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THE PRESIDENT OF THE REPUBLIC OF LITHUANIA AND THE CONSTITUTIONAL PRINCIPLE OF THE SEPARATION OF POWERS

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Summary. The separation of powers represents a particular concept, the core idea being that of balancing the power between different bodies so that no power can act without co-operation of the others, and each checks the others. The doctrine of the system of checks and balances has been developed on the basis of this particular conception. The most influential version of the separation of powers is that proposed by C. L Montesquieu ("*De L'Esprit de lois"*, 1748). Regardless of the doctrine we subscribe to (be it that of J. Locke or that of C. L. Montesquieu) there are no ways of implementation which have been recognized and agreed upon universally. Thus, it is the government which creates a legal reality of implementation of the principle of separation of powers. The principle of separation of powers envisages the development of a system whereby human rights and freedoms were guaranteed alongside with the effective functioning of the government.

The work of models of the separation of powers is only possible in a democratic political regime. In the Republic of Lithuania the principle of separation of powers is enshrined in the Constitution. The head of the country i.e. the President acts following the principles of the system of checks and balances. His functions are defined in the Constitution and laws. The jurisprudence of the Constitutional Court is a source of law that helps in understanding provisions of the Constitution. Therefore it also helps to understand the scope of powers of the President provided for in the Constitution. Lithuania has the parliamentary form of government, therefore powers of the President are in many ways conditional and in some areas quite nominal. Therefore there are frequent proposals to amend the Constitution by way of redistribution of powers. However, eagerness to improve the form of government often competes with another value i.e. constitutional stability.

The stability of the constitution is a paramount legal value in the mentioned doctrine. Therefore we challenge the proposal to reshuffle the balance of powers because of the following reasons. *First,* the existing government form works in practice and helps to achieve necessary goals. *Second,* the correction of the government form does not guarantee that the new model will meet our goals and will be a success. If it fails, social and political instability might become quite imminent. *Third,* the Constitutional court may effect certain changes on the government form by official interpretation of the Constitution. If the existing model of the separation of powers is amended by way of changing the Constitution, the jurisprudence on the topic developed previously would become irrelevant and new jurisprudence, meeting the latest amendments to the text of the Constitution, would have to be developed. *Fourth,* constitutional conventions are able to *de facto* mitigate the effect of discrepancies between the balance of powers, therefore the change to the text of the Constitution would destroy the developing system of constitutional conventions.

Keywords: president, constitutional principle of separation of powers, checks and balances, stability of a Constitution**.**

"Separation of powers is one of the most elaborated principles in the official constitutional doctrine." [1]

1. FROM THE CONCEPT OF "SEPARATION OF POWERS" TO THE CONCEPT OF "GOVERNMENT FORM"

The separation of powers: aspects of the doctrine. The long history of doctrine of the "separation of powers" reflects the developing aspiration of men over the centuries for a system of government in which the exercise of governmental power is subject to control.[2] The doctrine of popular sovereignty, which finds its roots deep in the medieval period, provided the stimulus for the progressive clarification of the idea of a legislative function, the function of delineating that law by which the ruler will be bound. The notion and the need

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[1] Kūris E. Constitutional Principles in the Jurisprudence of the Constitutional Court, in: *Constitutional Justice in Lithuania.* Vilnius: The Constitutional Court of the Republic of Lithuania, 2003. P. 476.

[2] Vile M. J. C. *Constitutionalism and the Separation of powers, 2nd edition*. Indianapolis: Liberty Fund, 1998. P.21.

to separate powers was born and developed in particular circumstances of the Civil War in England and even if French and American legal and political ideas had a significant influence on the doctrine of the separation of powers, the idea itself originally comes from England. In the "*Second Treatise of Government"* J. Locke found the origin of the legislative and executive authority in the powers the man had in the state of nature. The first of these was to do whatever he thought fit for the preservation of himself and others within the limits of the *Law of Nature*. This was the origin of the legislative power. The second power the man had in the state of nature was the power to punish crimes committed against the Law of Nature. This was the origin of the executive power. J. Locke referred to the third power as the *Federative power*. This power *"<...> one may call natural, because it is that which answers to the power every man naturally had before he entered into society"*. The federative power contains *"the power of war and peace, leagues and alliances, and all the transactions, with all persons and communities without the Commonwealth"*[3]. It must be underlined, that J. Locke chose to regard the legislative as a "supreme power". Therefore in J. Locke's hierarchy of separation of powers the three powers were not equal. The opinion was based on the fact, that the legislative power was directly delegated from the people. The doctrine of popular sovereignty was most topical at that time marked by contradiction between the King and the Parliament. From Locke's point of view, the judicial function was a part of the executive function.

