvi konstitucinė teisė*. TIC. 2003. p. 447.

crees conferring high diplomatic rank, by the minister of foreign affairs; decrees granting high military rank, by the minister of national defence; and a declaration of a state of emergency has to be countersigned by the prime minister. For all other decrees – concerning the appointment and dismissal of various national officials, including the prime minister and ministers, the signing of international treaties, mobilization, the date of parliamentary elections, the conferral of State awards, the granting of a pardon to convicted offenders, the establishment of public commissions and even for the dissolution of parliament – the president enjoys total discretion and they do not have to be countersigned by a member of the government. In the four cases mentioned above, where a minister has to countersign decrees issued by the president, the appropriate ministers are fully responsible for the decrees they have signed (Art. 85). However, according to a ruling by the Constitutional Court on 30 December 2003, even if a decree is later signed by a minister, the president is not released from personal constitutional responsibility if the decree constitutes a gross violation of the Constitution.

## 6. THE OFFICE OF THE PRESIDENT

The 1992 Constitution does not contain any provisions concerning the office of vice-president. The president instead has six or seven principal advisors (the heads of various departments) who are sometimes referred to as the president's "team". The president is free to appoint around forty civil servants in whom he has "personal confidence". These "career personnel" are appointed and managed by the Chancellor of the President's office. The President's office is in the country's capital, Vilnius. In the event of the President's death, resignation or removal from office by impeachment, the Speaker of the *Seimas* assumes the president's duties *pro tempore*. In these cases, new presidential elections must be organized within two months. The Speaker of the *Seimas* also assumes the office if the president is temporarily unable to perform the duties of the office, for example, due to illness (Art. 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.

## 7. IMPEACHMENT OF THE PRESIDENT

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

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

- i) the formation of a parliamentary impeachment committee, which examines the president's actions and formulates impeachment charges;
- ii) the preliminary stage of the impeachment process, when the parliament approves the impeachment charges, appoints parliamentary prosecutors and sends the impeachment charges to the Constitutional Court for legal and constitutional evaluation;
- iii) the conclusions of the Constitutional Court on whether the president's actions as formulated in the impeachment charges actually violated the Constitution<sup>30</sup>;
- iv) the legal submissions by the parties;
- v) the closing statement by the President of the Republic in the parliament;
- vi) a vote in parliament on whether to remove the president from office.

<sup>30</sup> According to the Constitution (Arts. 86 and 105), parliament may only vote to remove the president from office if the Constitutional Court concludes that the latter's violation of the Constitution is gross. According to a conclusion of the Constitutional Court on 31 March 2004, if it concludes that the president did not violate the Constitution or that there was no gross violation, the impeachment process must be terminated.

### *A. Wrongdoings that can form the legal basis for impeachment of the President*

Prior to the impeachment process of President Rolandas Paksas, legal doctrine in Lithuania made no distinction between impeachment charges concerning any particular public official, be it the president, a member of parliament or justices of higher courts (judges of the Court of Appeal and the Supreme Court and justices of the Constitutional Court). The Lithuanian Constitution provides for three formal impeachment charges:

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

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

Another point to note here is a certain peculiarity of the list of grounds for impeachment in Lithuania. Violation of the Constitution and high treason are often specified as grounds for impeachment in the constitutions of other countries. However, there are very few countries in the world where a breach of the oath of office is grounds for impeachment, first and foremost because an oath is primarily a moral concept. In order to



avoid this moral dimension and other difficulties in determining whether President Paksas had breached the oath of office, the Constitutional Court decided to look at the specific wording of the oath and link it with the other impeachment charge, i.e., a gross violation of the Constitution. In its ruling of 31 March 2004, the Court found that a breach of the oath of office is always a gross violation of the Constitution and *vice versa*.

A final peculiarity of the grounds for impeachment in Lithuania is that in order to remove a person from office, it is not enough to find a violation of the Constitution; the violation must be gross. According to the case-law of the Constitutional Court, not all violations of the Constitution should be regarded as gross violations, and to decide whether a violation of the Constitution is to be regarded as a gross violation, the actual content and circumstances of the President's actions must be evaluated. It should be pointed out here that in the case of President Paksas, the Constitutional Court interpreted the gross violation of the Constitution (and breach of the oath of office) first and foremost from the perspective of President Paksas' vulnerability to and dependence on a Mr. Borisov, which the ad hoc parliamentary committee deemed to constitute a threat to Lithuania's national security. In the absence of any such threat to national security, it appears that the Constitutional Court might not have concluded that President Paksas had committed a gross violation of the Constitution or breached the oath of the office. In other words, it seems likely that the 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 "the mafia" and foreign secret agencies. Therefore, even though the authors of the Lithuanian Constitution agreed on broader grounds for impeachment than in France, for instance, where the only ground for impeachment of the president is high treason, and did not include high treason as a ground for impeachment in the text of the Constitution, we nevertheless

see shades of high treason in the Court's ruling in its interpretation of the very idea of impeaching the president.

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

First of all, it should be noted that the *Seimas* has the competence to initiate impeachment proceedings and has the power to make the final 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 members of parliament may vote to remove the president from office. Accordingly, the institution with power to impeach the president in Lithuania is the *Seimas*.

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

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

*C. Parliamentary majority required for removing the President from office*

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

*D. Legal and political consequences of impeachment*

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

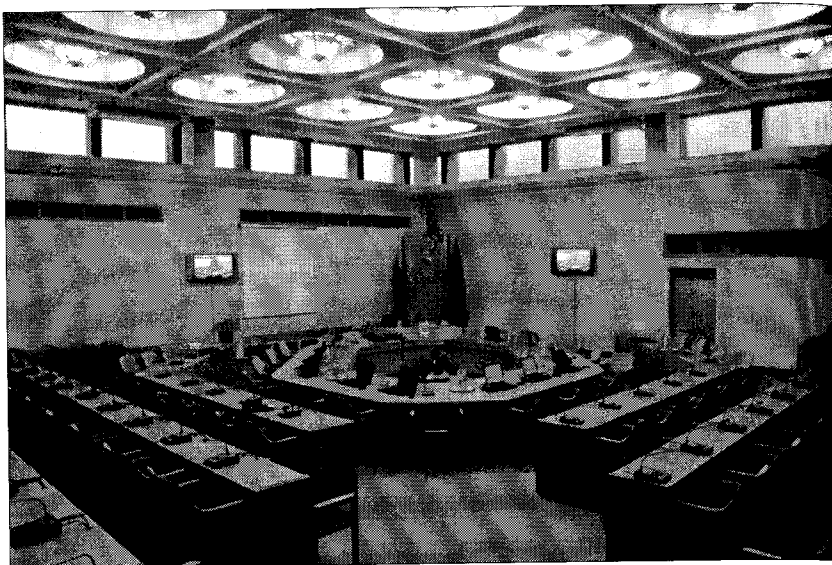
Until the impeachment of President Paksas, the Lithuanian legal and political world had no idea what restrictions would be placed on a president who had been removed from office. The Constitution says nothing on this subject. The question is whether a president who has been removed from office for gross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

of office may run for office in future presidential elections? The political elite in Lithuania made it clear that an affirmative answer to this question would be contrary to the very idea of civil society, the rule of law and other constitutional principles and therefore decided to amend the Law on Presidential Elections and the Constitution to prevent a president who was removed from office from running in presidential elections for the next five years. The Constitutional Court, however, rejected the rationale of this temporary disqualification from the passive electoral right and decided that the spirit of the Constitution requires not just a temporary but a permanent and complete disqualification of such a person from the political arena<sup>31</sup>. The Court’s rationale was that a person who has breached the oath to the Nation and 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” (ruling of 25 May 2004 [see section [III.6]).

In this ruling, the Court indirectly referred to the “permanent political disqualification” clause in the US Constitution and said that the president, once removed from office, may not stand in either future presidential elections or parliamentary elections. Nevertheless, it will be up to the European Court of Human Rights to say in the future whether the application of this restriction satisfies the requirements of the European Convention on Human Rights and its 1<sup>st</sup> Protocol<sup>32</sup>.

<sup>31</sup> According to the Court, such a person may not stand for any public office, which by virtue of the Constitution, is linked with an oath of office (the President of the Republic and a member of the national Parliament in this case) and may not hold the office of minister.

<sup>32</sup> For more information see Vaidotas A. Vaičaitis. *Impeachment of the President of the Lithuanian Republic: the procedure and its peculiarities*. In “The Uppsala Yearbook of East European Law 2004”. Uppsala University, 2005. pp. 248-282.



Cabinet of Ministers Meeting Room (photo by Vladimiras Gulevičius).

## VII. The government (*Vyriausybė*)

### 1. COMPOSITION OF THE GOVERNMENT AND APPOINTMENT OF ITS MEMBERS

According to the Constitution (Art. 91), the government consists of the prime minister and ministers. The President of the Republic is not a member of the government. According to Article 60 of the Constitution and case-law of the Constitutional Court, the prime minister and ministers may be selected from amongst the members of parliament but may not hold any other office than that of member of parliament, i.e., they may not be a member of a municipal council. 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 members of parliament). There is no office of deputy prime minister or minister without portfolio in Lithuania since, according to Article 98 of the Constitution, a minister is the head of a particular ministry<sup>33</sup>. Therefore, if the prime minister is temporarily unable to exercise the powers of the office, another minister deputizes for him (Art. 98). Although the Constitution says that ministers are directly subordinate to the Prime Minister (Art. 96.), in reality this subordination depends on

<sup>33</sup> The number of ministries in Lithuania ranges from thirteen to sixteen. In 2005 there were thirteen ministries: foreign affairs, interior affairs, finance, national defence, education, culture, justice, economy, social security & labour, health, agriculture, ecology and transport.

whether the government is made up of ministers from political parties different from that of the prime minister or of members of the same party. We can only speak of genuine subordination of ministers to the prime minister in the Lithuanian legal system in the latter situation. According to Article 101 (4), a minister must resign if more than half of all members of parliament express no confidence in him. This indicates that members of the government have individual responsibility. On the other hand, all the cabinet members have to resign if parliament expresses no confidence in the prime minister or if the latter resigns (Art. 101 (3)), which suggests solidarity or joint responsibility of the government. Joint government responsibility is also implied by Article 101, second sentence, which reads that if more than half of ministers' change, the government has to be re-invested with authority by the parliament.

The Constitution specifically refers to the minister of National Defence (Art. 140). Other ministries can be established or abolished at the discretion of parliament. It should be noted that there is no tradition of forming a so-called shadow cabinet in Lithuania.

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 accepts the results of the parliamentary elections. A new government must always receive a vote of confidence from a majority of the members of parliament. There is an office of Chancellor of the Government (*Vyriausybės kancleris*) but it is not politically relevant since this official's primary responsibility is to prepare the government's meetings.

Ministers are appointed by the president on the nomination of the prime minister. The prime minister presents the list of members of the government and the government's programme to the *Seimas* for

consideration within fifteen days of being appointed. The new government then assumes all its constitutional powers after the *Seimas* has approved its programme by a majority of the votes of the members of parliament participating in the session (Article 92).

## 2. COMPETENCE OF THE GOVERNMENT

The government is the executive branch of central authority. But *executive* in this sense does not mean that the only task of the government is *execution* of parliamentary legislation. As a rule, the legal basis of the government's competence lies in an Act of Parliament, but according to the case-law of the Constitutional Court, e.g., a ruling of 18 December 2001, the government may also issue directives in the absence of empowering legislation, relying directly on the provisions of the Constitution and on the constitutional principle of separation of public powers (Arts. 5 and 94). In principle, the only limitations in this case are that the government should not regulate human rights without an appropriate statute, governmental directives should not interfere with the competence of the parliament (as set out in Article 67 of the Constitution) and should not be contrary to parliament's legislation. Naturally, the government will rarely act without an appropriate statute to legitimize its actions.

The Constitution assigns principal responsibility for administering the affairs of the State and maintaining national security and public order to the government. In reality the government exercises its powers through different ministries and other public agencies. The government is headed by the prime minister, who represents the government and coordinates the work of the different ministries and agencies. Government directive (*Vyriausybės nutarimas*) is adopted by a majority of all the members of the cabinet and are signed by the prime minister and the sponsoring minister. If the government is formed by a single party, the prime minister enjoys powers equivalent to those of his counterpart in the Westminster

model. If the government is a large coalition, however, the prime minister's powers are less substantial. In the June 2006 a so called "minority government" was formed for the first time in the history of the Second Lithuanian Republic.

As a rule, the legal basis of the government's activities is parliamentary legislation. A formal reading of Article 94 (2) of the Constitution implies that the government is a secondary authority that must await appropriate legislation before issuing directives implementing that legislation. In practice the government initiates all political and legal reforms and possesses the most important legal and political instruments for implementing its programme. It drafts a large majority of legislative bills, administers public property, prepares the draft of the State budget and collects and distributes the taxes (through the national tax agency (*Valstybinė mokesčių inspekcija*) and other public agencies). Moreover, through the ministry of foreign affairs, the government establishes and maintains diplomatic relations with other countries and, together with the president, is the main actor in external relations.

### 3. RESPONSIBILITY AND ACCOUNTABILITY OF THE GOVERNMENT

The government has to have the confidence of parliament and must resign if it loses that confidence or if parliament passes a vote of no-confidence in the prime minister. This has happened only once in thirteen years since the adoption of the 1992 Constitution. This vote of no-confidence can also take the form of Parliament's refusal to approve an annual State budget. The Government must also resign if the prime minister resigns, which reflects the principle of solidarity of the cabinet (Art. 96). An absolute majority of members of parliament may remove any minister from office (Art. 101). Ministers are politically accountable to the *Seimas*. However, notwithstanding the lack of any provision to this effect in

the Constitution, convention provides that the president has the discretion (see also Article 96) to declare his loss of confidence in a particular minister if there is an apparent conflict between his private and public interests or on other moral grounds. Accordingly, if parliament wants to remove a minister from office, it does not need to pursue a complicated impeachment procedure.

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



The Constitutional Court in session (photo from Archives of the Constitutional Court of the Republic of Lithuania).

## VIII. The constitutional court (*Konstitucinis teismas*)

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

### 1. SELECTION AND APPOINTMENT OF THE JUSTICES

The method of selection of justices of the Constitutional Court has already proved its effectiveness, which might explain the Court's success in assuming a prominent role and gaining authority among other legal and political actors, along with popular public support. 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 jurisprudence. Judges of ordinary courts who had been trained and practised in the narrow-minded Soviet system wouldn't have been able to adapt to the new legal concepts of civil society, the rule of law and the democratic state in the immediate aftermath of the Soviet occupation in the 1990s.

The nine justices of the Constitutional Court are appointed for nine years and may not be reappointed. Every three years the Court is reconstituted with the appointment of three new justices. The justices are appointed by the *Seimas*. One candidate is proposed by the President of the Republic, a second by the Speaker of the *Seimas* and a third by the Chairperson of the Supreme Court. The *Seimas* may reject a candidate but has never done so up to now (2006). The *Seimas* also appoints the Chairperson Justice of the Constitutional Court on the President's nomination.

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

## 2. THE RIGHT TO ADDRESS THE CONSTITUTIONAL COURT

The Constitution of Lithuania does not provide for a system similar to that of constitutional complaint in Germany or *amparo* in Spain, which allows individuals to address the Constitutional Court. Questions are submitted to the Constitutional Court by political actors (the President, the *Seimas*, or a group representing one-fifth of the members of the *Seimas*, and the government) or by judges of the ordinary and administrative courts<sup>34</sup>.

According to Article 110 of the Constitution, ordinary and specialized courts do not have to apply an act of parliament that is in conflict with the Constitution. If the judge of the court examining the case is uncertain about the constitutionality of a statute or governmental directive, he or she

<sup>34</sup> At the beginning of 2006, a draft amendment to the Constitution was submitted in Parliament that would institute a system of constitutional complaint and grant every person the right to address the Constitutional Court.

<sup>35</sup> The President of the Republic may only contest the legality and constitutionality of governmental decrees, while the Government may only challenge the constitutionality of an act of Parliament.

has to suspend the case and refer the matter to the Constitutional Court to review the constitutionality of the specific legal instrument. The effect of this provision is that the majority of cases reaching the Constitutional Court are referred to it by judicial authorities. It also means that ordinary courts have to interpret legislation in the light of the Constitution and of the case-law of the Constitutional Court. Although the Constitutional Court often expresses the opinion that it is the only authority entitled to interpret the Constitution, ordinary and administrative courts also have a duty to interpret the Constitution before referring cases to the Constitutional Court. The judiciary in Lithuania therefore has the discretion not to apply an act of parliament if it is obviously contrary to the Constitution or to the jurisprudence of the Constitutional Court in accordance with the concept of *acte claire* or *acte éclairé*, as it is accepted in the case-law of the European Court of Justice. Naturally, the ordinary courts may not declare a statute of the parliament or any other legal instrument void. It would therefore be fair to say that the 1992 Constitution established a decentralized system of interpretation and application of the Constitution in Lithuania. On the other hand, it has to be admitted that ordinary courts in Lithuania still lack the courage to interpret and apply the Constitution independently.

According to the Constitution, the three main public authorities can control each other by challenging the constitutionality of each other's legal instruments, but the president and the government rarely use their discretion to challenge the Constitutional Court<sup>35</sup>. The opposition in parliament, by contrast, is second to the judiciary in terms of initiating constitutional review.

## 3. COMPETENCE OF

### THE LITHUANIAN CONSTITUTIONAL COURT

The first thing that needs to be said is that the Constitutional Court in Lithuania does not have the sole prerogative to review the constitution-

ality of legal instruments. The Constitutional Court has the power to review parliamentary legislation (ordinary and organic laws and other acts of Parliament), presidential decrees, governmental directives and international treaties (before or after ratification). Judicial review of the constitutionality of other legal instruments, such as legal acts of ministers and other public bodies, is the task of administrative courts. The Constitutional Court is also not competent to overrule judicial rulings. It is also important to note that as a rule the Constitutional Court exercises *a posteriori* constitutional control.

