

**SOME OF THE LEGAL POLITICAL SOURCES OF THE
CONSTITUTION OF THE REPUBLIC OF LITHUANIA
OF 25 OCTOBER 1992**

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S u m m a r y

In assessing the current Constitution of the Republic of Lithuania it has to be stated that it expresses and reflects political legal processes and the consequences thereof in democracy development. For the purposes of comprehending the entirety of the current Constitution system, it is essential to take account of the legal, political and historical aspects of this issue. All this predetermines a more comprehensive understanding of the Constitution's institutes and other phenomena thereof, also of the objective and subjective factors that influenced their formation. This is of major significance, since without the evaluation of the said and other circumstances, we will not succeed in finding the answer to the fundamental question, i.e. what is the genesis of the grounds of the Constitution of the Republic of Lithuania.

This article examines the main legal political phenomena, which, in the author's opinion, were of vital importance in the creation of the current Lithuanian constitutional system. In this context, three stages can be distinguished. The period of 1988-1990 belongs to the first stage. The principal feature of this period was the revision of the functioning political system. The second stage of the Lithuanian constitutional development is to be associated with the period of validity of the Provisional Fundamental Law of the Republic of Lithuania. This period is to be defined as a transitional one, during which the conception of the constitutional grounds of the state of the Republic of Lithuania became mature. The third development stage commenced from 25 October 1992, with the adoption of the Constitution of the Republic of Lithuania, which is continued into today.

Introduction

The constitutional system of the modern Lithuania has undergone several stages. The period of 1988-1990 belongs to the first stage. Its was mainly characterized by revision of the Soviet political system and the essential political factor stimulating this phenomenon was legal political ideas and practical activities of Lithuanian Sajūdis. It was precisely at this

moment when political parties traditional and non-traditional for Lithuanian society began their activities and the denial of one-party system logic commenced. This period, which now is being described as the constitutional war with Soviet Union, is also significant for maturing visions of a new constitutional system, which gained their material form in drafts of the new Constitution or constitutional statutory instruments. The main issue must not be neglected in this respect, i.e. to clarify what political legal system was being reorganized and broken. Naturally, it must be stated that Lithuania had been an annexed and occupied state. However, with reference to this universally acknowledged political legal situation, it must be taken into consideration that this system imposed and formed under coercion was a political legal reality with functioning real laws and rules. Thus, the main goal of the nation liberation primarily was to review the current political structure and then to create constitutional grounds of this system that would correspond to hopes of the Nation, i.e. its own lively constitutional system. In addition, it may be noted that the former legal order is described as *quasi-legal* and on a constitutional level as *quasi-constitutional*.

With regard to maturity of constitutional grounds of the society and state *the second stage* may be distinguished, which is to be associated with the period of validity of the Provisional Fundamental Law of the Republic of Lithuania, i.e. until adoption of the Constitution of the Republic of Lithuania on 25 October 1992. This period may be justly defined as a transitional one. It was a controversial and eclectic system, similar to former Soviet system in many aspects. Yet this period is of great significance to the development of constitutionalism in Lithuania. During that period a party system of Lithuanian public was being formed, drafts of constitutional concept matured and specific texts of constitution drafts were prepared. In the harsh political polemic an understanding of authorities structure and grounds for interrelations of authorities developed, which later was established in the Constitution. It must be also mentioned that at the time the experience of parliamentary democracy, functioning of the Government and other governing institutions was accumulated. Obviously as it was already mentioned a lot of negative features of functioning of political legal system may be detected, but at that period many theoretical provisions of the political system were tested in real political and legal processes.

Upon adoption of the Constitution of the Republic of Lithuania on 25 October 1992 *the third stage of constitutional system development* commenced. Its main characteristics should be the following: constitutionalizing of grounds of the political system; constitutional restriction of powers of authorities; dynamic development of political system contents with respect to provisions of the Constitution; improvement of constitutional interaction of state governing institutions; stability of constitutional grounds of the political system, which was primarily predetermined by strict order for amending of the Constitution; guaranties of constitutional grounds of the political system (control of constitutionality of laws), constitutional responsibility for violation of the Constitution (impeachment process), etc.

Thus, it can be stated that each of the said stages was significant in creating the political system established by the Constitution of the Republic of Lithuania. Its content was supplemented and specified by laws and other statutory instruments, regulating specific social relations in the sphere of politics and law.

1. Revision of the Political System in 1988-1990

1.1. In analyzing this issue it must be noted that the major political power of the society, which consolidated hopes of the nation to restore the independent democratic state of Lithuania and its constitutional system, was Lithuanian Popular movement "Sajūdis" (Lietuvos Persitvarkymo Sajūdis). Its foundation and activities are to be regarded as a unique case, where in reality of the political legal system limiting any initiative there appears the phenomenon with the main aim to deny the system itself. Namely Sajūdis was the political factor stimulating versatile discussion both of common democracy, historical

fairness issues and specific constitutional questions, which became topical in the political process of 1988-1990.

