

THE 1992 CONSTITUTION OF THE REPUBLIC OF LITHUANIA IN THE WIDER CONTEXT OF CONSTITUTIONAL DEVELOPMENT

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S u m m a r y

In this article the author suggests to analyse the 1992 Constitution of the Republic of Lithuania in the wider context of constitutional development. Such analysis could help to comprehend the true meaning of constitutional regulation of this country and to foresee the tendencies and prospects of constitutional development. The constitutionalism in the world, in Europe, in the Central and Eastern Europe is likened to three dimensions which clarify various characteristics of a national constitution. The author of the article deals with the interrelations of two common traits in the European legal systems (the constitutionalisation of Law and influence of the law of the European Union) to the future development of constitutionalism as well. This tendency compels one to think about granting a new mission to the Constitutional Court. The Constitutional Court must become true protector of the boundary between the national law and that of the European Union.

I. So far 1992 Constitution of the Lithuanian Republic mostly was examined in the context of national law. It is clear: the main task for the constitutionalists of the country is research of the adoption process of the Constitution, analysis and assessment of the essence and content of this act and various constitutional institutions. In other words, ascertaining what kind of act it is, what norms and principles are fixed in it, what is the significance of this act in the legal system of the country. "Every constitution can be analyzed in two aspects: as a written document or as mechanism, which functions in true reality [1, p.17]. Also in the Lithuanian law literature not only constitutional regulation is analyzed but also the implementation of it. The biggest attention is paid to the practice of the Constitutional Court of Lithuanian Republic, which guarantees superiority of the constitution in the system of law.

On the other hand most probably the time has come to ask: what would our constitution mean if we looked upon it from the wider context of the development of the constitutionalism. Real measures, also in law, can be cleared out only through comparison. The Lithuanian constitutional reality is one of many national legal realities (for us it is unique, but in the world only one of many), so we must "measure" constitutional successes and

failures by the method of comparison. Finally only this kind of research of the constitutionalism in Lithuania will make possible to answer to the question how we look like among other countries of the constitutional democracy.

It seems that after choosing such a direction of research we can look at the constitution of the Lithuanian Republic through several schemes:

- a) Research of the constitution of our country in the context of the global development of the constitutionalism (if we chose this scale, we would single out and compare only the most important features of the constitutional systems).
- b) Research of our constitution in the context of the development of the European constitutionalism (in this case we should discuss peculiarities of the European constitutionalism, then to analyze how this model is realized in Lithuania).
- c) Research of the constitution in the context of regional constitutionalism (in one case we should look at the constitution of the Lithuanian Republic as one of the constitutions of Central and Eastern European countries, in the second case – though even nearer – as one of the constitutions of the Baltic countries (the example of such research is the work of C. Taube [2]).

Different scales of the research reveal various peculiarities of the phenomenon. Some other features become more clear when we examine constitutional law in the synchronical and diachronical aspects. Such works of research are important not only from the academical point of view, they help to understand better what constitution really means in the national law.

II. While analyzing 1992 constitution of the Lithuanian Republic we usually stress that it is one of the constitutions of the countries of Central and Eastern Europe adopted at the end of the XXth century. This is the case of constitutional consolidation at some definite historical epoch in the concrete country. Case, to which its own particularity is typical and also similarity of the countries of the same epoch, the same region and the same development, which happened to find themselves in similar social, economical and legal situation. In other words many features are typical to the group of constitutions (Bulgaria, Romania, Slovenia - 1991, Estonia, Czechia, Slovakia - 1992, Poland - 1997 and other constitutions, which are named as post-totalitarian (often they are called constitutions of “new democracies”). Not taking into consideration peculiarities of the constitutional regulation in every country, while analyzing texts of new constitutions we could easily find many common features. That is the description in detail of the main personal rights and freedoms; constitutional regulation of political pluralism and the activities of the political parties, activities of mass media, national minorities, market economy, protection of property relationships; striving to consolidate “rationalized” parliamentary and semi-presidential system of management; proclamation of legal, social, secular and state ideas; most often the principle of the separation of power is directly formulated in such a constitutional text, by which the authority and interrelations of state institutions are fixed; European model of the constitutional control and so on.