#### A. Abstract constitutional review

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

In the case of abstract judicial review of constitutionality, the Constitutional Court has primarily a political function and the task of settling a political dispute or even a political crisis. The political elite sometimes uses 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 of the Criminal Code) but by a ruling of the Constitutional Court on the constitutionality of this form of punishment. A relevant example of a case where the Constitutional Court resolved a political crisis was the impeachment process involving President Rolandas Paksas in 2003-2004.

#### B. Concrete constitutional review

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

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

#### C. Judicial review of constitutionality of acts of parliament, presidential decrees and governmental directives

The Constitutional Court may examine not only the content of an act of parliament (or other legal instrument) but also its form or the procedure of its enactment. According to Article 69 of the Constitution, the adoption of legislation in parliament has to follow the Rules of Parliamentary Procedure (*Seimo Statutas*). Consequently, public bodies may refer legislation to the Constitutional Court if they feel that parliament did not follow established Rules of Parliamentary Procedure. It is not clear how detailed this formal review of the enactment procedure should be, but as a rule the Court applies the concept of *substantial violation* of the rules of parliamentary procedure. For instance, it may consider not only the



number of votes in favour of the statute but may even regard the adoption of an act of parliament without the opinion of the judicial committee concerning the constitutionality of the bill (which is required as a form of preventive control of legislation) as a substantial violation of the rules of parliamentary procedure and therefore of the Constitution (see, e.g., 19 January 2005, ruling [II.18]).

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

The majority of cases of constitutional review probably relate to the constitutionality of statutes. According to the Constitution, challenges to the constitutionality of an act of parliament can be brought by a group consisting of no less than one-fifth of the members of parliament (or by the *Seimas* itself<sup>36</sup>), the government or the courts. The president cannot challenge the constitutionality of legislation.

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

As a rule, a presidential decree has no normative value and review by the Constitutional Court is therefore fairly unusual. The court has examined the constitutionality of presidential decrees only three times (rulings of 30 December 2003, 15 April 2004 and 2 June 2005). Decrees of the president (like the directives of the government) have to comply not only with the Constitution but also with parliament's legislation.

<sup>36</sup> According to Article 106 of the Constitution, if the *Seimas* as such (and not a group of MPs) challenges an act of Parliament before the Constitutional Court, the applicability of the contested act is automatically suspended.

#### *D. Judicial review of the constitutionality of international treaties and agreements*

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

#### *E. Role of the Constitutional Court in impeachment proceedings*

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

Impeachment charges brought against the president are formulated by the Parliamentary Impeachment Committee and, if confirmed by parlia-

ment, presented to the Constitutional Court for examination. The Court has to evaluate the charges and present its conclusion as to whether the offences formulated by the impeachment committee actually constitute a violation of the Constitution.

In effect, therefore, if the Constitutional Court is asked to evaluate the constitutionality of the actions of an official in an impeachment procedure, it is playing the role of Constitutional Grand Jury and is competent to say whether the public official is guilty or not guilty of violating the Constitution. In its conclusion of 31 March 2004, the Court addressed the question of whether the president had breached the oath of office. In this sense, we can also speak of the Constitutional Court as certain High Court of Honour, with the competence to review a breach of oath, which is traditionally understood to be primarily a political and moral concept.

#### *F. The Constitutional Court as electoral court*

There is no specific electoral court in Lithuania. However, the Constitutional Court and the High Administrative Court can hear claims regarding the legality of decisions made by the Supreme Electoral Commission (*Vyriausioji rinkimų komisija*), which is responsible for organizing and supervising national elections. Legislation provides that decisions of the Commission or its failure to act may be appealed to the High Administrative Court before the end of voting. The official announcement of the results of parliamentary or presidential elections is made within 24 hours, after which a political party or candidate that disagrees with a decision of the Supreme Electoral Commission may ask the Constitutional Court for a conclusion on whether there has been a violation of electoral laws (see also Art. 105). Any such request must be made through the *Seimas* or through the president. The Constitutional Court has twice received such a request: in 1996 and 2004, when it examined the election of a candidate in a particular electoral district after the parliamentary elections. The Court, employing the concept of a substantial breach of electoral

laws, ruled that notwithstanding some minor violations during the campaign, the electoral laws had not been broken. Although the Constitution (Art. 107) provides that the final decision regarding the annulment of the results of an election rests with the *Seimas*, it is difficult to imagine a situation where the parliament would not accept the conclusion of the Constitutional Court that the electoral laws had been violated during an election campaign.

#### 4. STYLE AND METHODOLOGY OF REASONING OF THE CONSTITUTIONAL COURT

The first point to be made is that justices of the Constitutional Court cannot give a dissenting opinion, which eliminates the possibility of a wider scholarly discussion of politically, socially or morally sensitive issues.

According to the Constitution, the Constitutional Court is not limited to the provisions of the Constitution cited in the petition when it is examining the constitutionality of a legal instrument. Nor is the Court restricted to the actual articles of the Constitution, since it can review the document's compatibility with constitutional principles derived from the Preamble of the Constitution or from the spirit of the Constitution in a broader sense. This influences the methodology of the Court's reasoning. The Constitutional Court uses various methods of reasoning and interpretation.

The principal method is that of systematic and coherent interpretation. According to the Court, there are no legal gaps in the Constitution since it consists not only of the actual text but also its spirit, which can be used to rectify any imperfections in the text. This hermeneutic approach is also linked to historical and teleological methods of interpretation, which take into account first and foremost the purpose or intention of a certain rule or set of rules. The Court also often employs a comparative method of interpretation, interpreting various constitutional concepts of human rights in the light of the jurisprudence of the European Court of Human Rights and national legislation in the light of EU law, including

the jurisprudence of the European Court of Justice. The Court also uses the method of weighing and balancing different constitutional principles, since different principles and human rights are often in opposition in a particular case. But this method is far from fully developed in the Court's reasoning.

The Court has also developed the idea that legislation has to be interpreted first and foremost in light of the Constitution and not the other way around. The post-Soviet legal mentality tended to interpret certain provisions of the Constitution in light of existing legislation. But the Constitutional Court has tried to change this attitude to the Constitution through its jurisprudence.

It also has to be said that the Constitutional Court is still of the opinion that only it has the power to interpret the Constitution (see, for example, its ruling of 13 December 2004). This centralized approach to the interpretation of the Constitution is sometimes criticized by Lithuanian legal scholars<sup>37</sup> who refer to Article 6 of the Constitution, which provides that the Constitution is directly applicable law.

#### 5. EFFECT OF A RULING OF THE CONSTITUTIONAL COURT DECLARING ALL OR PART OF A LEGAL ACT UNCONSTITUTIONAL

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

<sup>37</sup> For example, see Egidijus Šileikis. *Alternatyvi konstitucinė teisė*. TIC, 2003.

Problems sometimes arise, however, if the *Seimas* is slow to change the unconstitutional piece of legislation. For instance, on 21 December 1999, the Constitutional Court declared that the new *Law on Reimbursement of State Officials* was in conflict with the Constitution in so far as it reduced the salaries of members of the judiciary, including the salaries of justices of the Constitutional Court. Since this ruling, the salaries of members of the judiciary have been paid on the basis of an earlier government directive. This is formally illegal because, according to legislation, the salaries of members of the judiciary have to be regulated by an act of parliament and not by the executive.

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

#### 6. JUDGMENTS OF THE CONSTITUTIONAL COURT

According to the Constitution and ordinary legislation, the Constitutional Court may deliver two types of judgments: rulings and conclusions. Until 2004 the distinction was assumed to be that *rulings* were final judgments of the Court on the constitutionality of a legal instrument, whereupon the unconstitutional legal act would be legally void and may not be applied, while a *conclusion* was regarded as official legal expertise and a non-binding recommendation for the *Seimas* on issues over which it has the final decision<sup>38</sup>. In a conclusion dating from 31 March 2004, however, the Court completely changed the notion that conclusions of the Constitutional Court are non-binding.

<sup>38</sup> See also Caroline Tauber, *Constitutionalism in Estonia, Latvia and Lithuania*. Iustus Förlag, 2001. p. 183.

### A. *Rulings of the Constitutional Court*

A ruling (*nutarimas*) is the main legal instrument by which the Constitutional Court forms its jurisprudence. The Constitutional Court delivers between thirteen and eighteen rulings a year. The courts and political actors (the president, the *Seimas* and the government) can seek a ruling of the Constitutional Court if they are uncertain about the constitutionality of a legal document.

### B. *Conclusions of the Constitutional Court*

Only the *Seimas* and the president can request a conclusion. According to the Constitution, the Constitutional Court presents conclusions (*išvada*) on questions submitted to it relating to the following (Art. 105):

- 1) whether electoral laws have been violated during presidential and parliamentary elections;
- 2) whether international treaties of the Republic of Lithuania are in conflict with the Constitution;
- 3) whether the actions of state officials facing impeachment proceedings are in conflict with the Constitution;
- 4) whether the health of the President of the Republic allows him to hold office.

During the thirteen years of its existence, the Constitutional Court has only presented a conclusion on four occasions: in 1995, concerning the constitutionality of the European Convention on Human Rights (it concluded that there was no conflict); in 2004, concerning malpractice by President Rolandas Paksas, who was facing impeachment (it concluded that the President had grossly violated the Constitution); and in 1996 and 2004, concerning violations of electoral laws during parliamentary elections (it found no violations of electoral laws).

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



The High Administrative Court of Lithuania (photo by Vladimiras Gulevičius).

## IX. The judiciary (*Teismas*)

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. The Constitutional Court is part of the judicial branch in the broader sense of the term, but it has special status under the Constitution, whose authors, as has been shown, regarded it as a special judicial body with competence beyond traditional judicial powers. Some provisions of the Constitution concern both the Constitutional Court and the judiciary in the broader sense<sup>39</sup>, but this chapter reviews the judicial branch excluding the Constitutional Court.

The Lithuanian legal and judicial system follows the Continental European model as opposed to the common-law system. In this context, the Constitution provides that “justice shall be administered only by courts” (Art. 109). The Constitution does not give a definition of justice, but from other constitutional provisions we can infer that justice in this context means that judgments must be administered justly, i.e., impartially; judges must be independent of other public authorities, political parties and private bodies (Arts. 109, 113, 114); court proceedings must be open to the public (Art. 117); the judgments of the courts must be reasonable,

<sup>39</sup> The provisions of Article 5 (“public power in Lithuania is vested in the *Seimas*, the President of the Republic and the Government and the judiciary”), the provisions of Article 113 (“Judges may not hold any other public office and may not be employed in any business, commercial or other private company. They may not receive any other remuneration than the salary as a judge, as well as remuneration for academic activities and royalties from creative work..”).

grounded in law and in conformity with the Constitution and values expressed in the Constitution (Arts. 7 and 110). The Constitution naturally gives the judiciary wide discretion to decide what constitutes justice in a particular legal dispute. While the Constitutional Court regards justice as one of the principal moral values on which a modern democracy under the rule of law is founded (e.g., a ruling of 22 December 1995), ordinary courts, and particularly the courts of lower instance, still maintain a very narrow formal-positivistic understanding of the concept of justice.

Lithuania has a dual judicial system, with ordinary and administrative courts having different jurisdictions in the administration of justice (see Art. 111). Courts of general jurisdiction deal with civil and criminal cases, while administrative courts deal with cases involving public administration, taxation and minor misdemeanours (e.g., breaking the speed limit).

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

The independence of the judiciary is guaranteed by the constitutional principle of the separation of public powers (Art. 5), by the immunity afforded to members of the judiciary and the prohibition of interference with the activities of judges or courts on pain of legal liability (Art. 114), by the fact that judges are appointed for life and their removal from of-

fice is constitutionally restricted (Arts. 115 and 116) and by the requirement that all decisions of the president concerning the appointment and removal from office of members of the judiciary must be made on the advice of the Judicial Council. The remuneration of the judiciary is also constitutionally protected (Art. 113). The Constitutional Court ruled on 12 July 2001 that the *Law on the Remuneration of State Officials*, which purported to reduce the salaries of some judges, contravened the constitutionally guaranteed independence of the judiciary (Art. 109) and other constitutional principles and declared this piece of legislation void.

### 1. THE ORDINARY COURTS

Article 111 (1) of the Constitution establishes a system of courts of general jurisdiction (or ordinary courts) to deal with civil and criminal cases. In accordance with the continental European tradition, this provision anchors a judicial system of three instances, courts of first instance, appeal and cassation, in the Constitution. There is no jury system in Lithuania, nor are there lay judges. All judges, including those of the local courts, are professional jurists who, again according to European tradition, are appointed and not elected<sup>40</sup>. The competence of the ordinary courts is laid down in the *Law on Courts (Teismų įstatymas)* and extends to minor civil and penal cases. Cases in local courts are heard by a single judge. There are 54 local courts (*apylinkės teimas*) with 480 judges, and they are established in practically every municipality. The local court is the court of first instance, which has jurisdiction to establish the facts of the case and, as a rule, has a heavier workload than the higher courts.

\* „Lietuvos Vyriausiosios Administracinės teismas“ sometimes is translated as „Supreme Administrative Court“.

<sup>40</sup> Legislation provides that a Master of Law degree from a university and five years of legal practice is required in order to apply for the office of judge. In Lithuania there is no special school for magistrates as there is in France, for example, but a candidate is required to have a year's practical experience in the court. The candidate is also required to pass a special examination, which is set by the Ministry of Justice and covers all the major subjects of law.

The district court (*apygardos teismas*) can serve as a court of appeal or as a court of first instance, depending on the amount of money (and some other circumstances) involved in a claim in civil proceedings and on the seriousness of the crime in criminal proceedings. There are five district courts, one in each of the five largest towns and cities of Lithuania. There are 194 district judges. District courts have separate divisions for civil and criminal cases. The jurisdiction of the district courts more or less coincides with the administrative boundaries of the country. The district court sits in a *collegium* of three judges. District courts, when acting as courts of first instance, have the competence to establish the facts of the case.

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 Court of Appeal, as a rule, may not review the facts of a case as established by the court of first instance. The Court of Appeal has civil and criminal divisions (*skyriai*) and 27 judges; it sits in a *collegium* of three judges.

The Supreme Court is the highest court of general competence and acts as a court of cassation, the court of final instance in civil and penal cases, and is competent only to review the application of the law by lower courts. As a rule, the Supreme Court accepts all legitimate appeals from the Court of Appeal and does not use a filter system, as is the case in common-law countries. There are 35 Supreme Court justices and the Supreme Court has divisions for civil and criminal law. The Supreme Court sits in a *collegium* of three or seven judges or in plenary session. Legislation provides that the Supreme Court should publish a journal of judicial practice (*Teismų praktika*) containing the most important cases and may deliver recommendations to ordinary courts regarding the application of law. The cases to be published in the journal of judicial practice are selected by the Senate of the Supreme Court, which is made up of seventeen justices appointed by the Chairperson of the Supreme Court, including the Chairperson himself. According to the *Law on Courts*, lower courts

of general competence must take into consideration the jurisprudence of the Supreme Court in analogous cases. Despite the legislature's intention to introduce the concept of *stare decisis* in the judicial system, this common-law transplant does not work very effectively in Lithuania. Judges from the former Soviet era, in particular, find it difficult to grasp the idea of *stare decisis* and to apply the principle in analogous cases. It has to be said that rules of precedent in decisions of the Supreme Court published in the journal of judicial practice are sometimes formulated as an abstract interpretation of a statutory rule detached from the facts of the case. The judges of lower courts therefore often regard the precedent as an application of an abstract interpretation of a legislative rule but not as a pretext for finding a link between the facts on which the Supreme Court issued a ruling and the facts of the case under consideration.

It has to be said that public confidence in the judicial branch in Lithuania is quite low. This may be explained in part by the fact that the majority of the corps of Soviet-era judges remained in office after independence because there were no new judges to replace them. Consequently, fifteen years after the reestablishment of an independent judiciary, the situation remains that the majority of sitting judges were trained during the period of Soviet occupation and generally find it rather difficult to adapt to the social and legal changes in society. The formalistic application of law (according to prevailing concepts of legal positivism) without taking into account the provisions and principles of the Constitution is a common practice adopted in the ordinary courts (especially those of the lower instances). The absence of a tradition of dissenting opinions in courts in Lithuania does not help to improve the rather formalistic reasoning employed by ordinary and administrative courts.

The 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 (i) the predominant role of the written proceedings, (ii) the fact that the judge has usually 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 (iii) the fairly active role played by the judge, who can ask questions about facts or points of law and interrupt or even comment on the legal arguments of the parties during the proceedings.

## 2. ADMINISTRATIVE COURTS (*Administraciniai teismai*)

Until the judicial reforms of 1999, Lithuania had a unitary judicial system, composed only of courts of general competence, with the Supreme Court at the top of the system. The decision was taken in 1999 to establish separate specialized courts with competence to adjudicate in administrative cases. The legal basis for this reform was Article 111 of the Constitution<sup>41</sup>. It was initially decided to establish only lower specialized courts and integrate them into the existing judicial system with the existing Court of Appeal and Supreme Court. One year into the reform process, in 2000, however, a separate High 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.

There are now five district administrative courts (*apygardos administracinis teismas*) and the High Administrative Court (*Vyriausiasis administracinis teismas*), which form the system of administrative courts in Lithuania. As a rule, district administrative courts sit in a *collegium* of three judges as a court of first instance; the High Administrative Court is the court of appeal and court of final resort in administrative proceedings. The High Administrative Court, which has fourteen judges, sits in

a *collegium* of three or five judges or in plenary session. There is no cassation in the system of administrative courts, which can be explained by the desire to guarantee more rapid administration of justice than in civil or criminal procedures.