The separation of powers represents a particular concept, the core idea being that of balancing the power between different bodies so that no power can act without co-operation of the others, and each checks the others. The doctrine of the system of checks and balances has been developed on the basis of this particular conception. The most influential version of the separation of powers is that proposed by C. L Montesquieu ("*De L'Esprit de lois"*, 1748). Donald S. Lutz writes that *"Montesquieu was full of praise for the separation of powers in England, and his analysis, though incorrect, still deeply impressed the Americans. The United States Constitution bears the imprint of this ideas, most notably in the separate judiciary."*[4] Thus, according to C. L. Montesquieu, government powers can be divided into three types: (a) the legislative, (b) the executive and (c) judicial power. The separation of powers devised by the framers of the US Constitution was designed with one primary idea in mind: to prevent the majority from ruling with an iron hand. Based on their experience, the framers retreated from the idea of giving any branch of the new government too much power.

The theory of separation of powers seeks to substantiate the need to grant powers to different institutions, the central question being proper identification of institutions for that purpose. The variety of opinions regarding the methods and the number of powers prevailing in XIX - XX centuries has not disclaimed the classical point of view (J. Locke, C.L Montesquieu), which rests on the thesis that there should be three institutional branches of one main power, which belongs to the people. Therefore legislative, executive and judicial braches are universally recognized as institutions, which exercise state power.

Regardless of the doctrine we subscribe to (be it that of J. Locke or that of C. L. Montesquieu) there are no ways of implementation which have been recognized and agreed upon universally. Thus, it is the government which creates a legal reality of implementation of the principle of separation of powers.

Government form: main and auxiliary criteria. Even though used widely in political science and sociology, the government form is also the notion used widely in constitutional law. It helps to flesh out the partition of competence between different braches. It is important that the content of government form is linked to another element of the State form i.e. political regime. It applies only to democratic regimes which manifest in presidential, mixed (semi presidential) and/or parliamentary government form.[5] Non democratic political regimes may not be classified using criteria applied for democratic government form, because non democratic regime is different as it rejects the separation of powers. It needs to be reminded that the variety of government forms is based on the workings of separation of powers. Obviously enough, government form and separation of powers are not identical but they form a close relationship. Therefore it is proper analysis of the concept of the separation of powers, which helps us understand the reason for the existing abundance of government forms.

Thus three forms of government are distinguished i.e. parliamentary, mixed, (semi presidential), presidential on the basis of distribution of authorization among power institutions. G. Sartori has spotted a problem with typology of "criteria" came up with the following ironic comment. *"Sure, a presidential system is non - parliamentary and, conversely, a parliamentary system is non – presidential. But the distribution of real world cases into these two classes reveals impermissible bedfellows. The reason for this is, on the one hand, that presidential system are* [sic] *for the most part inadequately defined; and, on the other hand, that parliamentary system* [sic] *differ so widely among themselves as to render their common name a misnomer for a deceitful togetherness"*.[6] Thus, there are not any major disagreements about the criteria describing parliamentary and presidential government forms. The concept of mixed (semi presidential) government is undergoing continuous re-

[3] Locke J. *Second Treatise of Government*, Ed. by Macpherson C.B., Hackett Publishing Company, Inc: Indianapolis, Cambridge, 1980. P. 75–77.

[4] Lutz S. D. *The Origins of American Constitutionalism.* Baton Rouge: Louisiana State University Press, 1988. P.157.

[5] Mesonis G. Main Features of the constitutions of the Baltic States, in: *Recht im Osrseeraum*. Berlin: Berliner Wissenschafts – Verlag, 2006. P. 20.

[6] Sartori G. *Comparative Constitutional Engineering.* An Inquiry into Structures, Incentives and Outcomes. New York: New York University Press, 1997. P. 83.

search and evaluation as it does not have universally accepted criteria of expression. When analyzing the government form, the mentioned criteria should not be given only *de jure* (formal) but also *de facto* evaluation which will help to divide criteria into main and auxiliary.

The analysis of legal writings on the subject has led to the conclusion that there is no universal set of criteria, therefore all criteria need to be classified to main and auxiliary. The mentioned division of criteria helps to develop a method enabling us to evaluate government form of any country.