Without any doubt we would also find many similarities analyzing constitutional ideology, which dominates in the countries of that region, also in the implementation practice of the constitutional norms. On the other hand, we remind once again that the communality of constitutional regulation, constitutional thought and practice does not deny individual features or particularity of the processes, which are going on in every country.

Post-totalitarian constitutions adopted at the end of the XXth century in legal literature are called the fourth wave of the development of the world constitutionalism, the wave, to which special attention to democratical institutions typical to constitutions, to the preservation of human values, and consolidation of the protection mechanism of superiority of constitution in legal system is attached. We can find such features in the 1992 Constitution of the Republic of Lithuania.

On the other hand we can notice that quite a few authors have emphasized, that the tradition of the democratical constitution of the countries in that region is rather modest but in one way or another the influence of it is being felt. So the desire of these countries to follow Western legal models can be understood, even more, enthusiastic support and implementation of the constitutionalism can be understood. Not occasionally G. Ajani, while analyzing the problems of circulation of legal models in the post-socialist law, considers the Central and Eastern European region “a tremendous recipient” [3, p.1088], which again tries to intercept Western models of legal regulation and legal doctrine in the most obvious way. It is noticed in legal literature that the new constitutions of these countries lack originality, that they do not present anything new (separation of powers, self-government, responsibility of Government and ministers), that the regulation in them is either common to or inspired by constitutional systems of the Western European countries [4, p. 24].

Similar assessments (besides usually they are motivated and well founded) force to raise the question, whether the newest Central and Eastern European constitutions are epigonous legal texts or at least small step towards constitutionalism? Maybe really this region, including Lithuania, are only users of constitutionalism and they themselves don't have what to suggest for the world? Only looking at the Constitution of the country in the wider context of the constitutional development (in the world, Europe or only in one region of the continent) we will be able to answer to this question.

III. There are not so many heights, the importance of which is totally recognized in the period of two hundred years of the practice of the constitutionalism. Several “waves” of the constitutional development, which reflect the evolution of society and state, can be characterized best by the constitutions, which became the examples to be followed. Among the “liberal” constitutions of the first wave the 1787 Constitution of the USA can be singled out (the oldest written Constitution in the world, which is characterized by the succinctness of the text and the strict model of the division of powers). The jurisprudence of the Supreme Court of the USA awarded even higher authority to this legal text. When we analyze constitutions of the second wave our attention usually is attracted by the 1919 Weimar Constitution of Germany – the example of “social” constitution, the influence of which felt not only the contemporary constitutions. Among the third wave constitutions usually are stressed Constitution of Germany of 1949 – the Main Law and 1958 Constitution of the 5th Republic of France, in which the new “fashions”¹ of constitutionalism became even more clear. The 1978 Constitution of Spain should be mentioned as well, which “materializes in the best way the synthesis of models of the classical and contemporary European constitutionalism” [5, p. 54].

So there are not so many summits of practical fixing of constitutionalism in great texts, into which would be possible to orientate at one time or another. Sometimes it is said in general, that the originality of constitutions should not be of great interest to their creators, that “the absolutely original text does not exist, the most valuable and most fixed constitutions have undergone influence of foreign doctrines and legal acts” [6, p.28]. Essential thing is acceptance of the act, which expresses the most important demands of the nation, and realization of the attitudes of this act is even more important.

IV. The main idea of the constitutionalism is limitation of power in order to defend personal rights and freedoms. Organization and authorization of the state powers, fundamentals of the state powers and personal relationships are fixed in the main legal act – constitution. All the other legal regulation and legal practice must suit to the main fixed rules.