A special ad hoc judicial body, whose members are the justices of the Supreme Court and the High Administrative Court, has been created to resolve disputes over jurisdiction between ordinary and administrative courts.

### A. Competence of administrative courts

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

Whether the judicial reforms establishing specialized administrative courts and allocating disputes with public agencies to these courts has yielded positive results is open to question. The fact is that, unlike the justices of the Constitutional Court, the judges of the administrative courts were appointed in 1999 and 2000 from the ordinary courts. This resulted in the majority of administrative judges regarding the administrative courts as *courts of administration* rather than *courts of human rights*.

As mentioned earlier, administrative courts are generally competent to resolve legal disputes between private parties and public authorities.

<sup>41</sup> Art. 111 par. 2 reads "For the investigation of administrative, labour, family and cases of other categories, specialized courts may be established according to law."



Most administrative proceedings involve a dispute between an individual and a public agency (for instance, a driver versus the police or a taxpayer versus the tax agency). 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. According to legislation, in Lithuania it is even possible to bring an action against the parliament, for instance, if an official is dismissed by an act of parliament (see, for example, the ruling of the High Administrative Court of 3 July 2003). The administrative courts are also competent in cases involving a dispute between two public agencies, e.g., a municipality and central government.

The High Administrative Court and the district administrative courts also have the power to review the constitutionality and legality of some legal instruments, for example, ministerial directives. During a case, an ordinary court can ask the administrative court to review a document's constitutionality or legality (concrete review). If the ordinary court is uncertain about the executive instrument's constitutionality (compatibility with the Constitution) or legality (compatibility with an act of parliament), it has to suspend the proceedings and apply for a ruling on the matter by the administrative court<sup>42</sup>. A finding by the administrative court that the instrument in question is in conflict with the Constitution or legislation renders it void, as is the case with a similar ruling by the Constitutional Court, and it may not be applied by any private or public entity. In other words, besides *concrete review* of maladministration, public agencies can also ask the administrative courts for an *abstract review* of the legality of a particular executive legal instrument.

The High Administrative Court also functions as the high electoral court when dealing with claims regarding decisions of the Supreme Electoral Commission or of possible violations of electoral laws before the end of voting. The High Administrative Court publishes a journal of the

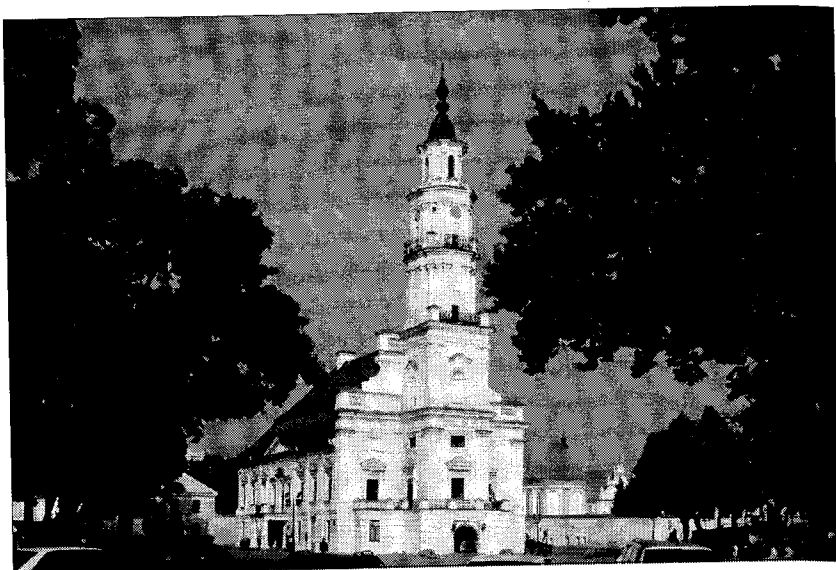
<sup>42</sup> The High Administrative Court is competent to review the legality of documents of any central executive agency (for instance, a ministerial decree), while district administrative courts may review the legality of legal instruments issued by regional and local authorities.

practice of the administrative courts (*Administracinių teismų praktika*) containing the most important cases in the preceding year, grouped according to subject, e.g., cases on the civil service, punitive liability, tax law, etc. The High Administrative Court uses this journal *inter alia* to issue its recommendations regarding the application of legislation to the district administrative courts.

### *B. Administrative procedure*

Although they are courts of first instance, the district administrative courts often sit with a *collegium* of three judges. The chairman of the district administrative court appoints a *juge rapporteur*, who is responsible for delivering a draft ruling. In practice, the *juge rapporteur* is often the only judge in the *collegium* who actually follows the proceedings. This procedure in fact means that the final ruling in the case is formulated by the *juge rapporteur* without much input from the other two judges and makes the use of a *collegium* a pointless formality.

Administrative proceedings in Lithuania do not differ greatly from civil proceedings. 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. As in the ordinary courts, the judge plays an active role in the proceedings. The ruling and the reasons for the decision may be delivered within seven days of the proceedings. If either party is dissatisfied with the ruling, it can appeal to the High Administrative Court. Although there is no cassation in administrative proceedings, it is still possible to appeal again to the High Administrative Court on the grounds of errors in the application of the law. The court must then form another *collegium* 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).



Kaunas City Hall (from the Archives of the Lithuanian State Department of Tourism).

## X. Local government (*Vietos savivalda*)

### 1. ADMINISTRATIVE DIVISION AND CENTRALIZATION OF PUBLIC POWER

There are 60 municipalities (*savivaldybės*) and ten counties (*apskritis*) in Lithuania. Residents of municipalities are represented by directly elected members of the municipal council, while the governors of the county (*Apskritis viršininkas*) are appointed by the central government. 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.

The municipalities in Lithuania are relatively large, with an average population of sixty thousand. There are smaller local administrative branches (*seniūnijos*), mainly encompassing a village, which do not have directly elected representative but are instead administered by a public official (*seniūnas*) appointed by the director of municipal administration. A *seniūnas* performs some public services in villages, such as civil metrication, notarial services, regulation of small trading activities and even examination of certain smaller administrative cases.

Lithuania is a fairly centralized country. According to the original idea of the Lithuanian Constitution, all public power comes from the Nation and is exercised by the central government and, through it, is devolved to local government (not the other way around). This centralized attitude of the founders of the 1992 Constitution can be explained by the fact that there is no tradition of devolution in Lithuania. Although some provisions of the Constitution suggest that municipalities have their own budget (Art. 121), nevertheless, the jurisprudence of the Constitutional Court and the national political and legal elite still advocate the country's centralized form of government<sup>43</sup>.

## 2. ELECTIONS OF MUNICIPAL COUNCIL AND MAYORS

According to the Constitution (Art. 119) and the *Law on Municipal Council Elections*, members of the municipal council are directly elected for four years according to the system of proportional representation. The active electoral right, i.e., the right to vote, in municipal elections is enjoyed not only by Lithuanian and EU nationals, but all permanent residents of the municipality in question. The mayor (*meras*) of a municipality is elected by a majority of the municipal council. The mayor, a politician, shares his or her administrative competence with the director of municipal administration, who is a civil servant.

<sup>43</sup> For example, the Constitutional Court ruled on 13 December 2004 that the constitutional provision that "municipalities shall draft and approve their own budget" does not mean "an independent (from central government) budget" and that Lithuania has a "unified budgetary system". In the same ruling, the Constitutional Court defended the quite centralized "Weberian" model of the Lithuanian civil service.

The passive electoral right, i.e., the right to stand for election, in municipal elections extends to Lithuanian nationals (citizens) and all permanent residents of the municipality who are aged twenty or older. The Migration Agency can issue permits for permanent residence to foreigners who have lived legally in Lithuania for five years or have obtained refugee status. The same restrictions on eligibility to stand in parliamentary elections also apply for municipal elections.

## 3. COMPETENCE OF LOCAL GOVERNMENT

The Constitution provides the basis for the competence of local government. Article 121, for instance, states that a municipality may establish local levies and may provide for the levying of taxes at the expense of its own budget. The municipal council can fix the local tax rates at its own discretion. Local government's principal power, however, comes from the constitutional provision that municipalities can adopt their own budget, independently of the central government (Art. 121 and 127). The independence of the municipal budget is therefore constitutionally protected and a municipality must have the necessary means to form and adopt its own budget. Nevertheless, the parliamentary legislation implementing these constitutional provisions does not give municipalities the possibility to collect taxes directly or even to adopt their budget independently, since by an act of parliament, the *Seimas* adopts what is known as an annual consolidated budget, including indexes of the budgets for the sixty municipalities. In a fairly controversial decision on 13 December 2004, the Constitutional Court decided to approve the existing legislative practice that allows the central public power (the *Seimas*) to determine the wages of civil servants working in a municipality. All of these points illustrate the centralized nature of local government in Lithuania. In effect, practically all financial resources for the municipal bud-

get come from the national treasury, i.e., from central government. Municipalities themselves are only able to establish parking fees, the fares for local transport, land rent and some other smaller levies.

Other areas of competence of local authorities are laid down in the *Law on Local Government*. Although secondary education is unified and centralized in the country, primary and secondary schools and hospitals are governed by municipalities. Municipalities have traditionally been competent to deliver all kinds of communal services, such as pre-school care, housing, town cleaning, local transport, parking, social security, funeral services, etc. The municipalities' competence also includes primary and informal education, administration of health and some other social services, employment policies and training services, the organization of cultural events, tourism and leisure (especially for juvenile, disabled and socially disadvantaged persons). Municipalities share other powers with central government. In this context, "shared competence" means, for instance, that central government can legislate on secondary education while local authorities can act in this area but only within the limits prescribed by that legislation.

The mayor represents the municipality, convenes and presides over sessions of the municipal council, signs decrees issued by the municipality and coordinates the functions of the different committees of the municipal council. Although not directly elected and required to share some powers with the director of municipal administration, the mayor of a municipality does possess the main levers of municipal power. The mayor is politically accountable to the municipal council and can be removed from office if he or she loses the confidence of a majority of the members of the council.

The Agent of the Government (*Vyriausybės atstovas*) exercises administrative supervision over a region, which is generally made up of approximately six municipalities. The Agent of the Government, who resides in the region's capital, can appeal to the administrative court if he or she feels a municipality has exceeded its competence.



Photo by Daina Čyvienė.

## XI. Human rights (*Žmogaus teisės*)

### 1. THE CONCEPT OF HUMAN RIGHTS

The contemporary Western concept of *human rights* is a fairly recent development, having evolved since World War II when the theory of “pure legal positivism” was discredited by its association with the rise and justification of totalitarian regimes. Since the adoption of the Universal Declaration of Human Rights, and more especially the European Convention on Human Rights, some European jurisdictions have gradually expanded the concept of *fundamental rights*, culminating in the Charter of Fundamental Rights of the European Union (2000).

The first thing that has to be said is that there is no coherent and decisive concept of *fundamental rights* in Lithuanian legal science and jurisprudence. Instead, the 1992 Constitution established a more general concept of *human rights*, which was nevertheless influenced by the European Convention on Human Rights. Chapters II to IV of the Constitution are devoted to various rights of the individual. The importance attached to these sections is shown by the fact that they come before the chapters on State powers. Although the Constitution is directly applicable law (Art. 6), in relevant cases, the courts have so far not relied solely on the provisions of the human rights sections of the Constitution but have instead tried to refer to a statute implementing the constitutional provisions, not only because the constitutional provisions are sometimes formulated in a rather abstract way but also because the direct application

of the Constitution is still quite a strange notion for ordinary courts and because the concept of human rights is also not taken seriously (to use Dworkian terminology) by the Lithuanian judiciary and legal community in general.

At the beginning of the 1990s, after the experience of the Soviet form of legal positivism<sup>44</sup>, the Lithuanian political and legal community was looking for a new concept to replace the prevailing formal-positivistic concept of law. Finally, among other legal concepts, the 1992 Constitution incorporated the idea of *ius naturalism*. Article 18 of the Constitution reads that “human rights and freedoms shall be natural (*prigimtinės*)”. This idea of natural human rights, based on human dignity as the origin of all human rights, and their priority over public power, contrasts with the concept of legal positivism, according to which, human rights only exist if they are laid down by the State in the text of positive law. This concept also means that the individual may not be deprived of his or her natural rights and that there is no definitive list of human rights. The birth of the concept of natural human rights in the Lithuanian Constitution was also influenced to a certain extent by the draft Constitution prepared by the American constitutionalists L. Wyman and B. Johnson in 1991, which took the idea of inalienable rights from the text of the Declaration of Independence (1776). The jurisprudence of the Constitutional Court also fosters the concept and terminology of *natural human rights* rather than

<sup>44</sup> Although the text of Soviet constitutions was usually formulated very democratically, it was not possible to apply their provisions in the courts. The judiciary had to interpret all provisions of the Soviet constitution and legislation in the light of Soviet ideology and various instructions of the Communist Party. Moreover, the Soviet judiciary, like all other public institutions, could not be regarded as independent since judges could be easily replaced if they did not follow the party line.

<sup>45</sup> The contemporary European concept of fundamental rights (*droits fondamentaux*) is much broader than the Lithuanian concept of natural human rights and may include, for instance, the right to good administration, business activities, labour services, consumer protection, etc. The concept of natural human rights is much narrower in this sense and includes only basic personal rights related to human dignity and the state of being human. The concept and terminology of fundamental rights will probably emerge in the Lithuanian legal system in the future under the influence of the terminology of the European Court of Justice and Court of Human Rights and the European Charter of Fundamental Rights.

the terminology of *fundamental rights* adopted in the legal traditions of some other European countries<sup>45</sup>. For instance, in a ruling of 9 December 1998, the Constitutional Court relied on this concept in declaring void a provision of the Criminal Code allowing capital punishment. In its jurisprudence, the Court has found that natural human rights include the right to life and human dignity (judgment of 9 December 1998), equal treatment of persons (judgment of 7 March 2003), right of access to cultural heritage (judgment of 8 July 2005), the right to ownership (judgment of 27 May 1994). It is also important to say that the contemporary concept of human rights in Lithuania is not limited to its use as a tool against arbitrary use of State power but can also be invoked in legal disputes between private bodies.

## 2. CATALOGUE OF HUMAN RIGHTS IN THE LITHUANIAN CONSTITUTION

As mentioned before, the Constitution does not contain a definitive list of human rights. However, different chapters of the Constitution do recognize a number of personal rights, political rights and socio-economic rights<sup>46</sup>. Of course, there are no clear demarcations in this classification since some rights may fall into different groups at the same time. Personal rights are the most important as they are directly linked with the concept of the natural and inalienable rights of a human being. In some European legal literature, the notion of fundamental rights only includes personal rights, sometimes together with political rights.

### A. Personal rights

Chapter II of the Constitution relates to personal and political rights. Firstly, Articles 18 to 32 encompass personal rights (*status personalis*), including the right to life, freedom, personal and family life, human dignity, the right to hold personal convictions and freedom of religion, the

<sup>46</sup> In this context, cultural rights are included in the category social and economic rights.

freedom to choose one's place of residence, freedom of speech, freedom of ownership and some others. *Habeas corpus* rights (the right to protection from arbitrary detention, see Article 20) can also be assigned to the category of personal rights under the Lithuanian Constitution.

The Constitutional Court has not developed a comprehensive doctrine on personal rights, although it did rule that the death penalty conflicted with a human being's natural rights and may not be used in a democratic society (ruling of 9 December 1998). The Court has identified the right to life and to human dignity as the basic human rights without which other human rights would be irrelevant. But the Constitutional Court's heaviest caseload with respect to personal rights has involved the restitution of personal rights to ownership of property after the Soviet expropriation in Lithuania in the 1940s. In this context, the Constitutional Court has adopted a rather soft attitude towards the right to restitution of expropriated property and sometimes tends to justify the government's refusal to return property *in natura*, relying on social changes that occurred during the fifty years of Soviet occupation. The government must, of course, provide fair compensation, while expropriated property must serve the needs of society. Another problem that has arisen in the context of restitution is the fact that ordinary legislation has provided that only individuals with Lithuanian citizenship are entitled to restoration of property that was expropriated by the Soviets.

It is interesting to note that the Lithuanian Civil Code (2000) enumerates the following personal rights: the individual's right to life, to human dignity and personal reputation, to private life, to one's name, to one's health and to one's bodily integrity.

### B. Political rights

The human rights provided for in the remaining articles of Chapter II, Articles 33 to 36, are political rights since they concern the individual's right to participate in the governance of the country, to vote in elections and stand for election, the right to criticize the government, the right of

assembly and the right of association. Although only Lithuanian citizens have the right to vote in national presidential and parliamentary elections, all permanent residents of the country, regardless of their nationality, have the right to vote and to stand as a candidate in municipal elections (Art. 119). All nationals of EU member states who are permanently resident in Lithuania can vote in elections for or stand for election to the European Parliament.

There is little jurisprudence of the Constitutional Court concerning political rights. Interestingly, the Court permanently removed the right of any person who is removed from the office of President of the Republic or as a member of parliament or of the judiciary by impeachment to stand in national elections (ruling of 25 May 2004). It is unclear whether the European Court of Human Rights would find this permanent curtailment of an individual's passive political right to be proportionate under the European Convention.

### C. Social and economic rights

Chapters III and IV deal with social and economic rights. Article 39, for instance, provides that the state should support maternity leave. Article 41 provides that public secondary education shall be free of charge. Articles 49 and 52, respectively, guarantee an individual's right to paid annual holidays and to a retirement pension. Articles 50 and 51 guarantee the right to join a trade union and to strike.

It could be argued that some social and cultural rights are declarative human rights, since their direct application in the court is not always possible<sup>47</sup>. This view may be supported by the rather abstract formulation of some provisions of the Constitution. For instance, Article 46 says that "the State shall support economic efforts and initiative that are useful to society" and "the State shall defend the interests of the consumer". Article 48 provides that "each person may freely choose a job or business and shall have the right to have proper, safe and healthy conditions

<sup>47</sup> See, e.g., Caroline Tauber. Op. cit. p. 226-238.

of work, to receive fair pay for work [...]". Even Article 41 (which states that "higher education shall be available to everyone according to his or her individual abilities. Citizens who are good at their studies shall be guaranteed higher education at State schools free of charge") is scarcely implemented in practice in the country.