Accountability of the government is offered to be regarded as basic criteria. These are the criteria, whose expression gives a possibility to draw final conclusions about the existing government form in a particular country. When the government is accountable to the representative institution i.e. parliament, the government form should be considered as parliamentary. Executive power's unaccountability to the parliament is evaluated as a trait typical of presidential government form. Accountability of the government to the head of state and parliament is typical of mixed (semi presidential) model.

The following criteria are proposed to be regarded as auxiliary: the procedure of presidential elections, the right to lead the government, the *veto*[7] right, a possibility for the head of the state to announce referendums and a possibility to have special powers. However, concrete expressions of the mentioned criteria do not help to recognize government form. Where auxiliary and main criteria collide, the government form is established by applying main criteria.[8]

Therefore when drawing conclusions on the government form in Lithuania we seek to reveal the genuine contents of the government form in every country. When analyzing government form, however, we do not apply the criterion of value. This was done because the analysis of *de jure* and *de facto* government form has disclosed the competition of two aspirations (a) constitutional stability and (b) aspiration to have a better government form (good governance). Any government form is good if it reflects these two aspirations.

2. THE PRESIDENT OF THE REPUBLIC OF LITHUANIA IN THE CONSTITUTIONAL SYSTEM OF CHECKS AND BALANCES.

Lithuania is a represented parliamentary republic, which has all the features typical of this government form. The government is dependant on the will of the Seimas (parliament) when it is formed and when its program is being approved. The President does not have powers to strip the government off of its powers. Therefore it is obvious, *"(...) that the problems of presidentialism are not in the executive arena but in the legislative arena."*[9] *De jure* powers of the President in Lithuania are *de facto* insufficient to allow us to classify the existing government form as mixed (semi presidential). Auxiliary criteria i.e. direct universal suffrage of President should not be treated as a reason to evaluate the existing form of government in Lithuania as other than parliamentary. The Article 5 of the Constitution provides*: "In Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic and the Government, and the Judiciary."* However, *"It would not be accurate to derive the principle of separation of powers exclusively from Article 5 of the Constitution."*[10] This principle is based on a systematic interpretation of the Constitution as a whole. Basic duties and the responsibilities of the President of the Republic of Lithuania are prescribed by the Constitution of the Republic of Lithuania and also by the law on *"The President of the Republic of Lithuania"*. The principles of the impeachment of the president are found in the Constitution and in the Statute of Seimas (*Statute of the Parliament)*. Chapter 6 of the Constitution of the Republic titled *"The President of the Republic"* contains 14 articles. The need to understand the Constitution and authentic contents of these provisions makes it necessary to refer to the jurisprudence of the Constitutional Court of the Republic of Lithuania. Jurisprudence of the Constitutional Court is another important legal source which assists in interpreting authentic – Constitutional duties and responsibilities of the President of the Republic of Lithuania. *"Some constitutional principles are expressis verbis formulated (declared) in the text of the Constitution, others are not formulated explicitly, but they are, however, deduced logically from those formulated directly in the text of the Constitution."*[11] Lithuanian Constitutional principle of separation of powers does not have an *expressis verbis* form, it was "discovered" by the Constitutional Court, because *"Constitutional principles evolve and are changed not only by means of formal amendments, but in other ways as well – by judicial interpretation <...>"*.[12]

First of all, it is necessary to observe that the Constitutional Court recognizes the government form of the Republic of Lithuania as parliamentary and recognizes the principle of the separation of powers as a constitutional principle of the Republic of Lithuania. As the Constitutional Court has stated, this principle means that

[7] *Veto* – the right to refuse to allow something to be done, especially the right to stop a law from being passed or a decision from being taken. Oxford Advanced learner's Dictionary. Oxford University Press: Oxford, 2000. P.1440.

[8] Mesonis G. *Valstybės valdymo forma konstitucinėje teisėje: Lietuvos Respublika Vidurio ir Rytų Europos kontekste*. Vilnius: Lietuvos teisės universiteta, 2003. P. 189–191.

[9] Sartori G. Comparative Constitutional Engineering. An Inquiry into structures, Incentives and outcomes. New York: New York University Press, 1997. P. 161.

[10] Kūris E. Constitutional Principles in the Jurisprudence of the Constitutional Court. *Constitutional Justice in Lithuania*. Vilnius: The Constitutional Court of the Republic of Lithuania, 2003. P. 477.

[11] Kūris E. Constitutional Principles in the Jurisprudence of the Constitutional Court. *Constitutional Justice in Lithuania*. Vilnius: The Constitutional Court of the Republic of Lithuania, 2003. P. 379.