¹ The fixation of personal rights and freedoms in the 1949 Main Law of Germany is considered as an example. The 1958 Constitution of the French Republic is famous for the fixed model of the system of management.

We have already mentioned some stages of the development of the constitutionism in the world. The constitutional regulation from the first Constitution of 1787 till the beginning of the XXIst century experienced changes. If at the beginning constitutions were more like the statute of organization and activities of state power, which fixed only some personal and political rights and freedoms, then in the newest constitutions the protection of social, economical and cultural rights is becoming more and more important. The object of constitutional regulation is getting wider and wider, and so on. The attitude towards constitution itself changes in the second half of the XXth century. “<...> Constitution for a long time was considered as a document of symbolical importance, which proclaims the main principles and legitimates the supremacy of law. Later it gradually forced to recognize its autonomy and supremacy, rising as the only real foundation of the legal state” [7, p. 23]. Such is the concept of constitution at the break of the XXth and XXIst centuries. The creators of constitution at the end of the XXth century, not like in earlier times, recognize without doubt: the rulers in the legal state must obey the laws, the legislator accepting new laws must keep to the norms and principles fixed in the Constitution. Not by chance it is stressed: “Constitutionalism nowadays appears together with the control of the constitutionality of laws” [8, p. 106]. This way new role of the constitution in national law is acknowledged, the role, which is understood also by the creators of new constitutions without saying. It is like an imperative for new democracies. As well for Lithuania. Exactly these ideas were the ideological basis for the creators of the 1992 Constitution of the Lithuanian Republic.

At the second half of the XXth century also tendency of unification of constitutionalism came to light, the Western concept of constitution is fixed in many countries of the world, constitutional justices in the European constitutional system are matched with the American one, common standards of human rights become the unchallenged imperative, in the constitutional law social – economical aspects of the person and society become more and more distinct. Of course the processes, which are going on in the world often are controversial, sometimes it is difficult to discover the main direction of the development. But they are reality. Also 1992 Constitution of the Lithuanian Republic, in spite of the peculiarities of life in Lithuania at the end of the XXth century, is one of the manifestations of these global processes. Of course even the biggest admirers of national law do not consider it any summit of “the new constitutionalism”, but also there is no doubt that the Lithuanian model of the constitution confirmed, that constitutional democracy functions rather successfully in Lithuania.

V. Analysis of the constitutional regulation in various countries, according to Lauvaux, allows to speak about the European model of the constitutionalism of nowadays, to which these features are typical: “Preamble and declarations, to which economical and social rights are added, establishment of special constitutional courts, creation of new cooperative federalism and political regionalism reflects the resolute philosophy, which goes further from the traditional conception of public freedoms, legal power, classical federalism or the role of local self-government” [5, p. 54]. We can see these common features (on the higher or lower degree) in the Italian 1947, German 1949, French 1958, Greek 1975, Portuguese 1976, Spanish 1978, and other constitutions of the European countries, adopted after the Second World War. The constitutions of the countries of the Central and Eastern Europe, adopted at the end of the XXth century, can be attributed to the European constitutional model. We could describe them as a modality of the European constitutional regulation model.

After the Second World War constitutional law in Europe evolutionized quickly. It was noticed that in some aspects it is getting nearer to the American model. Control of the constitutionality of laws, constitutional protection of human rights and freedoms, fixation of the constitutional dimensions in laws – is the constitutional practice, which builds new roads of the constitutionalism. “The second essential stage was reached after the fall of the Berlin

wall and Marxist regimes in Central and Eastern Europe” [8, p. 45]. So constitutionalism strengthens its positions in one more part of the continent, in the part, in which Lithuania is situated. We should look upon the 1992 Constitution of the Republic of Lithuania as a concrete case of the consolidation of constitutionalism in the Central and Eastern Europe.

VI. How has the constitutional reality appeared in the development context of constitutionalism of the Central and Eastern European countries (we will be mostly interested in those, which are orientated to Western Europe). In other words, how does this smaller regional context look like, in which the Lithuanian constitutional realities have the room?