Nevertheless, it is interesting to note that the Constitutional Court has been issuing a growing number of rulings concerning social rights. Between 2000 and 2005, the Constitutional Court issued about twenty judgments concerning the right to compensation for work, the right to a retirement pension or other social rights. In a ruling on 25 November 2002, the Constitutional Court invoked the principle of protection of legitimate interests when it ruled that sums awarded in a salary or a pension may not later be reduced. This ruling was a factor in the Government's decision that pensioners who are employed and receive a salary for their work must also be paid their full pension.

#### *D. The rights of minorities*

The rights of minorities are protected by Articles 37 and 45, which read "[c]itizens belonging to ethnic communities shall have the right to foster their language, culture and customs" and "[e]thnic communities of citizens shall independently manage the affairs of their ethnic culture, education, charity and mutual assistance. Ethnic communities shall be provided support by the State." The term "minority" does not appear in the text of the Constitution, which uses the term "ethnic community", which does not include religious or other minorities. In this context, it has to be said that Poles and Russians, who make up about 15% of Lithuania's total population, have the right to choose to send their children to public primary and secondary schools where education is guaranteed in their respective languages.

There is very little jurisprudence of the Constitutional Court concerning minority rights and it is difficult to imagine how the constitutional provisions of Articles 37 and 45 could persuade the State to take positive action. It should be mentioned here that after the restoration of independence in 1990, Lithuanian citizenship was granted to all Soviet immi-

grants who applied for it and had been residing legally in the territory of Lithuania up to 1989, without any residential or linguistic naturalization requirements. The only requirement for the granting of Lithuanian citizenship was to renounce Soviet citizenship.

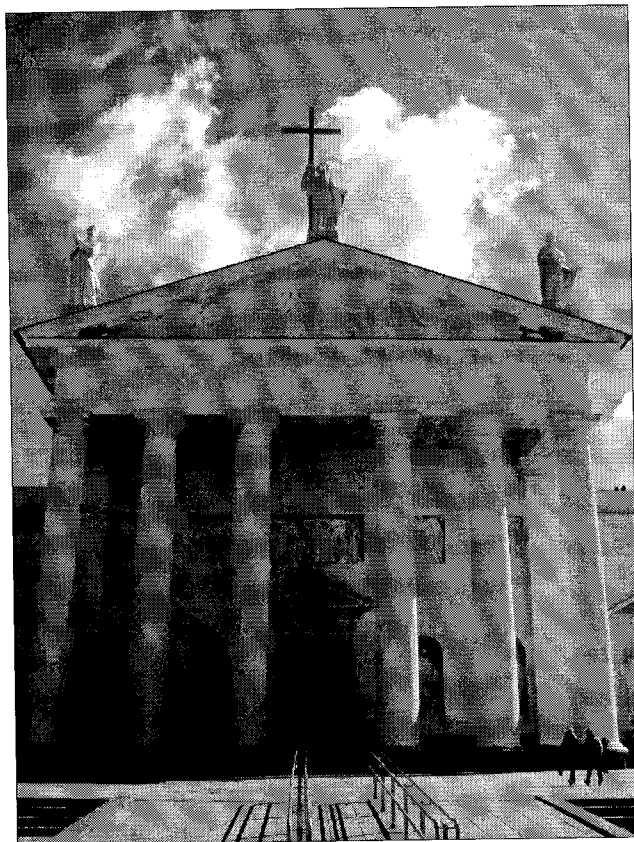
#### *E. Constitutional restrictions on human rights*

A concluding remark in this section is that the chapters of the Lithuanian constitution on human rights and their limitations have to be interpreted in light of the European Convention on Human Rights and the jurisprudence of the Court of Human Rights in Strasbourg. Despite the absence of any appropriate provision in the text of the Constitution, since 2002 the Constitutional Court has adopted the European concept of "*necessary in democratic society*" as a test to decide whether restrictions on human rights in the domestic legal system are legitimate. For instance, in a ruling on 14 March 2002, the Court found that the provisions of the *Law on Pharmaceutical Activities* that required owners of pharmacies to have a higher education in pharmaceuticals are not necessary in a democratic society. Using the same reasoning, in a ruling of 24 March 2003, the Court declared unconstitutional the rule permitting extensive censorship of the correspondence of detained persons.

Although it is not mentioned in the Constitution, the Constitutional Court has accepted the *principle of proportionality* with respect to restrictions on human rights since as early as 1996. In the beginning it referred only to the jurisprudence of the European Court of Human Rights, but since a ruling on 7 January 2000, the Court has accepted this principle as a domestic constitutional principle. Moreover, in a ruling of 2 October 2001, the Court said that the principle of proportionality can be derived from the constitutional principle of the *rule of law*, which is enshrined in the Preamble of the 1992 Lithuanian Constitution.

As already mentioned, safeguards for human rights could be strengthened in the Lithuanian legal system if the ordinary and administrative courts applied the Constitution as provided for in Article 6.





The Cathedral of the Archdiocese of Vilnius (photo by Liutauras Serapinas)

## XII. The state and church (*Valstybė ir Bažnyčia*)

Lithuania was the very last country in Europe to convert to Christianity. After some unsuccessful attempts, the country was finally converted in 1387, although only at the beginning of the fifteenth century in Samogitia in the north-west of the country. After the Treaty of Krėva in 1387, Lithuania's Grand Duke Jogaila became King of Poland and, together with other Lithuanian nobles, finally accepted Roman Catholicism and symbolically baptized the entire country. At the beginning of the sixteenth century, after the spread of the Reformation, majority of the powerful noble families in Lithuania joined Calvinist movements. But after the Union of Lublin in 1569, when Lithuania and Poland formed the so-called Commonwealth of Two Nations, the educational and other counter-Reformation policies of the Jesuits converted the country back to Catholicism.

Roman Catholicism is still the dominant religion in Lithuania. According to a recent census, about 80% of the population regard themselves as Roman Catholics, although the significance of the religion in social life was greatly diminished after 50 years of Soviet occupation. Other large Christian denominations in the country are members of the Russian Orthodox Church, Lutherans and Evangelical Reformats (*Evangelikai reformatai*).

Despite various restrictions on freedom of religion and conscience during the Soviet occupation<sup>48</sup>, the Roman Catholic Church and other traditional religious communities played an important role in the resistance movement during that time. The church was probably the one quasi-legal social entity in the country that was not dominated by the Communist Party.

## 1. CONSTITUTIONAL STATUS OF CHURCHES AND RELIGIOUS COMMUNITIES

After the restoration of independence in 1990, one of the first acts of restitution for injustices was the adoption of the *Law on the Restitution of the Status of the Catholic Church* (12 June 1990). However, under the law only the buildings that had been confiscated from the church were returned, not its expropriated land. This act of parliament is still in force but the church's property has not all been returned yet. Under the current legislation, non-governmental organizations other than the church are not entitled to the restoration of their rights to land or any other expropriated property, including buildings.

As mentioned earlier, the final text of the 1992 Lithuanian Constitution was a compromise between three drafts produced by the former communist party (LDDP), the Sąjūdis and the Liberal Party. In the drafts of the centre-right *Sąjūdis* and Liberal Party, the Roman Catholic Church was to have been restored to the prominent constitutional status it had enjoyed for centuries, right up to the Soviet occupation. For instance, the Liberal Party included provisions of the 1938 Lithuanian Constitution concerning the status of the church almost verbatim in its draft text of the Constitution. On the other hand, the draft of the former communists was fairly restrained in terms of the status accorded to religious communities

<sup>48</sup> During the Soviet occupation, ordinary religious practice was suppressed since it did not fit in with official Soviet atheist ideology. Religious practitioners were persecuted throughout society, from school to workplace. Non-conformist bishops and priests were killed or deported to Siberia. Many seminaries and churches were closed and their property was expropriated. The teaching of Marxist-Leninist ideology as a pseudo-religion was mandatory in Soviet primary, secondary and higher education in order to re-educate the population and form a new type of *Homo Sovieticus*.

and advocated rigid separation of state and church *à la soviétique*. The final text of the 1992 Constitution ultimately contained the centre-right concept of the status of the church, reproducing the provisions of the 1938 Constitution with some modifications.

### A. Principle of the secular state

The founders of the Constitution agreed first of all that Lithuania had to be a democratic secular state. The Constitution therefore provides that Lithuania has no state religion (Art. 43) and that public schools in Lithuania are secular (Art. 40). Without elaborating on it, the Constitutional Court has adopted the principle of the secular state in a couple of its rulings, including the separation of State and church and the state's neutrality concerning the individual's freedom of conscience and religion (for example, see the ruling of 13 June 2000).

But the Lithuanian concept of the secular state and the separation of State and church is a rather weak one<sup>49</sup>. It is taken to mean that the State treats the church as a partner in cultural, family and educational matters and respects its role and influence in those areas. For instance, at the request of parents, religious classes in public schools in Lithuania are taught by traditional churches, usually the Roman Catholic Church (Art. 40). Also important is the fact that the State recognizes marriages registered in the church (Art. 38), which means that a marriage celebrated in a traditional church or religious community does not need to be repeated in a civil service. It is enough for the municipality to receive the official marriage certificate from the church. The state also recognizes chaplains in the military, the police, prisons, universities and other public services.

Churches and religious communities carry out their activities according to their canons and statutes and independently of State power (Art. 43). This means that the state recognizes a quasi-dual legal system in the country since churches establish their own seminaries, determine

<sup>49</sup> In French legal literature there are two different concepts of the separation of State and Church. Strong separation (the French way) is usually called "*laïcité*" and weak separation is called "*sécularité*".

the programmes for religious education in public schools and use their canons to conclude marriages and divorces, while the State does not have the competence to intervene in these areas. In this regard, it has to be mentioned that in 2000 the Lithuanian Parliament ratified three treaties with the Holy See (the Vatican) i) on cooperation between the State and the Catholic Church, ii) on cooperation in educational and cultural matters and iii) on spiritual assistance for Catholics in the armed forces.

The Constitutional Court has not yet fully defined the principle of the secular state. In practically the only ruling on the question, on 13 June 2000, the Court adopted a rather incoherent point of view. On the one hand it recognized the idea of cooperation between the State and the Church in public education (the concept of *sécularité*), but on the other the ruling tended to limit the constitutional right of parents to ensure that their children were educated according to their moral or religious convictions in public schools (Art. 26) (the concept of *laïcité*).

### B. Traditional churches and religious communities

The provisions of Article 43 of the Constitution, which were taken from the 1938 Constitution, tend to legitimize the prominent status of the Roman Catholic Church and other major religious communities in the country by granting the traditional churches and religious communities privileged constitutional status. The thinking is that the traditional religious communities are part of the cultural heritage of the country, which has to be preserved and maintained by the State. Another idea behind this provision is to protect society from the influence of new pseudo-religious movements. According to the *Law on Religious Communities* (1995), six Christian denominations have the status of a traditional church. They are the Roman Catholic Church, the Greek Catholic Church (*unitai*), the Evangelical Lutheran Church (*Evangelikų liuteronų bažnyčia*), the Evangelical Reformat Church (*Evangelikų reformatų bažnyčia*), the Russian Orthodox Church and the Russian Old Believers Orthodox Church (*sen-tikiai*). This status was also awarded to three non-Christian communities: the Jewish religious community, the Sunni Muslim religious community and the Karaite religious community (*karaimai*)<sup>50</sup>. In 2001 the same

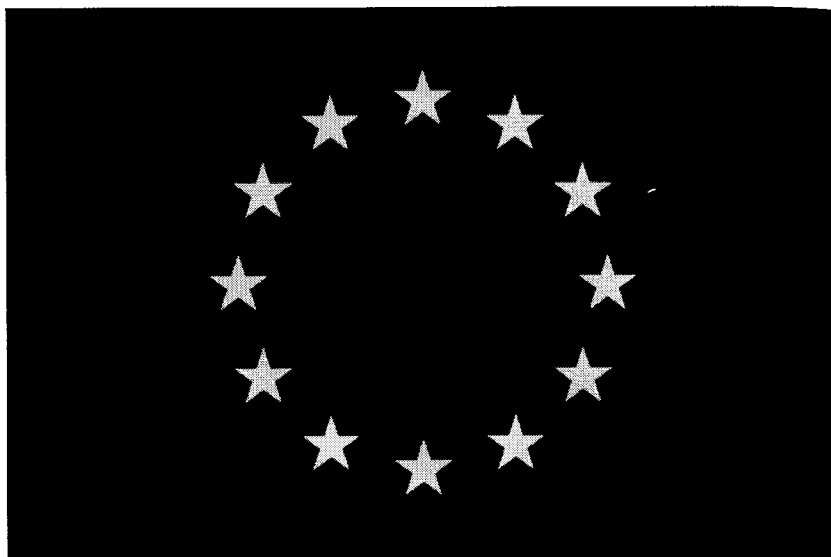
status was granted by act of parliament to the Baptist Church (*Lietuvos evangelikų baptistų bendruomenių sąjunga*). According to the legislation, this list of traditional churches and religious communities may be extended if a particular religious community operates legally in the country for at least 25 years and enjoys support in society. A special department of the ministry of justice is responsible for enforcing this act.

Compared with other religious communities, traditional churches enjoy certain privileges with respect to their participation in the social life of the country. For instance, they have the right to teach religion in public schools at the request of parents and a sufficient number of pupils (Art. 40); the State recognizes marriages registered in these churches (Art. 38); they can broadcast programmes on national television and radio stations; they may have chaplains in the armed forces and police and at public universities. They may also receive financial support from the State or from a municipal budget (this support is usually linked to restitution of expropriated property).

## 2. PUBLIC EDUCATION AND RELIGION

It is important to note that there is practically no private or religious secondary education in Lithuania, notwithstanding the fact that parents have the constitutional right to educate their children according to their religious and moral convictions (Art. 26). In this context, it is very important that Article 40 of the Constitution provides that parents can request religious education in public schools. According to the *Law on Education* (1991) moral education is a mandatory subject on the curriculum of public schools, which means that pupils have to choose between classes on secular ethics or on the traditional religion professed by their family. In 2000 the Lithuanian Parliament ratified an international treaty with the Holy See on cooperation in educational and cultural matters. As with all ratified treaties, the provisions of this treaty take precedence over national legislation. This treaty effectively confirmed the existing system of moral education.

<sup>50</sup> The Karaite religion was brought to Lithuania from the Crimea by Grand Duke Vytautas in the fourteenth century.



The European Flag

### XIII. Participation in the European Union

On 1 May 2004, Lithuania and nine other countries joined the European Union. The country's journey to accession to the EU was a long one. The government had already declared its adherence to internationally recognized principles of law and the protection of human rights in the Act of Restoration of Independence on 11 March 1990 after almost 50 years of Soviet occupation. In 1993 Lithuania became a member of the Council of Europe. In 1995 the president officially applied for accession to the EU and in 1996 the *Seimas* ratified the treaty of association with the EU. Finally, on 11 May 2003, the Lithuanian people approved accession to the EU in a popular referendum, and on 16 September 2003, the *Seimas* ratified the Athens Treaty on accession to the EU, by virtue of which Lithuania joined the EU on 1 May 2004.

In other words, it took nine years from the official application for membership before Lithuania finally joined the European Community. During those nine years Lithuania implemented thousands of legal measures in order to comply with the *acquis communautaire*. From a constitutional law perspective, one of the most important legal instruments relating to Lithuania's accession to the EU is the amendment of the Constitution in the Constitutional Act "On Membership of the Republic of Lithuania in the European Union" (13 June 2004), which was adopted two and half months after Lithuania joined the EU.

During the accession process there were legal and political debates about whether it was necessary to adopt an amendment to the Consti-

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

### 1. DELEGATION OF SOVEREIGNTY OR OF COMPETENCE OF THE STATE?

As it is in other Central and Eastern European countries, any reference to the curtailment or *delegation of sovereignty* is a very sensitive matter in Lithuania. This can probably be explained by the fact that the sovereignty these countries lost after World War II was only restored in the 1990s after the withdrawal of Soviet troops. But the issue of sovereignty is even more sensitive in the Baltic countries, which had been largely erased from the European political map after World War II. The Constitutional Act on Membership of the EU, therefore, does not mention delegation of sovereignty but provides for “delegation of some *competences* of the Republic of Lithuania” (Art. 1 of the Constitutional Act), which sounds less dramatic to Lithuanian ears.

### 2. PRECEDENCE AND THE DIRECT EFFECT OF EU LAW

By virtue of ordinary legislation, international treaties that have been ratified by the *Seimas* take precedence over national legislation. Never-

theless, it was decided that the precedence and direct effect of European legislation had to be embodied in the Constitution, and a provision to that effect was included in Article 2 of the Constitutional Act. Of course, this provision does not completely solve the problem of the relationship between EU law (first and foremost the provisions of the founding treaties) and the national Constitution. On the other hand, the wording of Article 2 of the Constitutional Act may be used in the future to justify the precedence of EU law over the national Constitution: “The norms of the European Union law shall be applied directly and ... shall have supremacy over the laws and other legal acts of the Republic of Lithuania.” But according to jurisprudence of the Constitutional Court (see judgment of 14 March 2006), it is of the opinion that the words “other legal acts” do not encompass the national Constitution.