[12] Penikis J. Amend or Adjust the Constitution? In: Smith E. (ed.) *The Constitution as an Instrument of Change*. Stockholm: SNS Förlag, 2003. P. 89.

legislative, executive and legal powers must be separated, sufficiently independent, but at the same time there must be some balance between them. *"The principle of the separation of powers, which is the base for organizing state highest powers of Lithuania, presupposes autonomy and relative independence of each of the three highest state institutions."*[13] This aspect, the content of which is elaborated in greater detail in other articles of the Constitution, consolidates the principle of the separation of powers of the state. This is the fundamental principle of the organization and functioning of a democratic state under the rule of law. Following the competence of state institutions (as established by the Constitution of the Republic of Lithuania) the governance model of the State of Lithuania is to be attributed to the parliamentary republic government form. Alongside, one should note that the government form of Lithuania also bears certain particularities of the so called (half-presidential) form of government. This is reflected in the powers of the Seimas, powers of the head of state – the President of the Republic, – and powers of the Government, as well as in the legal arrangement of their reciprocal interaction. In constitutional system of Lithuania the principle of the accountability of the Government to the Seimas has been established. The principles determine a respective way of Government formation. This aspect influences the concept of the role of the President too. The President shall represent the State of Lithuania and shall perform all the duties which he or she is charged with by the Constitution and laws (Article 77). Therefore, the law *"The President of the Republic"* is another (after constitution and the constitutional court jurisprudence) source of law which regulates this institution. The Constitution prescribes the ways and principles of the election of the president. Article 78 describes that "any person who is a citizen of the Republic of Lithuania by birth, who has lived in Lithuania for at least the past three years, who has reached the age of 40 prior to the election day, and who is eligible for election to a Parliament member may be elected President of the Republic. The President of the Republic shall be elected by the citizens of the Republic of Lithuania on the basis of universal, equal, and direct suffrage by secret ballot for a term of five years. The same person may not be elected President of the Republic of Lithuania for more than two consecutive terms." The Article 81 establishes requirements for the candidates to the office. Article 82 and 83 determine legal aspects of taking of an oath and some other activities of the President: "The elected President of the Republic shall take office on the day following the expiration of the term of office of the President of the Republic; on that day, in Vilnius and in the presence of the representatives of the Nation, the members of the Seimas, he will take an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all. The President of the Republic, upon being re-elected, shall retake the oath".

The President of the Republic is not alone, as we saw above, in the system of the state ruling institutions. The President acts in close cooperation with other state institutions: Seimas (Parliament), Government, Courts. Basic duties of the President are prescribed in the Article 84 of the Constitution of the Republic of Lithuania. The President of the Republic shall: 1) decide basic foreign policy issues and, together with the Government, conduct foreign policy; 2) sign international treaties of the Republic of Lithuania and submit them to the Parliament for ratification; 3) appoint or recall, upon the recommendation of the Government, diplomatic representatives of the Republic of Lithuania in foreign states and international organizations; receive letters of credence and recall of diplomatic representatives of foreign states; confer highest diplomatic ranks and special titles; 4) appoint, upon approval of the Parliament, the Prime Minister, charge him or her to form the Government, and approve its composition; 5) remove, upon approval of the Parliament, the Prime Minister from office; 6) accept the powers returned by the Government upon the election of a new Parliament, and charge it to continue exercising its functions until a new Government is formed; 7) accept resignations of the Government and, as necessary, charge it to continue exercising its functions or charge one of the Ministers to exercise the functions of the Prime Minister until a new Government is formed; accept resignations of individual Ministers and commission them to continue in office until a new Minister is appointed; 8) submit to the Parliament, upon the resignation of the Government or after it returns its powers and no later than within 15 days, the candidature of a new Prime Minister for consideration; 9) appoint or dismiss individual Ministers upon the presentation of the Prime Minister; 10) appoint or dismiss, according to the established procedure, state officials provided for in laws; 11) present Supreme Court judge candidates to the Parliament, and, upon the appointment of all the Supreme Court judges, recommend from among them a President of the Supreme Court to the Parliament; appoint, with the approval of the Parliament, Court of Appeal judges, and from among them - the President of the Court of Appeal; appoint judges and president of district and local district courts, and change their places of office; in cases provided by Law, propose the dismissal of judges to the Parliament; 12) propose to the Parliament the candidatures of three Constitutional Court judges, and, upon appointing all the judges of the Constitutional Court, propose, from among them, a candidate for a President of the Constitutional Court to the Parliament; 13) propose to the Parliament candidates for State Controller and Chairperson of the Board of the Bank of Lithuania; if necessary, propose to the Parliament to express non-confidence in said officials; 14) appoint or dismiss, upon the approval of the Parliament, the chief commander of the Army and the head of the Security Service; 15) confer highest military ranks; 16) adopt, in