Central and Eastern European region in the historical literature is described as having the peripheral character of the part of the European Western civilization. The history of these countries are the permanent experiments to reach better-developed Western countries in the road of civilization. The historical reality of this region of Europe are the gaps in the statehood, national calamities and conflicts, social and economical lagging behind [9, p. 5-11]. True, in spite of the low level of civilization sometimes we can see paradoxical subjects – unpredicted achievements of the political- legal system (1222 Hungarian Golden Charter, Lithuanian Statutes adopted in the XVIth century, 1791 Constitution of the Polish-Lithuanian Republic should be included in this list of achievements).

Sometimes the wave of constitutionalism at the end of the XXth century in the post-totalitarian Central and Eastern Europe is being described as a repeated lesson of the constitutionalism. The first lessons are Constitutions of the countries of “Versailles Europe” adopted just after the First World War, and the experiments to fix the foundations of constitutionalism in these countries.

Constitutions of 1920 of Czech Republic and Estonia, 1921 – Poland, the kingdom of Serbia, Croatia and Slovenia, 1922 – Lithuania and Latvia are the legal acts of that time, in which the attempt has been made to realize the demand to run democratically the life of society. It is often said that they are “social” constitutions (the influence of Weimar Constitution of Germany) and constitutions of parliamentary democracy. The weak legal capabilities, provinciality and low sophistication of political elite are the factors of that time, not favourable to find the optimal constitutional system. While evaluating these facts various features of Western influences are stressed [10, p. 3] (particularly from Roman and Germanic law). Contemporaries already noticed shortcomings of constitutional regulation of the countries of that region, e.g. Romeris wrote about Polish Constitution of 1921: “We don’t find in it almost any creative thought, only banal patterns borrowed mostly from the French constitutional practice <...>” [11, p. 219]. Similar evaluations were given also to the 1921 constitution of the kingdom of Serbia, Croatia and Slovenia because of the great number of borrowings, which often were taken non-creatively [11, p. 88].

Yet we would not be correct in assessing these legal documents too critically. These constitutions is a big step of constitutionalism in the region of Central and Eastern Europe. Besides these constitutions either from the point of view of content of regulation or the legal technique don’t look so bad. There is another trouble – societies of the countries in this region did not manage to keep to the democratical rules fixed in the constitution for a long time. Constitutional crisis, state upheavals, introduction of the authoritarian government were the features of the country’s interwar development. Constitutionalism managed to survive only for a short time, but did not manage to consolidate itself. So it is possible to speak only about the lesson of constitutionalism between the wars. This lesson was only fragment, for the continuation of which we will have to wait for a long time. But on the other hand this fragment was extremely important. It will be understood only at the end of the XXth century.

VII. After the fall of totalitarian system countries of Central and Eastern Europe after a long break again began to look at constitutionalism with hope. One of the slogans of the creation of new life became consolidation of the rational order, limitation of power and protection of human rights. "The hope of former "East" today is a law" [12, p. 16]. The second lesson of constitutionalism has begun. Some people state that it is only the repetition of the first lesson of the course. Most probably the second one. And it was begun already with previous constitutional experience, the big influence on which was made by the changed world context. And the societies of the beginning and end of the XXth century differ significantly. Of course we must not forget that in the history of this part of Europe we long lagged behind its constant strive to reach better developed countries and several decades of "the socialist expurgation". So the question rises again: maybe just like after the First World War these countries can only borrow and adopt more or less successfully the Western models? What way to choose? These questions are for the creators of constitutional texts.

We have mentioned that the eyes of constitutions of Central and Eastern European countries looked at the model of modern constitution of Western states. Certainly it was possible to try to renew democratical constitutions from between the wars, but even the hard-core romanticists and supporters of the preservation of traditions have understood how obsolete were these legal texts. When Latvia rehabilitated validity of the 1922 Constitution (of course, revised and supplemented), it was more the desire to stress the historical succession of the country; in other words this is the exception confirming the rule.