### 3. THE GOVERNMENT'S OBLIGATION TO COOPERATE WITH THE NATIONAL PARLIAMENT ON EU LEGISLATIVE PROPOSALS

The executive branch of government has the right of initiative and principal powers on European issues. The government does not even have to issue a directive concerning a proposal to adopt EU legislation (Article 4 of the Constitutional Act). The Lithuanian Parliament, learning from the experience of other member states, therefore included in the text of the Constitutional Act an obligation on the government to inform parliament of any proposals to adopt EU legislation. Moreover, if these proposals on EU legislation affect the competence of the parliament, the government has an obligation to consult parliament, which may even issue a recommendation on the issue. Article 3 of the Constitutional Act also stipulates that the government is obliged to cooperate with the parliamentary committees for European Affairs and Foreign Affairs on EU matters. Also important is the fact that these parliamentary committees can submit to the government the recommendations of the *Seimas* concerning the government's proposals to adopt EU legislation, while the government has to inform the *Seimas* about its execution of the recommendations.

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## XV. Acknowledgements

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## XVI. Annexes

### I. Population by gender (2005, Department of Statistics)

Territory	Population	Male	Female
The country	3,425,324	47%	53%
Vilnius (the capital)	553,904	46%	54%

### II. Presidents of the Republic of Lithuania (since 1990)

Vytautas <b>Landsbergis</b> (de facto)	1990-1992	(Sąjūdis)
Algirdas Mykolas <b>Brazauskas</b>	1993-1998	(LDDP, former Communist party)
Valdas <b>Adamkus</b>	1998-2003	(Independent candidate)
Rolandas <b>Paksas</b>	2003-2004	(Liberal Democratic Party, removed from office after impeachment)
Valdas <b>Adamkus</b>	2004	(elected for a second term).

### III. Ruling party after parliamentary elections (since 1990)

1. 1990 – Sąjūdis coalition (Popular Movement for Democracy);
2. 1992 – LDDP (former Communist Party);
3. 1996 – Conservatives and Christian Democrats;
4. 2000 – Social Democrats and Social Liberals;
5. 2004 – Labour Party and Social Democrats.

### IV. Governments and prime ministers

(Since March 11, 1990, with date of accession to office)

1. Kazimiera Danutė **Prunskienė** (17-03-1990, Sąjūdis coalition)
2. Albertas **Šimėnas** (10-01-1991, Sąjūdis coalition)
3. Gediminas **Vagnorius** (13-01-1991, Sąjūdis coalition)
4. Aleksandras Algirdas **Abišala** (21-07-1992, Sąjūdis coalition)
5. Bronislovas **Lubys** (12-12-1992, LDDP, former Communist Party)
6. Adolfas **Šleževičius** (10-03-1993, LDDP, former Communist Party)
7. Laurynas Mindaugas **Stankevičius** (23-02-1996, LDDP, former Communist Party)
8. Gediminas **Vagnorius** (04-12-1996, Conservative Party)
9. Rolandas **Paksas** (01-06-1999, Conservative Party)
10. Andrius **Kubilius** (03-11-1999, Conservative Party)
11. Rolandas **Paksas** (27-10-2000, Liberal Party)
12. Algirdas Mykolas **Brazauskas** (04-07-2001, Social Democrat Party)
13. Algirdas Mykolas **Brazauskas** (29-11-2004, Social Democratic Party).
14. Gediminas **Kirkilas** (06-07-2006, Social Democratic Party)



## V. Information concerning jurisprudence of the Constitutional Court

Number	Question/subject	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005* (01-06)	Total
<b>General information</b>															
1	Petitions received	22	39	18	16	21	33	36	54	54	34	50	56	14	447
2	Rulings	5	19	9	12	12	14	14	15	17	18	13	13	4	167
3	Conclusions	0	0	1	1	0	0	0	0	0	0	0	2	0	4
<b>Constitutionality</b>															
5	Entire legal document or some of its provisions are unconstitutional	3	10	5	10	7	9	7	7	13	11	9	10	4	105
6	Entire legal document or some of its provisions do not conflict with the Constitution	3	5	3	3	5	6	5	6	7	6	5	4	4	62
<b>Petitioner</b>															
7	The President of the Republic	0	0	1	1	0	0	0	0	0	0	0	1	0	3
8	A court	7	22	9	11	9	17	28	41	50	27	36	40	10	307
9	The Government	0	0	1	0	1	0	0	0	1	0	0	0	0	3
10	The <i>Sėimas</i> or a group of deputies	15	14	8	5	10	15	8	11	3	6	13	9	3	120

Number	Question/subject	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005* (01-06)	Total
<b>Human rights discussed in the ruling</b>															
11	The right to life (Articles 19, 21 of the Constitution)	0	0	0	0	0	1	0	0	0	0	0	0	0	1
12	The right to ownership (Article 23)	0	7	6	1	1	1	1	3	1	4	3	0	1	29
13	The freedom of information (Articles 25, 26)	0	0	0	0	1	0	0	0	0	2	0	0	0	3
14	Electoral rights (article 34)	1	4	0	0	0	1	0	0	0	0	1	2	0	9
15	Minority rights (article 37)	0	0	0	0	0	0	1	0	0	0	0	0	0	1
16	Social rights (right to pension, Article 50)	0	0	1	1	4	0	1	1	0	3	2	2	1	16

## VI. Constitution of the republic of Lithuania

(Adopted by citizens of the Republic of Lithuania  
in the Referendum of 25 October 1992)

The Lithuanian nation

- having established the State of Lithuania many centuries ago,
- having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania,
- having for centuries staunchly defended its freedom and independence,
- having preserved its spirit, native language, writing, and customs,
- embodying the natural right of the human being and the Nation to live and create freely in the land of their fathers and forefathers—in the independent State of Lithuania,
- fostering national concord in the land of Lithuania,
- striving for an open, just, and harmonious civil society and State under the rule of law,
- by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this Constitution.

### CHAPTER I

#### The state of Lithuania

##### Article 1

The State of Lithuania shall be an independent democratic republic.

##### Article 2

The State of Lithuania shall be created by the Nation. Sovereignty shall be vested to the Nation.

##### Article 3

- (1) No one may restrict or limit the sovereignty of the Nation or make claims to the sovereign powers of the Nation.
- (2) The Nation and each citizen shall have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force.

##### Article 4

The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives.

##### Article 5

- (1) In Lithuania, State power shall be exercised by the Seimas, the President of the Republic and the Government, and the Judiciary.
- (2) The scope of public powers shall be limited by the Constitution.
- (3) Public agencies shall serve the people.

##### Article 6 (1)

- The Constitution shall be an integral and directly applicable act.
- (2) Everyone may defend his or her rights on the basis of the Constitution.

##### Article 7

- (1) Any law or other act, which contradicts the Constitution shall be invalid.
- (2) Only laws which are promulgated shall be valid.
- (3) Ignorance of the law shall not exempt a person from responsibility.

##### Article 8

The forced seizure of State power or any of its agency shall be considered an anti-constitutional action, which is illegal and invalid.

##### Article 9

- (1) The most significant issues concerning the life of the State and the Nation shall be decided by referendum.
- (2) In the cases established by law, the Seimas shall announce a referendum.
- (3) A referendum shall also be announced if not less than 300,000 of the electorate so request.
- (4) The procedure for the announcement and execution of a referendum shall be established by law.

##### Article 10

- (1) The territory of the State of Lithuania shall be integral and shall not be divided into any state derivatives.
- (2) The State boundaries may be altered only by an international treaty of the Republic of Lithuania after it has been ratified by 4/5 of all the Parliament Members.

**Article 11**

The administrative units of the territory of the State of Lithuania and their boundaries shall be determined by law.

**Article 12**

(1) Citizenship of the Republic of Lithuania shall be acquired by birth and other grounds established by law.

(2) With the exception of cases provided for by law, no one may be a citizen of the Republic of Lithuania and another state at the same time.

(3) The procedure for the acquisition and loss of citizenship shall be established by law.

**Article 13**

(1) The State of Lithuania shall protect its citizens abroad.

(2) It shall be prohibited to extradite a citizen of the Republic of Lithuania to another state unless an international treaty where to the Republic of Lithuania is a party establishes otherwise.

**Article 14**

Lithuanian shall be the State language.

**Article 15**

(1) The colours of the State flag shall be yellow, green, and red.

(2) The Coat of Arms of the State shall be a white Vytis on a red background.

(3) The State Coat of Arms, flag and their use shall be established by laws.

**Article 16**

The national anthem shall be Vincas Kudirka's "Tautiška giesmė".

**Article 17**

The capital of the State of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania.

**CHAPTER II****The human being and the state****Article 18**

Human rights and freedoms shall be natural.

**Article 19**

The right to life of individual shall be protected by law.

**Article 20**

(1) Personal freedom shall be inviolable.

(2) No one may be arbitrarily detained or arrested. No one may be deprived of his freedom otherwise than on the grounds and according to the procedures which have been established by law.

(3) A person detained in flagrante delicto must, within 48 hours, be brought before a court for the purpose of deciding, in the presence of the detainee, on the validity of the detention. If the court does not adopt a decision to arrest the person, the detainee shall be released immediately.

**Article 21**

(1) The person shall be inviolable.

(2) Human dignity shall be protected by law.

(3) It shall be prohibited to torture, injure, degrade, or maltreat a person, as well as to establish such punishments.

(4) No person may be subjected to scientific or medical testing without his or her knowledge and consent.

**Article 22**

(1) The private life of an individual shall be inviolable.

(2) Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable.

(3) Information concerning the private life of a person may be collected only upon a justified court order and in accordance with the law.

(4) The law and the court shall protect everyone from arbitrary or unlawful interference in his or her private and family life, from encroachment upon his honour and dignity.

**Article 23**

(1) Property shall be inviolable.

(2) The rights of ownership shall be protected by laws.

(3) Property may be only seized for the needs of society according to the procedure established by law and shall be justly compensated for.

**Article 24**

(1) A person's dwelling place shall be inviolable.

(2) Without the consent of the resident, entrance into his or her dwelling place shall be only permitted upon a corresponding court order, or the procedure established by law when this is necessary to guarantee public order, apprehend a criminal, save the life, health, or property.

#### Article 25

(1) Individuals shall have the right to have their own convictions and freely express them.

(2) Individuals must not be hindered from seeking, receiving and imparting information and ideas.

(3) Freedom to express convictions, to receive and disseminate information may not be limited otherwise than by law, if this is necessary to protect the person's health, honour and dignity, private life, and morals, or to defend the constitutional order.

(4) Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation.

(5) The citizen shall have the right to obtain, according to the procedure established by law, any information concerning him or her that is held by State agency.

#### Article 26

(1) Freedom of thought, conscience and religion shall not be restricted.

(2) Every person shall have the right to freely choose any religion or faith and, either individually or with others, in public or in private, to manifest his or her religion or faith in worship, observance, practice or teaching.

(3) No person may coerce another person or be subject to coercion to adopt or profess any religion or faith.

(4) A person's freedom to profess and spread his religion or faith may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, the public order, the health and morals of the people as well as other basic rights and freedoms of the person.

(5) Parents and legal guardians shall, without restrictions, take care of the religious and moral education of their children according to their own convictions.

#### Article 27

A person's convictions, practiced religion or faith may not justified neither the commission of a crime nor the violation of law.

#### Article 28

While implementing their rights and freedoms, persons must observe the Constitution and the laws of the Republic of Lithuania and must not impair the rights and freedoms of other people.

#### Article 29

(1) All persons shall be equal before the law, the court, and other public agencies and officials.

(2) A person's rights may not be restricted, nor may he or she be granted any privileges on the ground of gender, race, nationality, language, origin, social status, religion, convictions, or opinion.

#### Article 30

(1) The person whose constitutional rights or freedoms are violated shall have the right to apply to court.

(2) Compensation for material and moral damage inflicted upon a person shall be established by law.

#### Article 31

(1) A person shall be presumed innocent until proven guilty by an effective court judgment according to the procedure established by law.

(2) A person charged with the commission of a crime shall have the right to a public and fair hearing of his case by an independent and impartial court.

(3) It shall be prohibited to compel a person to give evidence against himself, his family members or close relatives.

(4) Punishment may be imposed or applied only on the grounds established by law.

(5) No person may be punished for the same crime twice.

(6) A person suspected of the commission of a crime and the accused shall be guaranteed, from the moment of the detention or first interrogation, the right to defense and legal counsel.

**Article 32**

- (1) A citizen may move and choose his or her place of residence in Lithuania freely and may leave Lithuania freely.
- (2) These rights may not be restricted otherwise than by law and if it is necessary for the protection of the security of the State, the health of the people as well as for administration of justice.
- (3) A citizen may not be prohibited from returning to Lithuania.
- (4) Everyone Lithuanian person may settle in Lithuania.

**Article 33**

- (1) Citizens shall have the right to participate in the governance of their State both directly and through their democratically elected representatives as well as the right to enter on equal terms in the civil service.
- (2) Citizens shall be guaranteed the right to criticise the work of public agencies or their officials and to appeal against their decisions. Persecution for criticism shall be prohibited.
- (3) Citizens shall be guaranteed the right of petition; the procedure for implementing this right shall be established by law.

**Article 34**

- (1) Citizens who, on the day of election, have reached 18 years of age, shall have the right to vote in the election.
- (2) The right to be elected shall be established by the Constitution of the Republic of Lithuania and by the election laws.
- (3) Citizens who are declared legally incapable by court shall not participate in elections.

**Article 35**

- (1) Citizens shall be guaranteed the right to freely form societies, political parties and associations, provided that the aims and activities thereof are not contrary to the Constitution and laws.
- (2) No person may be forced to belong to any society, political party, or association.
- (3) The founding and functioning of political parties and other political and public organisations shall be regulated by law.

**Article 36**

- (1) Citizens may not be prohibited or hindered from assembling unarmed in peaceful meetings.

- (2) This right may not be limited otherwise than by law and only when it is necessary to protect the security of the State or society, public order, people's health or morals, or the rights and freedoms of other persons.

**Article 37**

Citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs.

**CHAPTER III****Society and the state****Article 38**

- (1) The family shall be the basis of society and the State.
- (2) Family, motherhood, fatherhood and childhood shall be under the protection and care of the State.
- (3) Marriage shall be concluded upon the free mutual consent of man and woman.
- (4) The State shall register marriages, births, and deaths. The State shall also recognise marriages registered in church.
- (5) In the family, spouses shall have equal rights.
- (6) The right and duty of parents is to bring up their children to be honest individuals and loyal citizens and to support them until they come of age.
- (7) The duty of children is to respect their parents, to take care of them in their old age, and to preserve their heritage.

**Article 39**

- (1) The State shall take care of families that raise and bring up children at home, and shall render them support according to the procedure established by law.
- (2) The law shall provide for paid maternity leave before and after childbirth as well as favourable working conditions and other privileges.
- (3) Children who are under age shall be protected by law.

**Article 40**

- (1) Public teaching and education shall be secular. At the request of parents, classes on religion shall be provided in public schools.
- (2) Non-public teaching and education may be established according to law.

- (3) Universities shall be granted autonomy.
- (4) The State shall supervise the activities of establishments of teaching and education.

**Article 41**

- (1) Education shall be compulsory for persons under the age of 16.
- (2) Education at public schools of secondary, vocational and further education shall be free of charge.
- (3) University education shall be accessible to everyone according to his or her individual abilities. Citizens who are good at their studies shall be guaranteed education free of charge at public Universities.

**Article 42**

- (1) Culture, science, research, and teaching shall be unrestricted.
- (2) The State shall support culture and science, and shall take care of the protection of Lithuanian historical, artistic and cultural monuments and other culturally valuable objects.
- (3) The law shall protect and defend the spiritual and material interests of an author which are related to scientific, technical, cultural, and artistic work.

**Article 43**

- (1) The State shall recognise traditional Lithuanian churches and religious organisations, whereas other churches and religious organisations shall be recognised provided that they have support in society and their teaching and practices are not in conflict with the law and public morals.
- (2) The churches and religious organisations recognised by the State shall have the rights of a legal person.
- (3) Churches and religious organisations shall be free to proclaim their teaching, perform their religious practices, and have houses of prayer, charity institutions, and schools for the training of the clergy.
- (4) Churches and religious organisations shall conduct their affairs freely according to their canons and statutes.
- (5) The legal status of churches and other religious organisations in the State shall be established by agreement or by law.
- (6) The teaching proclaimed by churches and religious organisations, other religious activities and houses of prayer may not be used for purposes which are in conflict with the Constitution and laws.
- (7) There shall not be a State religion in Lithuania.

**Article 44**

- (1) Ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, charity, and mutual assistance.
- (2) Ethnic communities shall be provided support by the State.

**Amendments to the Article:**

- No. I-1390, 20.06.1996, Valstybės žinios (Official Gazette), 1996, No. 64-1501 (05.07.1996)
- No. IX-1305, 23.01.2003, Valstybės žinios (Official Gazette), 2003, No. 14-540 (07.02.2003)

**Article 45**

- (1) Ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, charity, and mutual assistance.
- (2) Ethnic communities shall be provided support by the State.

**CHAPTER IV****National economy and labour****Article 46**

- (1) Lithuania's economy shall be based on the right of private ownership, freedom of individual economic activity and initiative.
- (2) The State shall support economic efforts and initiative that are useful to society.
- (3) The State shall regulate economic activity so that it serves the general welfare of the Nation.
- (3) The law shall prohibit monopolisation of production and the market and shall protect freedom of fair competition.
- (4) The State shall defend the interests of the consumer.

**Article 47**

- (1) The underground, internal waters, forests, parks, roads, historical, archaeological and cultural objects of State importance shall belong by the right of exclusive ownership to the Republic of Lithuania.
- (2) The Republic of Lithuania shall have exclusive rights to the airspace over its territory, its continental shelf and the economic zone in the Baltic Sea.
- (3) In the Republic of Lithuania foreign entities may acquire ownership of land, internal waters and forests according to a organic law.