[13] Lapinskas K. The Constitutional Court of the Republic of Lithuania in the system of state institutions, in: Constitutional Justice in Lithuania. The Constitutional Court of the Republic of Lithuania: Vilnius, 2003. P. 41.

the event of an armed attack which threatens State sovereignty or territorial integrity, decisions concerning defense against such armed aggression, the imposition of martial law, and mobilization, and submit these decisions to the next sitting of the Parliament for approval; 17) declare states of emergency according to the procedures and situations established by law, and submit these decisions to the next sitting of the Parliament for approval; 18) make annual reports in the Parliament about the situation in Lithuania and the domestic and foreign policies of the Republic of Lithuania; 19) call, in cases provided in the Constitution, extraordinary sessions of the Parliament; 20) announce regular elections to the Parliament, and, in cases set forth in Article 58 (2), announce pre-term elections to the Parliament; 21) grant citizenship of the Republic of Lithuania according to the procedure established by law; 22) confer State awards; 23) grant pardons to sentenced persons; and 24) sign and promulgate laws enacted by the Parliament or refer them back to the Parliament.[14] The President of the Republic, implementing the powers vested in him or her, shall issue acts-decrees. The system of the checks and balances provides that the decrees of the President, specified in Article 84 Nr. 3, 15, 17, 21 (see above), shall be valid only if they bear the signature of the Prime Minister or an appropriate Minister. Responsibility for such decrees shall lie with the Prime Minister or the Minister who signed it. The role of the President of the Republic in the process of formation of the new government is very significant. But President is not alone in this process too. The Constitution of the Republic laconically provides that president appoints, upon approval of the Parliament, the Prime Minister, charges him or her with the task to form the Government, and approve its composition and remove, upon approval of the Parliament, the Prime Minister from office. The Constitutional Court of the Republic of Lithuania officially explicated the President duties in the process of the formation of the State Government. The Constitutional Court of the Republic of Lithuania held that:

"Therefore referring to the parliamentary democracy principles that have been established in the Constitution, it is to be assumed that the President of the Republic cannot freely choose candidatures of the Prime Minister or ministers, for in all cases the appointment of the said officials depends on either the Seimas' confidence or distrust in them. The fact that the President of the Republic, as a part of the executive power, possesses some political possibilities to influence the formation of Government personal structure should not be ignored either.

It is due to this that the President of the Republic has to appoint the Prime Minister who is supported by the Seimas majority and to confirm such a Government the programme of which can be approved by the Seimas by the majority of votes of its members taking part in the sittings. Otherwise, the institution of the executive power ensuring functioning of the state would never be formed. After elections of the President of the Republic, the Government also returns its powers to a new President. However, the Constitution does not prescribe that the Government must resign then. This is due to the fact that after the change of the head of the state, the confidence of the Seimas in the Government remains intact. The analysis of the authorizations of the President of the Republic or the Seimas in the sphere of Government formation allows to assert that the main task of the activities of the President of the Republic in this process is to guarantee the interaction between the institutions of power. His actions in Government formation should be decided by the responsibility to form an efficient Government, i.e. having the confidence of the Seimas." [15]

Similarly the Constitutional Court made an observation in another case: "The relations between the President of the Republic and the Government are regulated by the norms of the Constitution which provide that the President of the Republic shall appoint, upon approval of the Seimas, the Prime Minister, charge him or her to form the Government, and approve its composition. He shall: remove, upon approval of the Seimas, the Prime Minister from office; accept the powers returned by the Government upon the election of a new Seimas, and charge it to continue exercising its functions until a new Government is formed; accept resignations of the Government and, as necessary, charge it to continue exercising its functions or charge one of the Ministers to exercise the functions of the Prime Minister until a new Government is formed. The President of the Republic shall submit to the Seimas, upon the resignation of the Government or after it returns its powers and no later than within 15 days, the candidature of a new Prime Minister for consideration, etc. The analysis of the authorizations of the President of the Republic or the Seimas in the sphere of Government formation allows to assert that the main task of the activities of the President of the Republic in this process is to guarantee the interaction between the institutions of power. His actions in Government formation should be decided by the responsibility to form an efficient Government, i.e. having the confidence of the Seimas. The Constitution strictly prescribes the aspects of immunity and the principles of the resignation of the president. The person of the President of the Republic shall be inviolable: while in office, the President may neither be arrested nor charged with criminal or administrative proceedings. The President of the Republic may be prematurely removed from office only for gross violation of the Constitution, breach of the oath of office, or conviction of an offence. The Parliament shall resolve issues concerning the dismissal of the President of the Republic from office according to

[14] *Constitution of the Republic of Lithuania* <http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=211295>.