It is not possible to separate constitutional process of Central and Eastern European countries from the passage to democracy. While analyzing this phenomenon Jerzy Mackow points to the fact that constitutional process ends with the adoption of constitution and several factors determine this process: 1) constitutional traditions of definite countries and (or, if the country doesn't have this tradition) examples of other countries; 2) institutions of the previous regime; 3) routine politics of the constitutional process" [13, p. 15-16]. Routine politics – are all political processes, events, and actions, by which interests of the political activists of this period are expressed. Adoption process of the 1992 Constitution of the Lithuanian Republic from this point of view was no exception" [14, p. 161-169].

VIII. Let us return to the modality of the European constitution model of the Central and Eastern European countries at the end of the XXth century, to which 1992 Constitution of the Lithuanian Republic should be attached. We have already mentioned typical features of the constitutions of this modality: detailed catalogues of the main rights, emphasized political pluralism, regulation of market economy and the relations of property, strengthening of the "flexible" powers' division model and so on. Because of this we should discuss peculiarities of these documents at length.

While analyzing legal documents, classified to this variant of constitutional regulation, researchers notice typical objective in these acts to stress the continuity of statehood of this country. We have mentioned that almost all the countries of this region suffered heavy losses in their history, the state sometimes during long fight disappeared or under better situation again recovered. The ups and downs of Poland, Lithuania, Czech Republic, Hungary – both in the Middle Ages and in modern times – are typical fates for this part of Europe. Historical excursions in the main law are even more typical to the countries, which did not have real statehood or had only rudiments of it in their distant history. So the desire to stress tradition of statehood is easily understood. Most probably this factor destined the appearance of the preamble chapter "historical background" in the 1991 Constitution of Croatia. Most probably it is the longest experiment to put all the possible historical foundations into the text of the main law, by which the right of the nation of Croatia to have the independent state is based. It is clearly the best example of the extremity of this kind. In other constitutions historical aspects are reflected more moderately (the stronger is the

tradition of statehood, the smaller number of historical breaks and “gaps” of statehood, the shorter usually is the motivation). The preamble of the 1992 Constitution of the Lithuanian Republic would be most probably at the average of such historical argumentation: rather common provisions about the Lithuanian state many centuries ago, the grounding of legal foundation of the state by Lithuanian Statutes and the Constitutions of the Lithuanian Republic, fight for freedom and independence during centuries, and so on. Besides those who know Lithuanian history will easily understand why in the provision of chapter 17 of the Constitution about Vilnius city as the capital of the state is added such description of the city: “historical Lithuanian capital for centuries”. From this point of view Constitutions of Czech Republic and Poland are even more laconic.

In the constitutions of the countries of Central and Eastern Europe, which survived through the totalitarian calamities, we can clearly see the antitotalitarian tendencies. Lesage, analyzing the newest constitutions of the Central and Eastern European countries, paid attention to the fact that by the provisions of these constitutions there is a desire to reach two aims: first, to fix new order, which would change the old one, and second, to protect themselves from the return of previous license [15, p. 14]. We should consider constitutional ban on the appropriation of sovereignty of the nation, right to resist when there are attempts to infringe against the constitutional order, the expression of antitotalitarianism, e.g. in the second part of the third chapter of the Constitution of Lithuanian Republic it is said, that “the nation and every citizen has the right to resist anybody, who encroaches by force against the independence of the Lithuanian state, its territorial integrity and constitutional order”. Second part of the 11th chapter of the Bulgarian Constitution is also connected with such provision. “No political party or ideology can be proclaimed or approved as nationally established”. In the most constitutions of Central and Eastern European countries we will find also regulated into details problem of the political and ideological pluralism and the activities of the political parties. Such constitutionalization appeared not by chance. For a long time here flourished the one party monopoly and multiparty system was denied. So the sphere of this public life was to be specially regulated. Not occasionally in the Bulgarian Constitution (ch.11, 1st part) appeared provision: “Political life in the Bulgarian Republic is based on the principle of political pluralism”. In the first part of chapter 8 of the Romanian Constitution there is similar provision: “Pluralism is the condition and guaranty of the constitutional democracy in the Romanian society”. Antitotalitarianism is also felt in the second part of chapter 35 of the Lithuanian Constitution: “Nobody can be forced to belong to any society, political party or association”.