**Article 48**

- (1) Every person may freely choose an occupation or business, and shall have the right to have proper, safe and healthy conditions at work, to receive fair pay for work and social security in the event of unemployment.
- (2) The work of foreigners in the Republic of Lithuania shall be regulated by law.
- (3) Forced labour shall be prohibited.
- (4) Military service or alternative service as well as labor which is executed during war, natural calamity, epidemic, or other urgent circumstances, shall not be deemed as forced labor.
- (5) Work performed by persons convicted by court, the work being regulated by law, shall not be considered forced labour, either.

**Article 49**

- (1) Every person shall have the right to rest and leisure, as well as to annual paid holidays.
- (2) Working hours shall be established by law.

**Article 50**

- (1) Trade unions shall be freely established and shall function independently. They shall defend the professional, economic and social rights and interests of employees.
- (2) All trade unions shall have equal rights.

**Article 51**

- (1) Employees shall have the right to strike in order to protect their economic and social interests.
- (2) The restrictions of this right and the conditions and procedure for its implementation shall be established by law.

**Article 52**

The State shall guarantee to citizens the right to receive elderly and disability pensions as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by laws.

**Article 53**

- (1) The State shall take care of people's health and shall guarantee medical aid and services for the human being in the event of sickness. The procedure for providing medical aid to citizens free of charge at public hospitals shall be established by law.
- (2) The State shall promote physical culture of society and shall support sport.
- (3) The State and each individual must protect the environment from harmful influences.

**Article 54**

- (1) The State shall take care of the protection of the natural environment, wildlife fauna and flora, separate objects of nature and areas of particular value and shall supervise a sustainable use of natural resources, their restoration and increase.
- (2) The destruction of land and the underground, the pollution of water and air, radioactive impact on the environment as well as depletion of wildlife and plants shall be prohibited by law.

**CHAPTER V****The parliament (The Seimas)****Article 55**

- (1) The Seimas shall consist of representatives of the Nation—141 Members of the Parliament who shall be elected for a four-year term on the basis of universal, equal, and direct suffrage by secret ballot.
- (2) The Seimas shall be deemed elected when at least three-fifths of the Members of the Parliament have been elected.
- (3) The procedure for election of Members of the Parliament shall be established by law.

**Article 56**

- (1) Any citizen of the Republic of Lithuania who is not bound by an oath or pledge to a foreign state, and who, on the election day, is not younger than 25 years of age and permanently resides in Lithuania, may be elected a Member of the Parliament.

(2) Persons who have not fulfilled their court-imposed sentence as well as persons recognized legally incapable by court may not be elected Members of the Parliament.

#### Article 57

(1) Regular elections to the Seimas shall be held on the year of the expiration of the powers of the Members of the Parliament on the second Sunday of October.

(2) Regular elections to the Seimas following pre-term elections to the Seimas shall be held at the time specified in the First Paragraph of this Article.

#### Amendments to the Article:

No. IX-2344, 13.07.2004, Valstybės žinios (Official Gazette), 2004, No. 111-4124 (17.07.2004)

#### Article 58

(1) Pre-term elections to the Seimas may be held on the decision of the Seimas adopted by not less than three-fifth majority vote of the Members of Parliament.

(2) Pre-term elections to the Seimas may also be announced by the President of the Republic:

1) if the Seimas fails to adopt a decision on the new programme of the Government within 30 days of its presentation, or if the Seimas two times in succession gives no assent to the programme of the Government within 60 days of its first presentation;

2) on the proposal of the Government, if the Seimas expresses direct no-confidence in the Government.

(3) The President of the Republic may not announce pre-term elections to the Seimas if the term of office of the President of the Republic expires in less than 6 months, also if 6 months have not passed since the pre-term elections to the Seimas.

(4) The day of elections to the new Seimas shall be specified in the resolution of the Seimas or in the decree of the President of the Republic on the pre-term elections to the Seimas. The elections to the new Seimas must be held within 3 months of the adoption of the decision on the pre-term elections.

#### Article 59

(1) The term of powers of Members of the Parliament shall begin to be counted from the day on which the newly-elected Seimas convenes for the first sitting. The term of powers of the previously elected Members of the Parliament shall expire at the beginning of this sitting.

(2) The elected Member of the Parliament shall acquire all the rights of a representative of the Nation only after taking at the Seimas an oath to be faithful to the Republic of Lithuania.

(3) The Member of the Parliament who either does not take the oath according to the procedure established by law, or who takes a conditional oath, shall lose the mandate of a Member of the Parliament. The Seimas shall adopt a corresponding resolution thereon.

(4) When in office, Members of the Parliament shall follow the Constitution of the Republic of Lithuania, the interests of the State as well as their own consciences, and may not be restricted by any mandates.

#### Article 60

(1) The duties of a Member of the Parliament, with the exception of his duties at the Seimas, shall be incompatible with any other duties at public agency as well as with work in business, commercial and other private establishments or enterprises. During his term of office, a Member of the Parliament shall be exempt from the duty to perform the military service.

(2) A Member of the Parliament may be appointed only either as the Prime Minister or a Minister.

(3) The service of a Member of the Parliament shall be remunerated as well as all the expenses relating to his parliamentary activities shall be reimbursed from the State Budget. A Member of the Parliament may not receive any other remuneration, with the exception of remuneration for creative activities.

(4) The duties, rights and guarantees of the activities of a Member of the Parliament shall be established by law.

#### Article 61

(1) A Member of the Parliament shall have the right to submit an inquiry to the Prime Minister, the Ministers, and the heads of other public agency formed or elected by the Seimas. The said persons must respond orally



or in writing during the session of the Seimas according to the procedure established by the Seimas.

(2) At a session of the Seimas, a group of not less than one-fifth of the Members of the Parliament may interpellate the Prime Minister or a Minister.

(3) Upon considering the response of the Prime Minister or a Minister to the interpellation, the Seimas may decide that the response is not satisfactory, and, by majority vote of half of all the Members of the Parliament, express no-confidence in the Prime Minister or the Minister.

(4) The voting procedure shall be established by law.

#### Article 62

(1) The person of a Member of the Parliament shall be inviolable.

(2) A Member of the Parliament may not be held criminally liable, arrested, nor may his freedom be otherwise restricted without the consent of the Seimas.

(3) A Member of the Parliament may not be persecuted for his voting or his speeches at the Seimas. However, he may be held liable according to the general procedure for personal insult or slander.

#### Article 63

The powers of a Member of the Parliament shall be terminated:

1) on the expiration of the term of his or her powers, or when the Parliament, elected in pre-term elections, convenes for the first sitting;

2) upon his or her death;

3) upon his or her resignation;

4) when he or she is declared legally incapable by the court;

5) when the Parliament revokes his or her mandate in accordance with impeachment proceedings;

6) when the election is recognized as invalid, or if the law on election is grossly violated;

7) if he or she takes up, or does not resign from, employment which is incompatible with the duties of a Parliament member; and

8) if he or she loses citizenship of the Republic of Lithuania.

#### Article 64

(1) Every year, the Seimas shall convene for two regular sessions—spring and autumn. The spring session shall commence on the 10th of March

and shall end on 30th of June. The autumn session shall commence on the 10th of September and shall end on 23rd of December. The Seimas may decide to prolong a session.

(2) Extraordinary sessions may be convened by the Speaker of the Seimas on the proposal of not less than one-third of all the Members of the Parliament, and, in cases provided for in the Constitution, by the President of the Republic.

#### Article 65

The President of the Republic shall convene the first sitting of the newly-elected Seimas which must be held within 15 days of the Seimas election. If the President of the Republic fails to convene the Seimas, the Members of the Parliament shall assemble by themselves on the day following the expiration of the 15-day period.

#### Article 66

(1) The sittings of the Seimas shall be presided over by the Speaker of the Seimas or his Deputy.

(2) The first sitting of the Seimas after the elections shall be opened by the eldest Member of the Parliament.

#### Article 67

The Seimas:

1) shall consider and adopt amendments to the Constitution;

2) shall pass laws;

3) shall adopt resolutions on referendums;

4) shall call elections for the President of the Republic of Lithuania;

5) shall establish public agencies provided for by law and appoint and dismiss their heads;

6) shall or shall not give assent to the candidature of the Prime Minister submitted by the President of the Republic;

7) shall consider the programme of the Government presented by the Prime Minister and decide whether to give assent to it;

8) shall, on the proposal of the Government, establish and abolish ministries of the Republic of Lithuania;

9) shall supervise the activities of the Government, and may express no-confidence in the Prime Minister or a Minister;

- 10) shall appoint justices and Presidents of the Constitutional Court and the Supreme Court;
- 11) shall appoint and dismiss the Auditor General and the President of the Board of the Bank of Lithuania;
- 12) shall call elections of municipal councils;
- 13) shall form the Central Electoral Commission and alter its composition;
- 14) shall approve the State Budget and supervise its execution;
- 15) shall establish State taxes and other compulsory payments;
- 16) shall ratify and denounce international treaties of the Republic of Lithuania and consider other issues of foreign policy;
- 17) shall establish administrative division of the Republic;
- 18) shall establish State awards of the Republic of Lithuania;
- 19) shall issue acts of amnesty;
- 20) shall impose direct administration and martial law, declare states of emergency, announce mobilization, and adopt decisions to use the Armed Forces.

**Article 68**

- (1) The right of legislative initiative in the Parliament shall belong to the Members of the Parliament, the President of the Republic, and the Government.
- (2) Citizens of the Republic of Lithuania shall also have the right of legislative initiative. 50,000 citizens of the Republic of Lithuania who have the electoral right may submit a draft law to the Seimas and the Seimas must consider it.

**Article 69**

- (1) Laws shall be adopted in the Parliament according to the procedure established by law.
- (2) Laws shall be deemed adopted if the majority of the Members of the Parliament participating in the sitting have voted in favour thereof.
- (3) Organic laws of the Republic of Lithuania shall be adopted if more than half of all the Members of the Parliament vote in favour thereof and they shall be altered by at least a three-fifth majority vote of all the Members of the Parliament. The Seimas shall establish the list of organic laws by a three-fifth majority vote of the Members of the Parliament.

- (4) Provisions of laws of the Republic of Lithuania may also be adopted by referendum.

**Article 70**

- (1) The laws adopted by the Seimas shall come into force after they are signed and officially promulgated by the President of the Republic, unless the laws themselves establish a later date for their coming into force.
- (2) Other acts adopted by the Seimas and the Statute of the Seimas shall be signed by the Speaker of the Seimas. The said acts shall come into force on the day following their promulgation, unless the acts themselves establish another procedure of coming into force.

**Article 71**

- (1) Within ten days of receiving a law adopted by the Seimas, the President of the Republic shall either sign and officially promulgate the law, or shall refer it back to the Seimas together with relevant reasons for reconsideration.
- (2) If the law adopted by the Seimas is not referred back and is not signed by the President of the Republic within the specified period, the law shall come into force after it is signed and officially promulgated by the Speaker of the Seimas.
- (3) A law or other act adopted by referendum must, within 5 days, be signed and officially promulgated by the President of the Republic.
- (4) If the President of the Republic does not sign and promulgate such a law within the specified period, the law shall come into force after it is signed and officially promulgated by the Speaker of the Seimas.

**Article 72**

- (1) The Seimas may reconsider and adopt the law which has been vetoed by the President of the Republic.
- (2) After reconsideration by the Seimas, a law shall be deemed enacted if the amendments and supplements submitted by the President of the Republic were adopted, or if more than half of all Members of the Parliament vote in the affirmative, and if it is an organic law - if at least three-fifths of all Members of the Parliament vote in the affirmative.
- (3) The President of the Republic must, within three days, sign and forthwith officially promulgate laws re-enacted by the Seimas.

**Article 73**

(1) The Seimas ombudsmen shall examine complaints of citizens concerning the abuse of powers by, and bureaucracy of, State and local government officers (with the exception of judges). Ombudsmen shall have the right to submit proposals to the court to dismiss guilty officers from their posts.

(2) The powers of the Seimas ombudsmen shall be established by law.

(3) As necessary, the Seimas shall also establish other control agencies. The system and powers of said agencies shall be established by law.

**Article 74**

For gross violation of the Constitution, breach of oath, or upon the disclosure of the commitment of felony, the Seimas may, by three-fifths majority vote of all Members of the Parliament, remove from office the President of the Republic, the Chairperson and justices of the Constitutional Court, the Chairperson and justices of the Supreme Court, the Chairperson and judges of the Court of Appeals, as well as Members of the Parliament. Such actions shall be carried out in accordance with impeachment proceedings which shall be established by the Standing Orders of the Parliament.

**Article 75**

Officials appointed or elected by the Seimas, with the exception of persons specified in Article 74 of the Constitution, shall be dismissed from office when the Seimas expresses no-confidence in them by majority vote of all the Members of the Parliament.

**Article 76**

The structure and procedure of activities of the Seimas shall be established by the Standing Orders. The Standing Orders of the Parliament shall have the power of Statute.

**CHAPTER VI****The president of the republic****Article 77**

(1) The President of the Republic is the Head of State.

(2) The President shall represent the State of Lithuania and shall perform everything with which he or she is charged by the Constitution and laws.

**Article 78**

(1) A Lithuanian citizen by origin, who has lived in Lithuania for at least the last three years, if he or she has reached the age of not less than 40 prior to the election day, and who is eligible for election to a Member of the Parliament, may be elected President of the Republic.

(2) The President of the Republic shall be elected by the citizens of the Republic of Lithuania for a five-year term by universal, equal, and direct suffrage by secret ballot.

(3) The same person may not be elected President of the Republic for more than two consecutive terms.

**Article 79**

(1) Any citizen of the Republic of Lithuania who meets the conditions set forth in the First Paragraph of Article 78 and has collected the signatures of at least 20,000 voters shall be registered as a presidential candidate.

(2) The number of presidential candidates shall not be limited.

**Article 80**

Regular elections of the President of the Republic shall be held on the last Sunday two months before the expiration of the term of office of the President of the Republic.

**Article 81**

(1) The candidate for the post of the President of the Republic who, during the first voting in which not less than half of all the voters participate, receives the votes of more than half of all the voters who participated in the election, shall be deemed elected. If less than half of all the voters participate in the election, the candidate who receives the greatest number of votes, but not less than one-third of the votes of all the voters, shall be deemed elected.

(2) If, during the first voting round, no single candidate gets the requisite number of votes, a repeat voting shall be held after two weeks pitting the two candidates who received the greatest number of votes against each other. The candidate who receives more votes thereafter shall be deemed elected.

(3) If no more than two candidates take part in the first round, and neither of them receives the requisite number of votes, a repeat election shall be held.

**Article 82**

(1) The elected President of the Republic shall take the office on the day following the expiration of the term of office of the President of the Republic, after he or she, in Vilnius, in the presence of the representatives of the Nation, the Members of the Parliament, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfill the duties of the office, and to be equally just to all.

(2) The re-elected President of the Republic shall also take the oath.

(3) The act of oath of the President of the Republic shall be signed by him or her and by the Chairperson of the Constitutional Court, or, in the absence of the latter, by a justice of the Constitutional Court.

**Article 83**

(1) The President of the Republic may not be a Member of the Parliament, may not hold any other office, and may not receive any remuneration other than the remuneration established for the President of the Republic as well as remuneration for creative activities.

(2) A person elected President of the Republic must suspend his or her activities in political parties and political organisations until a new presidential election campaign begins.

**Article 84**

The President of the Republic:

- 1) shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy;
- 2) shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification;
- 3) shall appoint and recall, upon the submission of the Government, diplomatic representatives of the Republic of Lithuania to foreign states and international organisations; receive letters of credence and recall of diplomatic representatives of foreign states; confer the highest diplomatic ranks and special titles;
- 4) shall appoint, upon the assent of the Seimas, the Prime Minister, charge him or her to form the Government, and approve its composition;
- 5) shall dismiss, upon the assent of the Seimas, the Prime Minister;

6) shall accept the powers returned by the Government upon the election of a new Seimas, and charge it to exercise its duties until a new Government is formed;

7) shall accept the resignation of the Government and, as necessary, charge it to continue exercising its duties or charge one of the Ministers to exercise the duties of the Prime Minister until a new Government is formed; shall accept resignations of Ministers and may charge them to exercise their duties until a new Minister is appointed;

8) shall, upon the resignation of the Government or after it returns its powers, within 15 days submit to the Seimas the candidature of a new Prime Minister for consideration;

9) shall appoint and dismiss Ministers upon the submission by the Prime Minister;

10) shall appoint and dismiss, according to the established procedure, State officials provided for by laws;

11) shall submit candidatures of the Supreme Court justices to the Seimas and, upon the appointment of all the Supreme Court justices, submit from among them to the Seimas the Chairperson of the Supreme Court; appoint judges of the Court of Appeal, and from among them, provided the Seimas gives assent to their candidatures, the Chairperson of the Court of Appeal; appoint judges and presidents of regional and local courts, and change their places of work; in cases provided for by law, shall submit that the Seimas dismiss judges; shall, upon the assent of the Seimas, appoint and dismiss the Prosecutor General of the Republic of Lithuania;

12) shall submit to the Seimas the candidatures for three justices of the Constitutional Court, and, upon the appointment of all the justices of the Constitutional Court, submit from among them to the Seimas a candidature for the Chairperson of the Constitutional Court;

13) shall submit to the Seimas the candidatures for the Auditor General and the President of the Board of the Bank of Lithuania; may submit that the Seimas express no-confidence in them;

14) shall appoint and dismiss, upon the assent of the Seimas, the Commander of the Armed Forces and the Head of the Security Service;

15) shall confer the highest military ranks;

16) shall adopt, in the event of an armed attack which threatens State sovereignty or territorial integrity, decisions concerning defence against such armed aggression, the imposition of martial law as well as mobili-

sation, and submit these decisions to the next sitting of the Seimas for approval;

17) shall declare a state of emergency according to the procedure and in cases established by law, and present this decision to the next sitting of the Seimas for approval;

18) shall make annual reports at the Seimas on the situation in Lithuania and the domestic and foreign policies of the Republic of Lithuania;

19) shall convene, in cases provided for in the Constitution, an extraordinary session of the Seimas;

20) shall announce regular elections to the Seimas and, in cases provided for in the Second Paragraph of Article 58 of the Constitution, announce pre-term elections to the Seimas;

21) shall grant citizenship of the Republic of Lithuania according to the procedure established by law;

22) shall confer State awards;

23) shall grant pardons to convicted persons;

24) shall sign and promulgate laws adopted by the Seimas or refer them back to the Seimas according to the procedure established in Article 71 of the Constitution.