The resolution adopted by the Constituent Assembly (22-23 October 1988) "On Conception of Sovereignty of the Soviet Socialist Republic of Lithuania" provided as follows: "Sovereignty of the Soviet Socialist Republic of Lithuania, both on national and state levels, the right to select a course of actions in international relations, its own social and political system and solve other issues of the state's interior life as guaranteed by the Constitution must be completely implemented" [1, pp. 218-219]. Although this resolution was defining the sovereignty of the Soviet Socialist Republic of Lithuania, but the focus on the right to select a course of actions in international relations and special emphasis on the right to choose a social and political system makes it obvious that an absolutely new quality of the political system was contemplated.

1.2. A significant legal factor changing development of the political system was the decree of the Presidium of the Supreme Council of the Soviet Socialist Republic of Lithuania dated as of 17 February 1989 "On Provisional Order of Registration of Statutes of Citizens' Voluntary Unions" [2]. Adoption of this decree was predetermined by the fact that by that time several traditional political parties had already been restored and new social organizations – clubs, societies, unions, social movements according to various spheres of social life and people's interests – were being established spontaneously. Although a legal order of registration of social organizations stipulated in the decree was not absolutely democratic – it was based on the system of permits rather than declarations, the order of appealing to court the refusal to register was not established – but it was a significant step forward in giving a new impetus for the reform of the existing political system. Pursuant to the order provided for in the decree statutes of social organizations, activities of which encompassed the whole territory of Lithuania or several districts and cities, were registered by an instrument of the Council of Ministers, whereas the statutes of those social organizations, which acted in the territory of the specific district or city, were registered by a respective instrument of the executive committee of the council of popular deputies [3].

The fundamental breakthrough in transforming the political system and formalizing phenomena of the political system development was marked by the amendment of wording of Articles 6 and 7 of the Constitution of the Soviet Socialist Republic of Lithuania [4]. This amendment of the Constitution established uniform constitutional grounds for functioning of all social organizations and social movements [5]. It must be stated that precisely this legal action was one of the key facts of the political process of the period, which provided legal grounds for preconditions of formation of a social political structure of a completely new quality.

By amending new wordings of Articles 6 and 7 of the Constitution of the Soviet Socialist Republic of Lithuania the Supreme Council admitted the Communist Party of Lithuania, which functioned at the moment, the assignee of rights of the Lithuanian Communist Party registered on 25 June 1940 with the Ministry of Interior of the Republic of Lithuania, committed the Presidium of the Supreme Council to supplement the above mentioned decree on provisional order of registration of statutes of citizens' voluntary unions and to establish the order of registration of political parties, which would remain effective until the law on political parties was passed [6].

1.3. In revision of the political system the declaration of the Supreme Council dated 18 May 1989 "On State Sovereignty of Lithuania" [7] had an important role. It emphasized historical aspect of Lithuanian statehood, coercive unlawful annexation of Lithuanian state to the USSR, due to which Lithuania lost its political, economic and cultural autonomy. The declaration noted that only the laws passed and approved of its Supreme Council were valid in Lithuania and future relations with the USSR and other states had to be established by treaties with those countries only. On the same day essential amendments and supplements of the Constitution were adopted [8].

Article 11 of the Constitution stipulated that the land, its depths, inner and territorial waters, forests and other natural resources were a national property of the Republic and an exclusive property of the Soviet Socialist Republic of Lithuania. The exclusive rights to air space above the territory of the Republic, its coast and the shelf and economic zones in the Baltic Sea were also established. In addition, other economic objects, valuable articles of Lithuanian history and culture were also acknowledged as property of the Republic. Furthermore the principle effective by the time that everything was property of “the soviet people” was also essentially corrected.

Instead of the common union citizenship provided for by Article 31 of the Constitution Lithuanian citizenship was established. Conditions for its forfeit or admittance later were regulated by the Law on Citizenship of the Republic of Lithuania [9]. Provisions stipulating that rights and freedoms of citizens were guaranteed by the Constitution of the USSR and USSR laws were eliminated from Article 37 of the Constitution. The new wording of the Article determined that rights and freedoms of Lithuanian citizens, provided for in the Constitution of the Republic of Lithuania, were guaranteed by laws and universally recognized international legal instruments. It was emphasized that protection of rights and freedoms was guaranteed in the court. 1.4. In view of the issue under discussion the amendments of Article 70 of the Constitution were very significant. The formerly effective wording emphasized that laws of the USSR were mandatory. The said Article was essentially corrected and it was determined that only the laws adopted by its Supreme Council or by the referendum were effective in Lithuania. Laws of the USSR and legal instruments of Soviet authorities and governing institutions could be valid in Lithuania only upon approval of the Supreme Council and registration in the respective order. Validity of the said instruments could be restricted or suspended upon resolution of the Supreme Council. Summarizing the essence of amendments to Article 70 of the Constitution they might be described as fortification of a kind of ratification process. Such ratification meant restriction of validity of the USSR laws, which in its turn commenced changing the nature of former both political and legal system.