One of the constitutional features of Central and Eastern European countries, which separates them from the constitutions of second and third waves, is the straight formulation of doctrine in the constitutional text itself. What is the sphere of constitutional justice and the activities of scientists in the mature Western democracies, often is straightly formulated in the texts of these constitutions. This tendency is not the desire to shift theory of constitutional law into legal texts, but it is the view entrenched at the end of the XXth century, that a constitution consists not only of the norms described in a constitutional text, but also of “principles and ideas, which are not straight forwardly fixed in certain constitutional provisions but stems out of their common meaning and sense” [16, p.249]. If it were so, then the logic of the creators of modern constitutions in the Central and Eastern European countries would have to be like this: let us try to include these principles and ideas straight into constitutions and this way we will enrich constitutional texts, also we will direct into undersophisticated users of constitutional norms and principles. This way formulations typical for doctrine appeared in the texts of constitutions: “Human rights and freedoms are innate” (18th ch. of the Constitution of the Lithuanian Republic), “The state power in the Republic of Croatia is organized according to the principle of separation of powers into legislative, executive and judiciary” (4th ch. of the Constitution of Croatia), “Activities of the Matronal Assembly, President of the Republic, Government and Courts are carried out on

the basis of the principle of the division of powers and balance (4th ch. of the Estonian Constitution), "Political decisions are adopted by the will of majority expressed by free elections. While adopting decisions according to the principle of majority the protection of the rights of minorities must be guaranteed" (6th ch. of the Czech Constitution).

Principle of the legal state is declared almost in all these constitutions. This is like reaction to the principle of "socialist legality". In the Romanian Constitution state is described as "legal, democratical and socialist" (third part of chapter 1 of the Constitution); the other countries use the notion of "democratical legal state" (1st ch. of the Slovakian Constitution, 1st ch. of the Czech Constitution, second ch. of the Polish Constitution, first indent of paragraph 2 of the Hungarian Constitution), notion of "legal and social state" (second ch. of the Slovenian Constitution, first part of ch.1 of the Constitution of Croatia) or the state is described only as "legal state" (fourth ch. of the Bulgarian Constitution). According to this view the decision chosen by the creators of the Lithuanian Constitution seems more modest but also more valid: The objective of "an open, just and harmonious civil society and state under the rule of law" is fixed in the preamble of Constitution. It is not difficult to describe the state being under the rule of law, but to guarantee the principles of the state under the rule of law is one of the most complicated tasks for the society of these countries and for the structures of public power. At the same time it should be noticed, that the constitutional courts of the countries of this region base their decisions on the principles of states under the rule of law. Various elements of this principle are expressed in the decisions of the Polish Constitutional Tribunal, Hungarian, Slovenian, Lithuanian Constitutional Courts. That is the superiority of law, protection of acquired rights and so on. Most probably you have noticed one more feature: many constitutions of the countries of that region, while describing the state, use the notion of "Social State" (Romania, Croatia, Slovenia and others). This is the conception of some kind of the role of State in public life, which reflects contemporary relations between people, society and state.