#### **Amendments to the Article:**

No. IX-1378, 20.03.2003, Valstybės žinios (Official Gazette), 2003, No. 32-1315 (02.04.2003)

#### **Article 85**

The President of the Republic, implementing the powers vested in him, shall issue decrees. To be valid, the decrees of the President of the Republic, specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution, must be signed by the Prime Minister or an appropriate Minister. Responsibility for such a decree shall lie with the Prime Minister or the Minister who signed it.

#### **Article 86**

(1) The person of the President of the Republic shall be inviolable: while in office, he or she may neither be arrested nor held criminally or administratively liable.

(2) The President of the Republic may be removed from office ahead of time only for gross violation of the Constitution or breach of oath, also when it transpires that a crime has been committed. The issue of removal

of the President of the Republic from office shall be decided by the Seimas according to the procedure for impeachment proceedings.

#### **Article 87**

(1) When, in cases provided for in the Second Paragraph of Article 58 of the Constitution, the President of the Republic announces pre-term elections to the Seimas, the newly-elected Seimas may, by at least three-fifths vote of all the Members of the Parliament and within 30 days of the day of the first sitting, announce a pre-term election of the President of the Republic.

(2) The President of the Republic wishing to participate in the election shall be immediately registered as a candidate.

(3) The President of the Republic re-elected in such an election shall be deemed elected for the second term of office, provided that more than three years of his first term of office had expired prior to the election. If less than three years of the first term of office had expired, the President of the Republic shall only be elected for the remainder of the first term of office, which shall not be considered the second term of office.

(4) If a pre-term election of the President of the Republic is announced during his second term of office, the current President of the Republic may only be elected for the remainder of the second term of office.

#### **Article 88**

The powers of the President of the Republic shall be terminated:

- 1) upon the expiration of the period for which he was elected;
- 2) after a pre-term election of the President of the Republic takes place;
- 3) upon resignation from office;
- 4) upon the death of the President of the Republic;
- 5) when the Seimas removes him from office according to the procedure for impeachment proceedings;
- 6) when the Seimas, taking into consideration the conclusion of the Constitutional Court, by at least three-fifths majority vote of all the Members of the Parliament, adopts a resolution stating that the state of health of the President of the Republic does not allow him to hold office.

#### **Article 89**

(1) In the event that the President of the Republic dies, resigns or is removed from office according to the procedure for impeachment proceed-

ings, or when the Seimas decides that the state of health of President of the Republic does not allow him to hold office, the office shall temporarily be held by the Speaker of the Seimas. In such a case, the Speaker of the Seimas shall lose his powers at the Seimas, and his or her office shall temporarily be carry out by his or her Deputy. In the enumerated cases, the Seimas must, within 10 days, call an election of the President of the Republic which must be held within two months. If the Seimas cannot convene and announce the election of the President of the Republic, the election shall be announced by the Government.

(2) The Speaker of the Seimas shall substitute for the President of the Republic when the latter is temporarily abroad or has fallen ill and for this reason is temporarily unable to hold office.

(3) While temporarily substituting for the President of the Republic, the Speaker of the Seimas may neither announce pre-term elections of the Seimas nor dismiss or appoint Ministers without the consent of the Seimas. During the said period, the Seimas may not consider the issue of no-confidence in the Speaker of the Seimas.

(4) The powers of the President of the Republic may not be executed in any other cases, or by any other persons or institutions.

#### Article 90

The President of the Republic shall have a residence. The financing of the President of the Republic and of his or her residence shall be established by law.

## CHAPTER VII

### The government of the Republic of Lithuania

#### Article 91

The Government of the Republic of Lithuania shall consist of the Prime Minister and Ministers.

#### Article 92

(1) The Prime Minister shall, with the assent of the Seimas, be appointed and dismissed by the President of the Republic.

(2) The Ministers shall be appointed and dismissed by the President of the Republic upon the submission of the Prime Minister.

(3) The Prime Minister, within 15 days of his appointment, shall present to the Seimas the Government which he or she has formed and which has been approved by the President of the Republic, and shall present its programme to the Seimas for consideration.

(4) The Government shall return its powers to the President of the Republic after the Seimas elections or upon election of the President of the Republic.

(5) A new Government shall receive the powers to act after the Seimas gives assent to its programme by majority vote of the Members of the Parliament participating in the sitting.

#### Article 93

When taking office, the Prime Minister and the Ministers shall, at the Seimas, take an oath to be faithful to the Republic of Lithuania, to observe the Constitution and laws. The text of the oath shall be established by the Law on the Government.

#### Article 94

The Government of the Republic of Lithuania:

1) shall administer the affairs of the country, protect the inviolability of the territory of the Republic of Lithuania, guarantee State security and public order;

2) shall execute laws and resolutions of the Seimas on the implementation of the laws as well as the decrees of the President of the Republic;

3) shall co-ordinate the activities of the ministries and other establishments of the Government;

4) shall prepare a draft State Budget and submit it to the Seimas; execute the State Budget and submit to the Seimas a report on the execution of the budget;

5) shall draft bills and submit them to the Seimas for consideration;

6) shall establish diplomatic ties and maintain relations with foreign states and international organisations;

7) shall administer other duties prescribed to the Government by the Constitution and other laws.

#### Article 95

(1) The Government of the Republic of Lithuania shall resolve the affairs of State administration at its sittings by issuing directives which must be

passed by a majority vote of all members of the Government. The Auditor General may also participate in the sittings of the Government.

(2) Government directives shall be signed by the Prime Minister and the appropriate Minister.

#### Article 96

(1) The Government of the Republic of Lithuania shall be jointly responsible to the Parliament for the general activities of the Government.

(2) The Ministers, in directing the spheres of administration entrusted to them, shall be responsible to the Parliament, the President of the Republic, and directly subordinate to the Prime Minister.

#### Article 97

(1) The Prime Minister shall represent the Government of the Republic of Lithuania and shall head its activities.

(2) When the Prime Minister is not available, or when he is unable to hold office, the President of the Republic, upon the submission of the Prime Minister, shall charge one of the Ministers to substitute for the Prime Minister during a period not exceeding 60 days; when there is no such submission, the President of the Republic shall charge one of the Ministers to substitute for the Prime Minister.

#### Article 98

(1) A Minister shall head his respective ministry, shall resolve issues belonging to the competence of the ministry, and shall also discharge other functions provided for by laws.

(2) Only another member of the Government appointed by the Prime Minister may temporarily substitute for a Minister.

#### Article 99

The Prime Minister and Ministers may not hold any other elected or appointed office, may not work in any business, commercial or other private establishments or enterprises, nor may they receive any remuneration other than that established for their respective Government offices and payment for creative activities.

#### Article 100

The Prime Minister and Ministers may not be held criminally liable, arrested or have their freedom restricted otherwise without the prior consent of the Seimas, while between the sessions of the Seimas—without the prior consent of the President of the Republic.

#### Article 101

(1) Upon the request of the Seimas, the Government or individual Ministers must give an account of their activities to the Seimas.

(2) When more than half of the Ministers are changed, the Government must once again receive its powers from the Seimas. Otherwise, the Government must resign.

(3) The Government must also resign in the following cases:

1) when the Seimas two times in succession does not give assent to the programme of the newly-formed Government;

2) when the Seimas, by majority vote of all the Members of the Parliament, by secret ballot expresses no-confidence in the Government or in the Prime Minister;

3) when the Prime Minister resigns or dies;

4) after elections to the Seimas, when a new Government is formed.

(4) A Minister must resign when more than half of all the Members of the Parliament, by secret ballot, express no-confidence in him.

(5) The President of the Republic shall accept the resignations of the Government or an individual Minister.

## CHAPTER VIII

### The constitutional court

#### Article 102

(1) The Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws.

(2) The status of the Constitutional Court and the procedure for the execution of its powers shall be established by the Law on the Constitutional Court of the Republic of Lithuania.

**Article 103**

(1) The Constitutional Court shall consist of 9 justices, each appointed for a single nine-year term of office. Every three years, one-third of the Constitutional Court shall be reconstituted. The Seimas shall appoint candidates for justices of the Constitutional Court from the candidates, three each submitted by the President of the Republic, the Speaker of the Seimas and the Chairperson of the Supreme Court who have an impeccable reputation, who have higher education in law, and who have not less than a ten year work record in the field of law or in a branch of science and education as a lawyer, may be appointed as justices of the Constitutional Court.

**Article 104**

(1) While in office, justices of the Constitutional Court shall be independent of any other State institution, person or organisation, and shall follow only the Constitution of the Republic of Lithuania.

(2) Before entering office, justices of the Constitutional Court shall take an oath at the Seimas to be faithful to the Republic of Lithuania and the Constitution.

(3) The limitations on work and political activities which are established for court judges shall apply also to justices of the Constitutional Court.

(4) Justices of the Constitutional Court shall have the same rights concerning the inviolability of their person as shall Members of the Seimas.

**Article 105**

(1) The Constitutional Court shall consider and adopt a judgment whether the laws of the Republic of Lithuania and other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania.

(2) The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws:

- 1) acts of the President of the Republic;
- 2) acts of the Government of the Republic.

(3) The Constitutional Court shall present conclusions:

- 1) whether there were violations of election laws during elections of the President of the Republic or elections of Members of the Parliament;
- 2) whether the state of health of the President of the Republic allows him to continue to hold office;

3) whether international treaties of the Republic of Lithuania are not in conflict with the Constitution;

4) whether concrete actions of Members of the Parliament or other State officials against whom an impeachment case has been instituted are in conflict with the Constitution.

**Article 106**

(1) The Government, not less than 1/5 of all the Members of the Parliament, and the courts, shall have the right to address the Constitutional Court concerning the acts specified in the First Paragraph of Article 105.

(2) Not less than one-fifth of all the Members of the Parliament and the courts shall have the right to address the Constitutional Court concerning the conformity of acts of the President of the Republic with the Constitution and the laws.

(3) Not less than one-fifth of all the Members of the Parliament, the courts, as well as the President of the Republic, shall have the right to address the Constitutional Court concerning the conformity of acts of the Government with the Constitution and the laws.

(4) The appeal of the President of the Republic to the Constitutional Court or the resolution of the Seimas asking for an investigation into the conformity of an act with the Constitution shall suspend the validity of the act.

(5) The Seimas may request a conclusion from the Constitutional Court, and in cases concerning Seimas elections and international treaties, the President of the Republic may also request a conclusion.

(6) The Constitutional Court shall have the right to refuse to accept a case for consideration or to prepare a conclusion if the application is based on non-legal reasoning.

**Article 107**

(1) A law (or part thereof) of the Republic of Lithuania or other act (or part thereof) of the Seimas, act of the President of the Republic, act (or part thereof) of the Government may not be applied from the day of official promulgation of the judgment of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

(2) The judgments of the Constitutional Court on issues ascribed to its competence by the Constitution shall be final and not subject to appeal.



(3) On the basis of the conclusions of the Constitutional Court, the Seimas shall take a final decision on the issues set forth in the Third Paragraph of Article 105 of the Constitution.

#### Article 108

The powers of a justice of the Constitutional Court shall cease:

- 1) upon the expiration of the term of powers;
- 2) upon his death;
- 3) upon his resignation;
- 4) when he is incapable to hold office due to the state of his health;
- 5) when the Seimas removes him or her from office in accordance with the procedure for impeachment proceedings.

## CHAPTER IX

### The court

#### Article 109

- (1) In the Republic of Lithuania, justice shall be administered only by courts.
- (2) While administering justice, the judge and courts shall be independent.
- (3) When considering cases, judges shall obey only the law.
- (4) The court shall adopt decisions in the name of the Republic of Lithuania.

#### Article 110

- (1) A judge may not apply a law, which is in conflict with the Constitution.
- (2) In cases when there are grounds to believe that the law or other legal act which should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall address the Constitutional Court requesting it to decide whether the law or other legal act in question is in compliance with the Constitution.

#### Article 111

- (1) The courts of the Republic of Lithuania shall be the Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts and local courts.
- (2) For the consideration of administrative, labour, family and cases of other categories, specialised courts may be established according to law.

(3) Courts with extraordinary powers may not be established in the Republic of Lithuania in a time of peace.

(4) The formation and competence of courts shall be established by the Law on Courts of the Republic of Lithuania.

#### Article 112

- (1) In Lithuania, only citizens of the Republic of Lithuania may be judges.
- (2) Justices of the Supreme Court as well as its Chairperson chosen from among them shall be appointed and dismissed by the Seimas upon the submission of the President of the Republic.
- (3) Judges of the Court of Appeal as well as its President chosen from among them shall be appointed by the President of the Republic upon the assent of the Seimas.
- (4) Judges and chairpersons of local, regional, and specialised courts shall be appointed, and their places of work shall be changed by the President of the Republic.
- (5) A special institution of judges provided for by law shall advise the President of the Republic on the appointment, promotion, transfer of judges, or their dismissal from office.
- (6) A person appointed judge shall take an oath, according to the procedure established by law, to be faithful to the Republic of Lithuania and to administer justice only according to law.

#### Article 113

- (1) A judge may not hold any other elected or appointed office, may not work in any business, commercial, or other private establishments or enterprises. Also he may not receive any remuneration other than the remuneration established for the judge and payment for educational or creative activities.
- (2) A judge may not participate in the activities of political parties and other political organisations.

#### Article 114

- (1) Interference by public agency, Members of the Parliament and other officials, political parties, political and public organisations, or citizens with the activities of a judge or the court shall be prohibited and shall incur liability provided for by law.

(2) A judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Seimas, or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania.

#### Article 115

Judges of courts of the Republic of Lithuania shall be dismissed from office according to the procedure established by law in the following cases:

- 1) of their own will;
- 2) upon expiration of the term of powers or upon reaching the age of elderly pension established by law;
- 3) due to the state of health;
- 4) upon the election to another office or upon their transfer, with their consent, to another place of work;
- 5) when by their behaviour they discredit the office of the judge;
- 6) when judgments imposed on them by court come into force.

#### Article 116

If the judges of the Supreme Court or of the Court of Appeals grossly violate the Constitution, break their oath, or are found guilty of a crime, the Seimas may remove them from office according to impeachment proceedings.

#### Article 117

(1) In all courts, the consideration of cases shall be open to the public. Closed court sittings may be held in order to protect the secrecy of private or family life of the human being, or where public consideration of the case might disclose a State, professional or commercial secret.

(2) In the Republic of Lithuania, court proceedings shall be conducted in the State language.

(3) Persons who do not speak Lithuanian shall be guaranteed the right to participate in investigation and court proceedings through an interpreter.

#### Article 118

(1) Public prosecutors shall prosecute criminal cases on behalf of the State, shall carry out criminal prosecutions, and shall supervise the activities of the interrogative bodies. (2) Public prosecutor defends personal and public interest in cases prescribed by law.

(3) When performing his functions, the public prosecutor shall be independent and shall obey only the law.

(4) The Public Prosecutor's institution of the Republic of Lithuania shall consist of the Office of the Prosecutor General and territorial prosecutor's offices.

(5) The Prosecutor General shall be appointed and dismissed by the President of the Republic upon the assent of the Seimas.

(6) The procedure for the appointment and dismissal of public prosecutors and their status shall be established by law.

#### Amendments to the Article:

No. IX-1379, 20.03.2003, Valstybės žinios (Official Gazette), 2003, No. 32-1316 (02.04.2003)

## CHAPTER X

### Local government and administration

#### Article 119

(1) Administrative units provided by law on State territory shall be entitled to the right of self-government. This right shall be implemented through local government Councils.

(2) Members of local government Councils, who are permanent residents of appropriate municipality, shall be elected by the permanent residents of their municipality for a four-year term on the basis of universal, equal and direct suffrage by secret ballot.

(3) The procedure for the organization and activities of self-government institutions shall be established by law.

(4) Local government Councils shall form executive bodies which are accountable to them for the direct implementation of the laws of the Republic of Lithuania and the decisions of the Government and the local government Council.

#### Amendments to the Article:

No. VIII-32, 12.12.1996, Valstybės žinios (Official Gazette), 1996, No. 122-2863 (18.12.1996)

No. IX-959, 20.06.2002, Valstybės žinios (Official Gazette), 2002, No. 63-2629 (28.06.2002)

#### Article 120

(1) The State shall support municipalities.

(2) Municipalities shall act freely and independently within their competence defined by the Constitution and laws.

**Article 121**

- (1) Municipalities shall draft and approve their budget.
- (2) Local government Councils shall have the right within the established limits and according to the procedure provided by law to establish local dues, and to provide for the leverage of taxes and duties at the expense of their own Budget.

**Article 122**

Municipal councils shall have the right to appeal to court regarding the violation of their rights.

**Article 123**

- (1) In higher level administrative units, the governance shall be organised by the Government according to the procedure established by law.
- (2) The observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities shall be supervised by the Agents appointed by the Government.
- (3) The powers of the Agents of the Government and the procedure of their execution shall be established by law.
- (4) In cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct administration on the territory of a municipality.

**Article 124**

Local government Councils shall have the right to appeal to court regarding the violation of their rights.

**CHAPTER XI****Finances and the State budget****Article 125**

- (1) In the Republic of Lithuania, the Bank of Lithuania shall be the central bank which belongs to the State of Lithuania by right of ownership.
- (2) The procedure for the organisation and activities of the Bank of Lithuania, its powers and the legal status of the President of the Board of the Bank of Lithuania as well as the grounds of his dismissal shall be established by law.