[15] The 10 January 1998 Constitutional Court Ruling "On the compliance of the 10 December 1996 Seimas Resolution "On the Programme of the Government of the Republic of Lithuania" with the Constitution of the Republic of Lithuania", available at: <http://www.lrkt.lt/dokumentai/1998/n8a0110a.htm>, last accessed on 1 July 2008.

impeachment proceedings. The powers of the President of the Republic shall be terminated: 1) upon the expiration of the term of office; 2) upon holding a pre-term presidential election; 3) upon resignation from office; 4) upon the death of the President of the Republic; 5) when the Parliament removes the President from office according to impeachment proceedings; and 6) when the Parliament, taking into consideration the conclusion of the Constitutional Court and by three-fifths majority vote of all the Parliament members, adopts a resolution stating that the President of the Republic is unable to fulfill the duties of office for reasons of health. In the event that the President dies or is removed from office according to impeachment proceedings, or if the Parliament resolves that the President of the Republic is unable to fulfill the duties of office for reasons of health, the duties of President shall temporarily be passed over to the Parliament Chairperson. In such a case, the Chairperson of the Parliament shall lose his or her powers in the Parliament, and at the behest of the Parliament, the duties of Chairperson shall temporarily be carried out by the Assistant Chairperson. In said cases, the Parliament shall announce, within 10 days, an election for the President of the Republic which must be held within two months. If the Parliament cannot convene and announce the election for the President of the Republic, the election shall be announced by the Government. The Chairperson of the Parliament shall act for the President of the Republic when the President is temporarily absent beyond the boundaries of the country or has fallen ill and by reason thereof is temporarily unable to fulfill the duties of office. While temporarily acting for the President of the Republic, the Chairperson of the Parliament may neither announce pre-term elections of the Parliament nor dismiss or appoint Ministers without the agreement of the Parliament. During the said period, the Parliament may not consider the issue of lack of confidence in the Chairperson of the Parliament. The powers of the President of the Republic may not be executed in any other cases, or by any other persons or institutions.

Some presidential duties are determined by the circumstances of the constitutional system of the checks and balances. This principle means that legislative, executive and legal powers must be separated, sufficiently independent, but at the same time there must be balance among them. Thus Article 87 of the Constitution provides that: " (1) When, in cases specified in Article 58 (2), the President of the Republic announces pre-term elections to the Parliament, the newly-elected Parliament may, by three-fifths majority vote of all the Parliament members and within 30 days of the first sitting, announce a pre-term election of the President of the Republic. (2) If the President of the Republic wishes to compete in the election, he or she shall immediately be registered as a candidate. (3) If the President of the Republic is re-elected in such an election, he or she shall be deemed elected for a second term, provided that more than three years of the first term had expired prior to the election. If the expired period of the first term is less than three years, the President of the Republic shall only be elected for the remainder of the first term, which shall not be considered a second term. (4) If a pre-term election for the President of the Republic is announced during the President's second term, the current President of the Republic may only be elected for the remainder of the second term.[16]

The powers of the President and stability of the Constitution. Under the Constitution, the Seimas is the strongest branch: it enacts law, forms the governmental institutions which are accountable to it and selects chief officers, establishes ministries, ratifies treaties, appoints and removes by impeachment the President and judges of the Constitutional Court and the Supreme Court, declares states of emergency and imposes martial law. The model of separation of powers in Lithuania is notable for the domination of Parliament. There are no institutions in the country which could counterbalance the powers of the Seimas. On the other hand, we can not say that this "counterbalance" means bad quality of the separation of powers. It is rather the other way around. Parliamentary government form dominates in Europe.[17] In terms of legal powers Presidents of Germany, Latvia, Hungary, Italy, Czech Republic etc. are in the shade of parliaments and nobody challenges the "gaps" in the systems of checks and balances of these countries.