The conclusion should be drawn that adoption of the said constitutional amendments stimulated commencement of forming an independent legal system. The sittings both of the Supreme Council of the Soviet Socialist Republic of Lithuania and its Presidium less and less respected legal instruments of the USSR, conservative and undemocratic postulates of law were being ignored or broken [10].

Upon adoption of the amendment of Article 70 of the Constitution it was necessary to establish legal procedures determining in what way the new at that time principle of interaction of legal instruments of the USSR and laws of the Republic of Lithuania and other legal rules should be implemented. On 3 November the Supreme Council passed a resolution “On the Order of Application of Article 70 of the Constitution (The Fundamental Law) of the Soviet Socialist Republic of Lithuania” [11]. It was established that provisionally, until the newly summoned Supreme Council begins its activities, decisions regarding coming into force of legal instruments of the state government and authorities of the USSR in the territory of Lithuania. The issues of suspending or restricting validity of those legal instruments or separate rules thereof could be solved only by the Supreme Council. The resolution stipulated that the rules of legal instruments of the state government and authorities of the USSR come into force in the territory of Lithuania only in the following cases: when such rules are directly included (incorporated) into Lithuanian legislation or other legal rules upon decision of the supreme state government bodies; when the Supreme Council of the Republic of Lithuania and the Presidium of the Supreme Council adopt a separate resolution with regard to validity of those rules. On adoption of such resolutions the legal instruments had to be entered into the register of legal instruments of the USSR legislation effective in the territory of the Republic. Analogous legal order was applied to instruments adopted by governing institutions.

1.5. Courses of political development in the election platform of Sajūdis were based on specifically defined criteria. This document indicated not only general political goals but also specific actions for liberation from the existing political system and for creation of a new one, which would correspond to short-term and long-term expectations of the nation [12].

With the aim of elimination consequences of annexing, the election platform of the Popular Movement “Sajūdis” emphasized that in 1990 the USSR violated mutual treaties and effected aggression against the republic of Lithuania, overthrew its government, by coercive and fake voting formed the People’s Seimas, which having appropriated sovereign rights of the nation made declarations in order to cover the annexing of Lithuania under a pretext of incorporation of Lithuania into the composition of the USSR and its inhabitants turning into citizens of the USSR. Sajūdis in its platform stated that it was necessary to cancel annexation of Lithuania promptly by a parliamentary constitutional way and to declare an act of restoration of the state of Lithuania.

The program established the major goals, which had to be implemented by deputies running for election with this platform. The main of these was to declare that People’s Seimas declarations and resolutions as of 1940 were unlawful and are invalid as of the moment of adoption thereof. In order to eliminate any political legal links with a constitutional system of the USSR it was intended that next steps had to be revision of the constitution of the Soviet Socialist Republic of Lithuania: to amend articles 29 and 30 on armed forces of the USSR and to invalidate article 61 on the duty of citizens of the Soviet Socialist Republic of Lithuania to serve in the armed forces of the USSR; to supplement article 52 with a provision that citizens of the Soviet Socialist Republic of Lithuania cannot be taken away from the territory of the Soviet Socialist Republic of Lithuania against their will.; to amend articles 28, 57, 71, 72, 75, 77, 97 so as to eliminate constitutional duties of the Soviet Socialist Republic of Lithuania and its citizens with respect to the USSR and to amend the title of section 7 and article 68 treating Lithuania as an integral part of the USSR.

The program stated that having eliminated the annexation legally the normal restoration of state functions would not be ensured as long as the status of the USSR army, terms and conditions of its withdrawal from the territory of Lithuania are not established by treaties between states. Sajūdis stated that it was in favour for neutrality of Lithuania as the utmost goal of its foreign policy.