"Political philosophy is expressed in the Constitution by the highest rules, by which the nation determines to rule the society" [17, p. 24]. The essence of this philosophy is the constitutional conception of the relations between a person and a State, which are fixed in the constitution directly and indirectly. In the constitutions of Central and Eastern European countries, speaking about relations between a person and a state, the priority of person is stressed, it is demanded that the state must honor the rights of a person. While describing the sources of strengthening of the fundamental rights of the Constitution of the Republic of Lithuania it is written: "The human rights returned into the 1992 Constitution of the Republic of Lithuania as the experience of the whole world. It was influenced by the noble acts of international law, documents of the United Nations Organization and the Council of Europe. The traditional and modern human rights are reflected in our Constitution" [18, p.130]. The mentioned above acts were also the source of inspiration for the creators of other new constitutions of Central and Eastern Europe. The standards of these acts were fixed in the latest constitutions.

Property relations are one of the most important elements of the new system. In the countries, in which state property dominated, equality of various forms of property must be fixed, e.g. the inequality of private and state property should be eliminated. Besides legal equality of various forms of property, market economy and freedom are also mentioned in the Constitution and the initiative of personal economical activities, the obligation of state to regulate economical activities in the way, that it would serve for the common wealth of the nation (the latter provisions are fixed in chapter 46 of the Constitution of the Lithuanian Republic).

In the new constitutions of the Central and Eastern European countries question of the relations of international and national law is solved in a new way, taking into consideration tendencies of development of the second half of the XXth century. Unlike in the previous constitutions, usually principle of the superiority of international law is fixed in them. Also

sometimes it is established that the ratified international agreements are the part of national legal system.

All the constitutions of Central and Eastern European countries ground the organization of state power and functioning on the division of powers. This principle often is formulated directly (ch. 4 of the Estonian Constitution, the first part of ch. 10 of the Polish Constitution). The Constitutional Courts of these countries, while interpreting this principle solve disputes in the sphere of the relations of state institutions. Elements of the division of powers – division of powers and independence, brakes and balances, interaction of powers are explained in the constitutional jurisprudence.

The form of management of the state is fixed in the new constitutions. The alternative was chosen not only because of the historical circumstances, but also because of the active political context. One thing is clear – the presidential power is not fixed in any Central and Eastern European countries, which are orientated to the West. All alternatives swing between two models: parliamentary systems of management are fixed in the Main law of Germany, and in the practice of the fifth constitution of the French Republic the half-presidential power was formed. In many cases we could speak about the domination of the parliamentary systems.

The Constitutions of Czech Republic, Hungary, Estonia and Latvia only representational power present to the president of the Republic. These countries orientated themselves into the German constitutional model. The presidents of these countries in legal literature are called “the first notary of the country”. Authority of the directly elected presidents (e.g. Romanian, Polish, and Lithuanian) is more important and has bigger influence to the interior and foreign dealings of the country. The nearest to the so-called classical French half-presidential model of management is the system of management fixed in the Romanian Constitution.

In the Central and Eastern European constitutions we will also find provisions of local management and self-government (10th ch. of the Constitution of the Lithuanian Republic, 7th subdivision of the Polish Constitution, ch. 4 of the Slovak Constitution etc.). Sometimes, as it is the case in the Bulgarian Constitution, prohibition to establish the autonomous formations is fixed. The sources of such provisions are realities of the country and the desire to strengthen unity of the country.

Almost in all Central and Eastern European countries (except Estonia, in which the Supreme Court carries out the control of constitutionality of legal norms) constitutional courts are the main institutions, which protect the Constitutions. It must be noticed, that constitutional courts in this region of Europe must fulfill not only control of the constitutionality of legal acts, but also to form new legal conception based on constitution.

These and other features are typical for the constitutions at the end of 20th century of the Central and Eastern European countries. The same we can see in the 1992 Constitution of the Lithuanian Republic. It is connected with the similarities of the historical situation and with the passage to democracy at the same time (according to Massias constitutional law of the countries of that region cannot be disconnected from the provision of the passage to democracy) [19, p. 7], with the social, economical and political reforms carried out in these countries, with the influence of thought and legal practice of Western democratical countries. We should look at the constitution of any country as the result of relations of various original factors.