When constitution is the most important source of constitutional law it has a great impact on the development of law in the country, therefore it is obvious that *"Intervention in the text of constitution will determine amendments of laws"*[18]. It is obvious that "Constitutional **stability is a great value** and serves as the basis for the stability of all legal system, therefore constitutional amendments are only possible when this is obviously inevitable because of substantial changes under economic, social, political and other circumstances. As long as provisions of a constitution "lend" themselves to interpretation, the text of the constitution should not be subjected to any changes, because it is interpretation itself, which allows to adapt the Constitution to ever changing realities and to new needs of man, society and the state without making any changes to the text of the Constitution." [19] It has been mentioned, but it probably needs an additional emphasis, that any government form is acceptable as long as it is able to meet the following main requirements: (a) guarantee of human rights and freedoms (b) ensure effective work of governmental institutions. Any amendments to constitution and correc-

[16] *Constitution of the Republic of Lithuania* <http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=211295>.

[17] Mesonis G. Parlamentas Čekijos Respublikos konstitucinėje sąrangoje (Parliament in the Constitutional Structure of the Czech Republic), in: *Parlamentas ir valstybinės valdžios institucijų sąranga: Liber Amicorum Česlovui Juršėnui*. Vilnius: Mykolo Romerio universitetas, 2008. P. 474–475.

[18] Žilys J. Konstitucijos stabilumas teisinės kultūros kontekste. *Konstitucija, žmogus, teisinė valstybė*. Konferencijos medžiaga. Vilnius: Lietuvos žmogaus teisių centras, 1998. P.19.

[19] Sinkevičius V. Lietuvos Respublikos Konstitucinio Teismo jurisdikcijos ribos. Konstitucija XXI amžiuje. *Jurisprudencija.* 2002. 30(22). P.133.

tions to the government form are only acceptable when the mentioned requirements are not met.

CONCLUSIONS

The principle of separation of powers envisages the development of a system whereby human rights and freedoms were guaranteed alongside with the effective functioning of the government. The theory had three major stages in its development. The first stage is related to J. Locke and his theory. The second is linked to the concept of C.L. Montesquieu. Even if it did undergo some major corrections, it is still relevant. The third stage is related to the theory of checks and balances which emerged in the USA and filled in the gaps of the previous doctrine of the separation of powers. The third stage, which started in the 20th century could be described as that of revision. It features two main aspects: (a) theory and practice of the separation of powers is revisited and assessed anew (b) despite of the plethora of modern theories of the separation of powers, the contents of the proposed theories can not deny the main principles formulated before.

The work of models of the separation of powers is only possible in a democratic political regime. Therefore legal writers agree that parliamentary government model working in a democracy is appropriate to tackle all the issues relevant for any model of the separation of powers. Parliamentary republic is described by the presence of a certain concentration of powers in the hands of parliament. It needs to be said that the parliamentary model has a number of checks and balances to restrain the powers of the parliament. Therefore we can not agree with the argument that the dominance of parliament denies the main principles of the mentioned doctrine and with the argument that this situation needs to be rectified by amending the text of the constitution in order to get the balance of institutional powers right.

In the Republic of Lithuania the principle of separation of powers is enshrined in the Constitution. The head of the country i.e. the President acts following the principles of the system of checks and balances. His functions are defined in the Constitution and laws. The jurisprudence of the Constitutional Court is a source of law that helps in understanding provisions of the Constitution. Therefore it also helps to understand the scope of powers of the President provided for in the Constitution. Lithuania has the parliamentary form of government, therefore powers of the President are in many ways conditional and in some areas quite nominal. Therefore there are frequent proposals to amend the Constitution by way of redistribution of powers. However, eagerness to improve the form of government often competes with another value i.e. constitutional stability.

The stability of the constitution is a paramount legal value in the mentioned doctrine. Therefore we challenge the proposal to reshuffle the balance of powers because of the following reasons. *First,* the existing government form works in practice and helps to achieve necessary goals. *Second,* the correction of the government form does not guarantee that the new model will meet our goals and will be a success. If it fails, social and political instability might become quite imminent. *Third,* the Constitutional court may effect certain changes on the government form by official interpretation of the Constitution. If the existing model of the separation of powers is amended by way of changing the Constitution, the jurisprudence on the topic developed previously would become irrelevant and new jurisprudence, meeting the latest amendments to the text of the Constitution, would have to be developed. *Fourth,* constitutional conventions are able to *de facto* mitigate the effect of discrepancies between the balance of powers, therefore the change to the text of the Constitution would destroy the developing system of constitutional conventions.