Prior to transition to the period of constitutionality of the independent Lithuanian state the resolution of the Supreme Council of the Soviet Socialist Republic of Lithuania “On Liquidation of treaties between Germany and the USSR dated 1939 and consequences thereof” was of great importance as it announced the declaration of the People’s Seimas dated as of 21 July 1940 regarding Lithuania’s joining the USSR as non-expressing the will of the Lithuanian nation and thereby unlawful and invalid. It was also stated that the law of the USSR as of 3 August 1940 “On Accepting the Soviet Socialist Republic of Lithuania into the Union of Soviet Socialist Republics” was unlawful and it did not bind Lithuania legally. It was proposed to the USSR to initiate bilateral negotiations with respect to restoration of independence of the Lithuanian state [13].

2. General Aspects of Constitutional System Pursuant to the Provisional Fundamental Law of 1990-1992

2.1. Emphasizing the significance of the Provisional Fundamental Law to the development of Lithuanian constitutionality we must take account of the fact that it was during this period that versatile political legal discussion about the future constitutional order of Lithuania and naturally about political system of the society took place. This political process was marked by many significant constitutional facts and phenomena closely related to the modern constitutionalism of Lithuanian state. What is meant by that? *First of all*, it was the poll (plebiscite) of 9 February 1991, during which the nation of Lithuania solved the issue

of the basic rule of the future Constitution of Lithuania, i.e. the form of the Lithuanian state. *Secondly*, it was preparation of draft of the concept for the Constitution of the Republic of Lithuania in 1991 [14]. *The third* was referendum of 23 May 1993, which analyzed drafts of laws in order to restore the institution of the President of the Republic of Lithuania. *The fourth* was the referendum of 25 October 1992 during which the Constitution of the Republic of Lithuania was adopted.

Those significant phenomena of development of Lithuanian constitutionalism should be assessed in a more comprehensive manner, because they to some extent reveal the genesis of the political system of Lithuania.

2.2. PFL basically described the principle of separation of powers - the power of state in Lithuania was effected by the Supreme Council, Government of the Republic of Lithuania and the Court. It was rejected to declare the power organization principle, namely *democratic centralism* (unity), which meant that all bodies of state authorities - from the lowest to the highest levels - were elected, they are accountable to the people and decisions of the higher bodies are mandatory to the lower authorities. Pursuant to the former concept the councils of People's Deputies - the Supreme Council of the Soviet Socialist Republic of Lithuania, People's Deputy councils of districts, cities, regions, settlements and localities formed the common system of state authorities, which included the executive institutions - the Council of Ministers and executive committees of the Council.

One more significant aspect should be noted - although the idea to declare the principle of *democratic centralism* was discarded, its spirit was obvious in the structure of state institutions. Pursuant to the PFL the People's Deputies councils - the Supreme Council, councils of districts, cities, settlements and localities - formed an integral system of representing state authorities. The clause of PFL "The Deputy" determined that deputies organize implementation of resolutions of the councils, controls work of state bodies, companies, institutions and organizations. This provision established the nature of common power - a deputy of the representing institution was not only adopting legislation, but had to organize its implementation. Having taken over the former concept a deputy of the Supreme Council upon the approval of the Supreme Council could effect its powers without terminating his employment activities. PFL emphasized the duty of the deputy to account for his/her own and the respective council's work for the electorate, staff, political parties, public organizations and movements, which nominated him/her as a candidate to the deputies. PFL established the principle of imperative mandate - a deputy failing the credit of the electorate could be revoked by the decision of majority of the electorate. At the moment a special law defining procedure for such revocation was effective.

The Supreme Council had the right to cancel resolutions and decrees of the Council of Ministers, also resolutions of district and city councils, provided they were against the laws. The right of higher councils to cancel legal instruments of lower councils reflecting the unity of power was the legal tool, which as such denied prerogatives of the judicial power as an independent part of the state power to ensure legitimacy and justice.

The Presidium remained in the structure of the Supreme Council. Actually, its status was essentially corrected. However, the Presidium retained its functions, which in democratic countries lie with the head of the state or other constitutional bodies. The Presidium further granted citizenship and decided on issues of granting political asylum; granted clemency; gave awards; appointed and revoked diplomatic representatives in foreign states and international organizations; accepted credentials of diplomatic representatives of foreign states.

The Council of Ministers (Government) was responsible and accountable for the Supreme Council and during the period between sessions of the Supreme Council - for the Presidium of the Supreme Council. Thus, although in accordance to the PFL powers of the Presidium were limited, it can be seen from the provision of the Government's accountability to the Presidium that to some extent the relict of the old system was not discarded.

Irrespective of our view on the Provisional Fundamental Law the period of its validity was significant in the history of constitutionalism of Lithuania - at that time political and legal ideas with respect to constitutional development of Lithuania matured and gained form. This constitutional act was not stable, it was constantly amended and supplemented. The process was predetermined and somewhat stimulated by the fact that the order of amending the PFL was very easy, it was not burdened by procedural rules. The system of norms of the PFL was characterized by a combination of various legal phenomena, traditions and cultures. In other words, having adopted from the soviet system certain forms of constitutional regulation and on supplementing them with innovations, the system itself remained controversial and inconsistent.