**Amendments to the Article:**

X-572, 25.04.2006, Valstybės žinios (Official Gazette), 2006, No. 48-1701 (29.04.2006)

**Article 126**

- (1) The Bank of Lithuania shall be directed by the Board of the Bank consisting of the Chairman, his deputies and members.
- (2) The President of the Board of the Bank of Lithuania shall be appointed for a five-year term by the Seimas upon the submission of the President of the Republic.

**Article 127**

- (1) The budgetary system of the Republic of Lithuania shall consist of the independent State Budget of the Republic of Lithuania as well as independent municipal budgets.
- (2) The State budget revenue shall be raised from taxes, compulsory payments, levies, income from State property and other income.
- (3) Taxes, other payments to the budgets, and levies shall be established by the laws of the Republic of Lithuania.

**Article 128**

- (1) Decisions concerning the State loan and other basic property liabilities of the State shall be adopted by the Seimas on the proposal of the Government.
- (2) Procedures concerning the management, utilization, and disposal of State property shall be established by law.

**Article 129**

The budget year shall begin on the 1st of January and shall end on the 31st of December.

**Article 130**

The Government shall prepare a draft State Budget and present it to the Seimas no later than 75 days before the end of the budget year.

**Article 131**

- (1) The draft State Budget shall be considered by the Seimas and shall be approved by law prior to the start of the new budget year.
- (2) During the consideration of the draft budget, the Seimas may increase expenditure provided that it specifies the financial sources for the said

expenditure. Expenditure established by laws may not be reduced as long as the said laws are not altered.

#### Article 132

(1) If the State Budget is not approved in time, at the beginning of the budget year the budget expenditure each month may not exceed 1/12 of the State Budget expenditure of the previous budget year.

(2) During the budget year the Seimas may change the budget. It shall be changed according to the same procedure by which it is drawn up, adopted and approved. As necessary, the Seimas may approve an additional budget.

### CHAPTER XII

#### National audit office

##### Article 133

(1) The system and powers of the National Audit office shall be established by law.

(2) The National Audit office shall be headed by the Auditor General who shall be appointed for a five-year term by the Seimas upon the submission of the President of the Republic.

(3) When taking office, the Auditor General shall take an oath. The oath shall be established by law.

##### Article 134

(1) The National Audit office shall supervise the lawfulness of the possession and use of State property and the execution of the State Budget.

(2) The Auditor General shall submit to the Seimas a conclusion on the report on the annual execution of the budget.

### CHAPTER XIII

#### Foreign policy and national defence

##### Article 135

(1) In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare

of the citizens and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice.

(2) In the Republic of Lithuania, war propaganda shall be prohibited.

##### Article 136

The Republic of Lithuania shall participate in international organisations provided that this is not in conflict with the interests and independence of the State.

##### Article 137

There may not be any weapons of mass destruction and foreign military bases on the territory of the Republic of Lithuania.

##### Article 138

(1) The Seimas shall ratify or denounce the following international treaties of the Republic of Lithuania:

- 1) on the alteration of the State boundaries of the Republic of Lithuania;
- 2) on political co-operation with foreign states, mutual assistance treaties as well as treaties of defensive nature related to the defence of the State;
- 3) on the renunciation of the use of force or threatening by force as well as peace treaties;
- 4) on the presence and status of the armed forces of the Republic of Lithuania on the territories of foreign states;
- 5) on the participation of the Republic of Lithuania in universal international organisations and regional international organisations;
- 6) multilateral or long-term economic treaties.

(2) Laws as well as international treaties may also provide for other cases when the Seimas ratifies international treaties of the Republic of Lithuania.

(3) International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania.

##### Article 139

(1) 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.

(2) Citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law.

(3) The organisation of national defence shall be established by laws.

#### Article 140

(1) The main issues of State defence shall be considered and co-ordinated by the State Defence Council which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces. The State Defence Council shall be headed by the President of the Republic. The procedure for its formation, activities and its powers shall be established by law.

(2) The President of the Republic shall be the Commander-in-Chief of the Armed Forces of the State.

(3) The Government, the Minister of National Defence, and the Commander of the Armed Forces shall be responsible to the Seimas for the administration and command of the armed forces of the State. The Minister of National Defence may not be a serviceman who has not yet retired to the reserve.

#### Article 141

Persons performing actual military service or alternative service, as well as officers of the national defence system, the police and the interior, non-commissioned officers, re-enlistees, and other paid officials of paramilitary and security services who have not retired to the reserve may not be Members of the Parliament or members of municipal councils. They may not hold elected or appointed office in the State civil service, nor may they take part in the activities of political parties and organisations.

#### Article 142

(1) The Seimas shall impose martial law, announce mobilisation or demobilisation, adopt a decision to use the armed forces when a need arises to defend the Homeland or to fulfill the international obligations of the State of Lithuania.

(2) In the event of an armed attack which threatens the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on the defence against the armed aggression,

impose martial law throughout the State or in its separate part, announce mobilisation, and submit these decisions to the next sitting of the Seimas for approval, while in the period between sessions of the Seimas he shall immediately convene an extraordinary session of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic.

#### Article 143

If a regular election is to be held in time of war actions, either the Seimas or the President of the Republic shall adopt a decision to extend the term of powers of the Seimas, the President of the Republic, or of municipal councils. In such a case, elections must be called not later than three months after the end of the war.

#### Article 144

(1) When a threat arises for the constitutional system or social peace of the State, the Seimas may impose a state of emergency throughout the territory of the State, or in any part of it. The period of the state of emergency shall not exceed six months.

(2) In cases of urgency, between sessions of the Seimas, the President of the Republic shall have the right to adopt such a decision and convene, at the same time, an extraordinary session of the Seimas for the consideration of this issue. The Seimas shall approve or overrule the decision of the President of the Republic.

(3) The state of emergency shall be regulated by law.

#### Article 145

After imposition of martial law or a state of emergency, the rights and freedoms specified in Articles 22, 24, 25, 32, 35, and 36 of the Constitution may be temporarily limited.

#### Article 146

(1) The State shall take care of and provide for the servicemen who lost their health during the military service as well as for the families of servicemen who lost their lives or died during the military service.

(2) The State shall also provide for citizens who lost their health while defending the State as well as for the families of the citizens who lost their lives or died in defence of the State.

## CHAPTER XIV

### Alteration of the constitution

#### Article 147

(1) In order to amend the Constitution of the Republic of Lithuania, a proposal must be submitted to the Parliament by either no less than one-fourth of the members of the Parliament, or by at least 300,000 voters.

(2) During a state of emergency or martial law, amendments to the Constitution may not be made.

#### Article 148

(1) The provision of Article 1 that the State of Lithuania is an independent democratic republic may only be amended by a referendum in which at least three-fourths of the electorate of Lithuania vote in favor thereof.

(2) The provisions of Chapter 1 and Chapter 14 may be amended only by referendum.

(3) Amendments of other chapters of the Constitution must be considered and voted upon in the Parliament twice. There must be a lapse of at least three months between each vote. Bills for constitutional amendments shall be deemed adopted by the Parliament if, in each of the votes, at least two-thirds of all the Members of the Parliament vote in favor of the enactment.

(4) An amendment to the Constitution which is rejected by the Parliament may not be submitted to the Parliament for reconsideration for the period of one year.

#### Article 149

(1) The adopted law on an amendment to the Constitution shall be signed by the President of the Republic of Lithuania and officially promulgated within 5 days.

(2) If the President of the Republic of Lithuania does not sign and promulgate such a law in due time, this law shall become effective when the Speaker of the Seimas signs and promulgates it.

(3) The law on an amendment to the Constitution shall become effective no earlier than one month after the adoption thereof.

## FINAL PROVISIONS

#### Article 150

The constituent part of the Constitution of the Republic of Lithuania shall be:

- The Constitutional Law “On the State of Lithuania” of 11 February 1991;
- The Constitutional Act “On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions” of 8 June 1992;
- The Law “On the Procedure for Entry into Force of the Constitution of the Republic of Lithuania” of 25 October 1992;
- The Constitutional Act “On Membership of the Republic of Lithuania in the European Union” of 13 July 2004.

#### Amendments to the Article:

No. IX-2343, 13.07.2004, Valstybės žinios (Official Gazette), 2004, No. 111-4123 (17.07.2004)

#### Article 151

This Constitution of the Republic of Lithuania shall come into force on the day following the official publication of the results of the Referendum, provided that more than half of the citizens of the Republic of Lithuania with the electoral right give their assent to the Constitution in the Referendum.

#### Article 152

The procedure for entry into force of this Constitution and separate provisions thereof shall be regulated by the Law of the Republic of Lithuania “On the Procedure for Entry into Force of the Constitution of the Republic of Lithuania” which, together with this Constitution of the Republic of Lithuania, shall be adopted by referendum.

#### Article 153

After the adoption of this Constitution of the Republic of Lithuania by referendum, the Seimas of the Republic of Lithuania may, by 25 October 1993, alter by a 3/5 majority vote of all the Members of the Seimas the provisions of the Constitution of the Republic of Lithuania contained in Articles 47, 55, 56, Item 2 of the Second Paragraph of Article 58, in Articles 65, 68, 69, Items 11 and 12 of Article 84, the First Paragraph of Article 87, in Articles 96, 103, 118 and in the Fourth Paragraph of Article 119.

**Article 154**

The Constitution of the Republic of Lithuania and the Law of the Republic of Lithuania "On the Procedure for Entry into Force of the Constitution of the Republic of Lithuania" adopted by referendum shall be signed and promulgated within 15 days by the Chairman of the Supreme Council of the Republic of Lithuania.

President of the supreme council of the  
Republic of Lithuania  
Vytautas Landsbergis

Vilnius  
6 November 1992

### **Constitutional law of the Republic of Lithuania on the State of Lithuania**

The Supreme Council of the Republic of Lithuania, taking account of the fact that during the general poll (plebiscite) held on 9 February 1991, more than three-fourths of the population of Lithuania with the active electoral right voted by secret ballot in favour of "the State of Lithuania being an independent democratic republic", emphasising that by this expression of sovereign powers and will, the Nation of Lithuania once again confirmed its unchanging stand on the issue of the independent State of Lithuania; interpreting the results of the plebiscite as the common determination to strengthen and defend the independence of Lithuania and to create a democratic republic, and executing the will of the Nation of Lithuania, adopts and solemnly proclaims this Law.

**Article 1**

The statement "The State of Lithuania shall be an independent democratic republic" is a constitutional norm of the Republic of Lithuania and a fundamental principle of the State.

**Article 2**

The constitutional norm and the fundamental principle of the State formulated in the First Article of this Law may be altered only by a general poll (plebiscite) of the Nation of Lithuania where not less than three-fourths of the citizens of Lithuania with the active electoral right vote in favour of it.

President of the supreme council of the  
Republic of Lithuania Vytautas Landsbergis

Vilnius,  
11 February 1991  
No. I-1051

### **Constitutional act of the Republic of Lithuania on the non-alignment of the Republic of Lithuania to post-soviet eastern unions**

The Supreme Council of the Republic of Lithuania, invoking the 16 February 1918 and 11 March 1990 Acts on the Restoration of the Independent State of Lithuania and basing itself on the will of the entire Nation as expressed on 9 February 1991, and seeing the attempts to preserve in any form the former Union of Soviet Socialist Republics with all its conquered territories and the intentions to draw Lithuania into the defence, economic, financial and other "spaces" of the post-Soviet Eastern block, resolves:

1. To develop mutually advantageous relations with each state which was formerly a component of the USSR, but to never join in any form any new political, military, economic or other unions or commonwealths of states formed on the basis of the former USSR.
2. The activities seeking to draw the State of Lithuania into the unions or commonwealths of states specified in the First Article of this Constitutional Act shall be regarded as hostile to the independence of Lithuania and liability for them shall be established by laws.

3. There may be no military bases or army units of Russia, the Commonwealth of Independent States or its constituent states on the territory of the Republic of Lithuania.

President of the supreme council of the  
Republic of Lithuania  
Vytautas Landsbergis

Vilnius,  
8 June 1992  
No. I-2622

### **Law of the Republic of Lithuania on the procedure for entry into force of the constitution of the Republic of Lithuania**

#### **Article 1**

Upon the entry into force of the Constitution of the Republic of Lithuania, the Provisional Basic Law of the Republic of Lithuania shall become null and void.

#### **Article 2**

Laws, other legal acts or parts thereof, which were in force on the territory of the Republic of Lithuania prior to the adoption of the Constitution of the Republic of Lithuania, shall be effective inasmuch as they are not in conflict with the Constitution and this Law, and shall remain in force until they are either declared null and void or brought in line with the provisions of the Constitution.

#### **Article 3**

Provisions of the laws of the Republic of Lithuania which regulate the status of the supreme institutions of State power and governance of the Republic of Lithuania, of deputies and municipal councils shall be in force until the elected Seimas decides otherwise.

#### **Article 4**

The powers of the Supreme Council of the Republic of Lithuania and its deputies shall cease from the moment when the elected Seimas of the Republic of Lithuania convenes for its first sitting.

The members of the Seimas of the Republic of Lithuania shall convene for the sitting on the third working day after the official announcement by the Central Electoral Commission, following both election rounds, that not less than 3/5 of all the Members of the Seimas have been elected.

#### **Article 5**

The following text of the oath for the Member of the Seimas of the Republic of Lithuania shall be established:

"I (full name),  
swear to be faithful to the Republic of Lithuania,  
swear to respect and execute its Constitution and laws and to protect the integrity of its lands;  
swear to strengthen, to the best of my ability, the independence of Lithuania, and to conscientiously serve my Homeland, democracy, and the welfare of the people of Lithuania.  
So help me God."

The oath may also be taken omitting the last sentence.

#### **Article 6**

During the period when there is still no President of the Republic, the legal situation shall be equivalent to the situation which is provided for in Article 89 of the Constitution of the Republic of Lithuania.

As necessary, the Seimas may, by a majority vote of more than half of all the Members of the Seimas, extend the terms provided for in Article 89, but for no longer than a four-month period.

#### **Article 7**

Justices of the Constitutional Court of the Republic of Lithuania and, from among them, the President of the Constitutional Court, must be appointed not later than one month after the election of the President of the Republic.

When justices of the Constitutional Court are appointed for the first time, three of them shall be appointed for a three-, three for a six-, and three for a nine-year term.

The President of the Republic, the Speaker of the Seimas, and the President of the Supreme Court, when proposing to appoint Constitutional Court justices, shall indicate who of them should be appointed for a three-, who for a six-, and who for a nine-year term.



The justices of the Constitutional Court who will be appointed for three- or six-year terms may hold the same office for one more term of office after an interval of not less than three years.

#### Article 8

The provisions of the Third Paragraph of Article 20 of the Constitution of the Republic of Lithuania shall become applicable after the laws of the Republic of Lithuania on criminal procedure have been brought in line with this Constitution.

President of the supreme council of the  
Republic of Lithuania  
Vytautas Landsbergis

Vilnius  
6 November 1992

### **Constitutional act of the Republic of Lithuania on membership of the Republic of Lithuania in the European Union**

The Seimas of the Republic of Lithuania,

- executing the will of the citizens of the Republic of Lithuania expressed in the referendum on the membership of the Republic of Lithuania in the European Union, held on 10-11 May 2003;
- expressing its conviction that the European Union respects human rights and fundamental freedoms and that the Lithuanian membership in the European Union will contribute to a more efficient securing of human rights and freedoms,
- noting that the European Union respects national identity and constitutional traditions of its Member States,
- seeking to ensure a fully-fledged participation of the Republic of Lithuania in the European integration as well as the security of the Republic of Lithuania and welfare of its citizens,
- having ratified, on 16 September 2003, the Treaty Between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese

Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic Concerning the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic to the European Union, signed on 16 April 2003 in Athens,

– adopts and proclaims this Constitutional Act:

1. The Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its public institutions in the areas provided for in the founding Treaties of the European Union and to the extent that, together with the other Member States of the European Union, it would, together with other Member States of the European Union, meet its membership commitments in those areas as well as enjoy the membership rights.
2. The legal rules of the European Union law shall be a constituent part of the legal system of the Republic of Lithuania. Where it concerns the founding Treaties of the European Union, the norms of the European Union law shall be applied directly, while in the event of collision of legal norms, they shall have supremacy over the laws and other legal acts of the Republic of Lithuania.
3. The Government shall inform the Seimas about the proposals to adopt acts of European Union law. As regards the proposals to adopt the acts of European Union law regulating the areas which, under the Constitution of the Republic of Lithuania, are related to the competences of the Seimas, the Government shall consult the Seimas. The Seimas may recommend to the Government a position of the Republic of Lithuania in respect of these proposals. The Seimas Committee on European Affairs and the Seimas Committee on Foreign Affairs may, according to the procedure established by the Statute of the Seimas, submit to the Government the opinion of the Seimas concerning the

proposals to adopt the acts of the European Union law. The Government shall assess the recommendations or opinions submitted by the Seimas or its Committees and shall inform the Seimas about their execution following the procedure established by legal acts.

The Government shall consider the proposals to adopt the acts of European Union law following the procedure established by legal acts. As regards these proposals, the Government may adopt decisions or resolutions for the adoption of which the provisions of Article 95 of the Constitution are not applicable.

*e Constitution was supplemented by this Constitutional Act:*  
*W ON THE ALTERATION OF THE CONSTITUTION No. IX-2343*  
*zw on Supplementing the Constitution of the Republic of Lithuania with*  
*Constitutional Act "On Membership of the Republic of Lithuania in*  
*European Union" and Supplementing Article 150 of the Constitution*  
*the Republic of Lithuania), adopted by the Seimas of the Republic of*  
*huania.*  
 nius, 13. 07. 2004