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LIETUVOS RESPUBLIKOS PREZIDENTAS IR KONSTITUCINIS *VALDŽIŲ PADALIJIMO* PRINCIPAS

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S a n t r a u k a

Valdžių padalijimo teorija numato sukurti valdžios institucijų sąrangos sistemą, garantuojančią žmogaus teises ir laisves ir užtikrinančią efektyvų valdžios funkcijų atlikimą. Galima skirti kelis valdžių padalijimo teorijos raidos etapus. Pirmasis etapas sietinas su D. Loku ir jo teorijos atsiradimu. Antrasis etapas sietinas su Š. L. Monteskje koncepcija, kuri, nors ir buvo iš esmės koreguota, išliko aktuali iki šių dienų. Trečiasis etapas sietinas su Amerikoje sukurta stabdžių ir atsvarų teorija, pašalinančia iki tol egzistavusios valdžių padalijimo doktrinos spragas. Ketvirtasis etapas (XX a.) galėtų būti įvardijamas kaip revizionistinis. Jam būdingi du aspektai: a) iš naujo įvertinamas valdžių padalijimo teorijos ir praktikos paveldas ir b) siūlomų modernių valdžios padalijimo koncepcijų turinys (nepaisant jų gausos) nesugeba paneigti aunkstesnės koncepcijos pagrindinių principų.

Valdžių padalijimo teorijos modeliai siejami tik su demokratiniu teisniu politiniu režimu. Todėl doktrinoje neabejojama, jog demokratinėje valstybėje parlamentinis valdymo modelis yra tinkamas spręsti pagrindinius uždavinius, kuriuos turi spęsti kiekvienas valdžių padalijimo modelis. Parlamentinei respublikai yra būdingas tam tikras valdžios galių sutelkimas parlamente. Ir parlamentiniame valdymo modelyje numatyta nemažai stabdžių ir atsvarų, numatančių parlamento galių ribojimą, todėl kritiškai vertintinas argumentas, jog parlamento dominavimas yra valdžių padalijimo doktrinos ir principų paneigimas, todėl būtina intervencija į konstitucijos tekstą turint tikslą atkurti pažeistą institucinę galių pusiausvyrą.

Atsiradus ir plėtojantis valdžių padalijimo doktrinai, prezidentinis *veto* pradėtas analizuoti kaip stabdžių ir atsvarų sistemos integrali dalis. Pripažinus, kad tokie valstybės vadovo įgaliojimai yra stabdžių ir atsvarų sistemos dalis, iškilo gana sudėtingas teorijos ir praktikos klausimas: koks iš tikrųjų turėtų būti prezidentinio *veto* turinys?

Lyginant skirtingų valdymo formų prezidentinio *veto* turinį būtina konstatuoti, kad tiek stiprusis, tiek ir silpnasis *veto* gali būti pozityvus elementas stabdžių ir atsvarų sistemoje. Pagrindiniais prezidentinio *veto* pakankamumo kriterijais turėtų būti aplinkybės, apibrėžiančios valdymo formos demokratiškumą (tai reiškia, kad pripažįstamos žmogaus teisės ir laisvės ir valstybės plėtra yra grindžiama teisinės valstybės principais), bei valdžios institucijų tarpusavio santykių darnumas. Esant užtikrintoms šioms sąlygoms galima teigti, jog konstitucinės sąrangos požiūriu prezidentinis *veto* yra tinkamas egzistuojančio stabdžių ir atsvarų mechanizmo elementas.

Konstitucijos stabilumas, valdžių padalijimo modelis yra teisinės vertybės, todėl abejotume siūlymų keisti nusistovėjusią stabdžių ir atsvarų sistemą prasmingumu. Šios abejonės galimos dėl šių priežasčių. Pirma, dabartinė valdymo forma pasiteisino praktikoje kaip padedanti įgyvendinti iškeltus uždavinius. Antra, valdymo formos korekcija negarantuoja, jog naujasis modelis atitiks keliamus tikslus ir bus sėkmingas. Priešingu atveju atsirastų prielaidos socialiniam ir politiniam nestabilumui. Trečia, koreguojant valdžių padalijimo modelį, t. y. darant intervenciją į Konstituciją, Konstituciniam Teismui tektų keisti jurisprudenciją taip, kad ji atitiktų Konstitucijos kaitos realijas, o tai taip pat galėtų turėti įtakos teisinės sistemos stabilumui.

Pagrindinės sąvokos: Respublikos Prezidentas, parlamentinė respublika, konstitucinis valdžių padalijimo principas, konstitucinio reguliavimo stabilumas.

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