2.3. In constitutionalism of modern Lithuania a special place is to be attributed to the poll (plebiscite) of 9 February 1991. One issue was submitted for decision of the nation - whether the electorate is for the statement of the drafted Constitution of the Republic of Lithuania: *The state of Lithuania is an independent democratic republic*. One might wonder why upon restoration of the state of Lithuania on 11 March 1990 it was necessary to declare once more that the state of Lithuania was an independent democratic republic. In order to answer to this question at least partially it is necessary to survey and evaluate certain political legal circumstances of the period.

Firstly, the general poll (plebiscite) was the answer to the referendum of authorities of the USSR regarding survival of the USSR, which had to take place on 17 March 1991. In fact political and legal position of Lithuania with respect of that referendum was formulated in the declaration of the Presidium of the Supreme Council and the Government of the Republic of Lithuania as of 22 February 1991 "On the USSR referendum organized in the Soviet Union on 17 March 1991" [15, p. 638]. The document emphasized that as of 11 March 1990 "... no laws or decisions of governing bodies of the USSR are effective in Lithuania and are binding to its citizens". It was reminded that "<...> the community of world states has never recognized annexation of Lithuania and in legal respect Lithuania has never been a part of the USSR". An finally it was noted that organization of such referendum was nothing else than "<...> rough intervention into interior matters of the Republic of Lithuania and a new attempt on its sovereignty."

Secondly, the poll (plebiscite) of 9 February 1991 is to be regarded in view of the context of international relations. Describing the poll (plebiscite) in this respect it should be noted that political governing bodies of Western states basically did not promote more rapid disintegration process of the USSR and carefully assessed the position of the Baltic States regarding separation from the USSR and restoration of independent democratic states. On the other hand on various occasions the opinion was expressed that the nation of Lithuania should solve the issue of independence via referendum. Thus, one of the sentences of the poll (plebiscite) was to confirm to the democratic civilization of the world the sovereign resolution of Lithuania to restore the independent democratic state. The prognosis was that precisely such expression of sovereign powers of the Nation would strengthen prestige of the state of Lithuania in the international community, accelerate its recognition and establishing of diplomatic relations.

Thirdly, assumptions of organization of the poll (plebiscite) were based not only on goals and objectives of interior and foreign policy, the poll of population of Lithuania and their opinion was especially important with respect to the development of constitutionalism. In other words the sovereign power and will expressed by the constituent authorities (nation) with respect to the state of Lithuania was that constitutional and moral foundation, on which the constituent authorities (the Supreme Council) could continue the initiated work of restoration of the state, accelerate creation of the constitution [16].

The first step in drafting the Constitution had to be defining of the major issue, i.e. the form of the State. In this respect while analyzing the poll (plebiscite) it should be noted that the statement "The state of Lithuania was an independent democratic republic" summarized

and united formerly used definitions of Lithuanian state [17]. In this sense expression of will of the nation and its sovereign powers was without any doubts significant and meaningful.

The effected poll (plebiscite) was the basis for adoption of the constitutional law of the Republic of Lithuania as of 11 February 1991 "On State of Lithuania", which became an integral part of the Constitution of the Republic of Lithuania. It is established in article 150 of the Constitution.

Summarizing the significance of the poll (plebiscite) in formation of constitutional grounds of Lithuanian political system, the following conclusions might be made: 1) the Constitutional Law "On the State of Lithuania" organically supplemented the following historic acts of constitutionalism in Lithuania - The Independence Act of 16 February 1918, the resolution of the Constituent Assembly of 15 May 1920 and the Act on Restoration of the Independent State of Lithuania of 11 March 1991; 2) the will of people of Lithuania expressed in the poll (plebiscite) and the Constitutional Law "On the State of Lithuania" were essentially the grounds on which the form of governing the Lithuanian state (republic), the form of territorial system (unitarian), and form of the political system (democracy), system of state bodies, powers of these bodies and the nature of their interaction were established in the Constitution; 3) the poll (plebiscite) in the constitutionalism of Lithuania of modern times is also significant for the fact that upon declaration of restoration of the state of Lithuania on 11 March 1991 a democratic tradition of the constitutional (juristic) state commenced when the nation decided all the key issues of the society and state directly and thereby implemented its sovereign powers. Later the referendum of 23 May 1992 was held on the issue of restoring the institution of the president of the Republic of Lithuania. The referendum of 14 June 1992 handled withdrawal of the Russian Army and indemnification of the inflicted damage. On 25 October 1992 the referendum on the issue of the Constitution was held; 4) results of the poll (plebiscite) of residents of Lithuania and the adopted Constitutional Law had a major role in fortifying the prestige of the state of Lithuania in the world and the international community specifically.

2.4. It has been already mentioned that in May 1991 the Guidelines (Metmenys) of the concept of the Constitution of the Republic of Lithuania was submitted for consideration of its people. This document meant not only a certain stage in creation of the Constitution but also reflected political and legal ideas prevailing in the society with respect to parameters of the future political system of the Republic of Lithuania. Although the Draft did not have a specific regulatory role in constitutionalism of Lithuania, it was a significant political – legal document, which expressed the basic features of political – legal culture of Lithuania of that period. Its provisions were clearly reflected not only in constitutional drafts but also in the general concept and the text of the Constitution of the Republic of Lithuania as of 25 October 1992.

In view of the key features of the Guidelines content a few summarizing conclusions might be drawn: 1) The Guidelines were created under complicated political circumstances, i.e. when seeking fortification of the independent state of Lithuania and its international recognition. In this fight various political, legal means were employed and one of the key facts were the initiated creation of the new Constitution. Vision of the future Constitution matured in a harsh discussion of interaction of the society and state, on role and influence of law in a political process; 2) the target to form characteristics of a common constitutional system was expressed in the Guidelines, which would be the beginning of overall discussions moving towards the permanent Constitution of the Republic of Lithuania; 3) the major issue solved in the Draft was the institutional structure. It was a complicated problem because it had many various links with interests of different social groups, cultural, ideological and legal phenomena, problematic interaction of the person and the state; 4) The Draft reflected favouring of priorities of the parliamentary democracy and this was not done by chance. At that time a lot of people thought that the parliamentary democracy would form premises for implementation of their political and legal expectations. Such

democratic culture in itself was an organic part and born from meetings of thousand of people of the National Revival period, where the sovereign, i.e. the Nation of Lithuania, spoke up, expressed its will and power; 5) Although the Draft contained a few features of the Provisional Fundamental Law and its provisions, it was a marked step forward in creating a constitutional model of the Republic of Lithuania.

2.5. A comparatively peaceful discussion of the Draft in the society was stimulated by proposals of restorations of the institution of the President of the Republic expressed by opinion of political organizations and some political activists. For example, the Council of Seimas of Lithuanian Sajūdis on 22 October 1991 made the declaration "On restoration of the presidential institution in the Republic of Lithuania". The Council of Seimas of Sajūdis indicated that the Republic of Lithuania was already a universally recognized state and a member of the United Nations Organization. The declaration emphasized: "The situation of today's Lithuania, especially its interior matters, obligate all of us to search for solutions as fast as possible. Probably one of the most optimal of them would be restoration of the institution of the president of the Republic of Lithuania <...>" [18].

The proposal to restore the institution of the president of the Republic of Lithuania immediately already in the autumn 1991 was based by the following arguments: the state rule system would be completely formed, effectiveness of the governing authorities increase, work of the Parliament and the Government would become more efficient, a relation of authorities would be established more firmly, it would be possible to create economy and culture in a more essential and constructive manner, to maintain the social balance, to restore and establish human rights; personal responsibility for important decisions with respect to state matters would be legitimized; representation of the state would be formalized.

On 30 November 1991 Seimas of Lithuanian Sajūdis approved the drafts of laws on the Presidential institution proposed by the Council of Seimas of Sajūdis. The Seimas of Sajūdis committed the Council of Seimas to organize promptly a referendum on this issue, which could be canceled provided the Supreme Council adopted respective legislation and decision regarding immediate elections of the President of the Republic of Lithuania [19]. Soon the press published the drafts of the laws "On the President of the Republic of Lithuania" and "On restoration of the institution of the President of the Republic of Lithuania and Amendment and Supplementing of the Provisional Fundamental Law of the Republic of Lithuania" [20].

The wish to restore the institution of the President of the Republic of Lithuania promptly was even more intensified by the resolution of the 3rd convention of Lithuanian Sajūdis date 15 December 1991 "On restoration of the institution of the President of the Republic of Lithuania". The convention committed the Seimas of Sajūdis and its Council to continue the initiated work in order to achieve the goal as constructively and as soon as possible and the deputies of the Supreme Council supported by Sajūdis were encouraged to support restoration of the institution of the President by all means [21].

In assessing the content of drafts submitted for the referendum, a few summarizing conclusions might be made. Firstly, it was targeted to attribute to the President of the Republic of Lithuania a significant role in the political system. On the other hand, powers of Seimas restricted many authorizations provided for the President. Thus, whatever the assessment of aspects of the state rule structure, it should be noted that the goal of granting the President with maximum powers with determining certain restrictions to the said powers was pursued.

The drafts of laws submitted for the referendum of 23 May 1992 [22] were not passed as only about 57.64 percent of the electorate appeared in the elections and 39,96 percent of all electorate voted in favour of the drafts of laws. The discussion that took place in the Supreme council after the referendum reflects the latter's role in the political life of the society [23, p.p. 240-257]. Assessing the referendum itself and its results in

constitutionalism of Lithuania it should be emphasized that the will of Lithuanian electorate was a very significant factor not only in selecting the form of the rule for the Lithuanian state and determining powers of governing institutions but also searching and finding constructive forms for political compromise.

2.6. On the one hand, the ideas to restore the institution of the President of the Republic of Lithuania promptly polarized the society greatly, but on the other hand, pursuance of this goal stimulated the constitutional process – drafting of the new Constitution. Already on 5 November 1991 the Supreme Council adopted a resolution regarding development of constitutionalism of the Republic of Lithuania, highlighted key features of the future Constitution as well as social and political conditions, which should be considered in preparation and adoption of the Constitution. The resolution also determined terms within which a commission for drafting the Constitutions should be formed and when it should submit a draft of the Constitution [24].

On 10 December 1991 the Supreme Council formed a provisional commission for preparation of a draft of the Constitution and assigned to it by 15 March 1992 to submit a draft of the Constitution [25]. On 22 January 1992 the Presidium of the Supreme Council approved work regulations of the commission [26, pp. 588-590]. In addition to general organizational issues, this document set forth that the commission in preparing a draft of the Constitution had to refer to a long standing experience of Lithuanian statehood, take into account the Draft of the Concept of the Constitution of the Republic of Lithuania and constitutions of the Lithuanian state of the interwar period as well as democratic sources of constitutions of European and other countries.

On 21 April 1992 the Supreme Council approved the draft of the Constitution submitted by the Provisional Commission and decided to publish the draft for consideration of the public [27]. However, the road of the draft of the Constitution prior to its publication and after that was very complicated. The problem was that on 3 March 1992 on approval of the draft of the Constitution by the Provisional Commission and on resolving to submit it for consideration of the Supreme Council, three members of the Commission proposed alternatives of many articles and later prepared an alternative integral draft of the Constitution.

On 6 May 1992 the Declaration on the Constitution of Lithuania was announced, which was signed by Lithuanian Sajūdis, Lithuanian Democratic Party, Lithuanian Christian Democratic Party and the Lithuanian National Union. The Declaration stated the formation of the coalition for preparation of a draft of the Constitution and a wish to ensure its adoption [28]. Soon the press published the draft of the Constitution prepared by the Sajūdis coalition “For democratic Lithuania” [29].

In such a way two drafts of constitutions appeared marking different positions with respect to constitutional status of governing institutions, their interaction and competence. The basis for major disagreement was the problem of balancing the relations among Seimas, the President of the Republic and the Government and other issues of constitutional regulations.

Further development of constitutional creation might be described as a continuous and assertive search of political and legal compromises. This goal was perhaps one of the most significant in the protocol of the group for coordination of constitutional problems of the Supreme Council of the Republic of Lithuania, which was approved by the Supreme Council on 4 August 1992 [30].

Conclusions

1. Political historical sources of the Constitution of the Republic of Lithuania as of 25 October 1992 without reservation related to constitutionalism of the Republic of Lithuania in the interwar period and to the most significant documents of the time: The Independence

Act of 16 February 1918, the resolution of the Constituent Assembly of 15 May 1920 on reestablishment of a democratic state of Lithuania. In the Act of the Supreme Council of 11 March 1990 "On Restoration of the Independent State of Lithuania" these documents were evaluated as the ones that "has never ceased to be legally effective and are constitutional grounds of the State of Lithuania".

2. Modern political and legal concept of the Constitution of the Republic of Lithuania reflects experience of Lithuanian statehood, democratic ideas of constitutions of European and other countries. In drafting of the Constitution the provisional and permanent constitutions of the Republic of Lithuania in the interwar period were considered. In its legal ideology and culture it is closely linked to the Constitution of the Lithuanian State as of 1 August 1922.

3. The general concept of the Constitution, especially the structure of the state governing institutions matured in a harsh political and legal polemic. One of the most topical issues was a problem of the constitutional status of the President of the Republic of Lithuania. The discussion of this issue significantly predetermined the model of interaction of other branches of the state rule, which was later established in the Constitution.

4. In the end of the 20th century many exterior and interior political phenomena influenced development of constitutionalism of Lithuania. In this context a period of 1988-1990 could be distinguished, the basic aspect of which was expression of sovereign powers of the Nation and political legal premises of this phenomenon. Probably the most significant ones would be the following: policy or reorganization declared by the USSR; essential political and legal breakthroughs that took place in the Eastern and Middle European states.

5. The Provisional Fundamental Law had an important role in the constitutionalism of Lithuania. It marked the so-called transitional period (1990-1992), during which political and legal systems were subjected to a determined reform, forms of development of modern democracy established. During the period of validity of this constitutional instrument further perspectives of constitutional development were elaborated reflected in various constitutional drafts and finally established in the Constitution of the Republic of Lithuania of 25 October 1992.



COMMENTS AND BIBLIOGRAPHY

1. Lietuvos Persitvarkymo Sajūdis (Lithuanian Sajūdis of Reorganization). Constituent convention. 22-23 October 1988. Vilnius, Mintis, 1990.
2. *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios*. 1989. No. 6-46. Prior to adoption of this decree there was no legal procedure, referring to which it would be possible to register public organizations.
3. Upon coming into effect of the decree by the resolution of the Council of Ministers, in addition to other public organizations statutes of Lithuanian Journalists Union, Lithuanian Artists Union, Lithuanian Composers Union, Lithuanian Photo Artists Union, Lithuanian Writers Union, Lithuanian Designers Union, Lithuanian Architects Union and the Charity Fund were registered.
4. *Lietuvos TSR Aukščiausiosios Tarybos ir Vyriausybės žinios*. 1989. No. 36-536.
5. Former wording of Art. 6 of the Constitution stipulated that the "leadings and steering" power of the soviet society, the "nucleus" of its political system, state and public organizations was the Communist Party of the Soviet Union.
6. *Žinios*. 1989. No. 36-537.
7. *Žinios*. 1989. No. 15-167.
8. *Žinios*. 1989. No. 15-166.
9. *Žinios*. 1989. No.33-444.
10. On 28 July 1989 the Presidium of the Supreme Council adopted a resolution, by which assigned the Ministry of Interior to take decisions regarding applications of citizens to leave for permanent

residence for foreign countries without invitations, which were stipulated in the provisions of entering the USSR. The Presidium also proposed for the Ministry of Interior to discontinue registration in the services of interior the citizens from countries of Economic Assistance Council, who arrived in the territory of the Soviet Socialist Republic of Lithuania temporarily.

11. *Žinios*. 1989. No. 32-432.
12. *Sajūdis of Lithuania and Implementation of State Ideals*. Vilnius: LII leidykla, 1998.
13. *Žinios*. 1990. No.8-182.
14. *Lietuvos Aidas*. 10 May 1991.
15. Digest of documents of the Supreme Council and the Presidium of the Supreme Council of the Republic of Lithuania. Vol. 2.
16. In fact the first steps were already being made. On 7 November 1990 the Presidium of the Supreme Council approved a group of preparation the Constitution of the Republic of Lithuania, which had already commenced its work. It was the first organizational structure with a specific aim to prepare at least the general concept of the Constitution. The group prepared the Draft of the Concept of the Constitution, which approved by the Presidium of the Supreme Council on 1 May 1991 were published in the press for consideration of the public.
17. The Act "On Restoration of the Independent State of Lithuania" of 11 March 1991 stipulated that "<...> Lithuania is again an independent state" and Art. 1 of the Provisional Fundamental Law ran as follows: "The Republic of Lithuania is a sovereign democratic state expressing the common will and interests of Lithuanian people".
18. *Lietuvos Aidas*. 29 October 1991.
19. *Lietuvos Aidas*. 4 December 1991.
20. *Ibid*. 5 December 1991.
21. *Ibid*. 19 December 1991.
22. On 7 May 1992 *Lietuvos Aidas* published two drafts of laws "On the President of the Republic of Lithuania" and "On Amendment and Supplementing of the Provisional Fundamental Law of the Republic of Lithuania in restoring the institution of the President of the Republic of Lithuania".
23. 5th session of the Supreme Council (of first convention) of the Republic of Lithuania. *Stenographs. No. 57. – Vilnius: Lietuvos Respublikos Seimo leidykla. 1995.*
24. *Žinios*. 1991. No. 32-874.
25. *Žinios*. 1991. No. 36-978.
26. Digest of documents of the Supreme Council and the Presidium of the Supreme Council of the Republic of Lithuania. Vol. 4. Vilnius: Valstybinis leidybos centras, 1992.
27. *Lietuvos Aidas*. 1 May 1992.
28. *Ibid*. 6 May 1992.
29. *Ibid*. 14 May 1992.
30. *Žinios*. 1992. No. 24-708.