Namely experiment of Central and Eastern European countries to fix modern constitutionalism in the short period of time is the experience, the importance of which exceeds national borders. From this point of view every success is valuable, particularly if it means fixation of the legal order based on the constitutional superiority. By this aspect adoption of the 1992 Constitution of the Lithuanian Republic, creation and fixing of legal system based on it, is the phenomenon, the importance of which goes beyond the national boundaries.

IX. Researchers of the constitutional law of the European countries point two typical tendencies of the development of law on the border of XXth and XXIst centuries: on the one hand constitutionalization of national law is getting stronger, on the other - national law feels bigger and bigger influence of international law, first of all of the law of European Union. Namely the collision of these tendencies will determine the legal scene in the nearest future. It will include Central and Eastern European countries, which are strengthening the importance of law in public life after they have chosen the direction of integration into European Union. So the legal life in Lithuania must be viewed at taking into consideration those two tendencies.

So any research of the essence and role of the constitution in national law is hardly possible without noticing the typical phenomenon of nowadays – constitutionalization of national law.

At the end of the XXth century researchers noticed, that various branches of national law (criminal, civil, administration etc.), also practice of using of legal norms and even science of law, undergoes bigger and bigger influence of constitution and its values. Constitution penetrates deeper and deeper into the whole legal life. We can call this phenomenon the constitutionalization of law [20]. Constitutional fixing of the main personal rights and freedoms, direct implementation of constitutions, appearance of the institutions of the constitutional control and their active proceeding, possibility to defend one's rights using constitution, makes the main law of the country the real centre of legal life. "Today the national law is looked at through the prism of constitutionality. It is one of the premises and at the same time manifestation of the constitutionalization of law as the universal tendency. Ordinary (first of all statutory) law must be based on constitution, it must be possible to verify its legitimacy and validity appealing to the constitution" [21, p. 10].

Appearance of the constitutional control institutions, activities of constitutional courts in safeguarding the protection of constitution allow to speak about the settling of "active" constitution. Protection of the main rights, safeguarding of the harmonious functioning of state power institutions are the functions of constitutional court, the fulfillment of which stimulates "constitutionalization" of the legal system. It is the process of "strengthening" of the constitution. I would say it should be very important to understand this process as an important "course" of legal development for the Central and Eastern European countries, which returned to democracy not so much time ago. Talking about the influence of constitution – the main legal source of law - it is noticed: "Constitutionalization of legal order is connected with the fact how constitution is understood, taught and applied" [22, p. 227]. So first of all qualitative characteristics of the constitutional text itself should be considered as important. It is the significant factor, which determines the strength of the influence of this act on national law. Extremely important in this case is the fact how the constitution itself is understood and what values it expresses. Doctrine of the constitutional conception in legal system first of all is formed by the constitutional thought. From this point of view very important is the constitutional doctrine formulated by the decisions of constitutional court, which makes influence on the science of law, directs subjects of legislature into one or another direction and also makes influence on the practice of the implementation of law.

Gradually getting force legal constitutionalization becomes more and more clear legal reality; the generation of lawyers is developing, which understands law as a real living centre of law.

While knowing the legal heritage of Central and Eastern European countries we understand, that this process is also raising problems. First of all we meet the collisions between the modern and conservative legal thought (and in Lithuania in many textbooks of ordinary law problems are discussed as if there has not been 1992 Constitution at all, or it is mentioned only formally), very often during the adoption of legal acts constitutional dimensions are ignored, or the subjects of political process in general don't understand them (after that the Constitutional Court must correct "childish" mistakes) etc. While

explaining Constitution the Constitutional Court constantly underlines the separation of powers, obligation to follow to the fixed adopting procedure of legal act, prohibition to appropriate competence attributed to another institution of the state power, ban on the violation of constitutional principles and norms while using its own competence. The Seimas, President and Government – all the institutions of political power must learn how to react rationally to the decisions of Constitutional Court.

Not less important is to safeguard the priority of Constitution while applying law in practice. State institutions and officials must understand the importance of Constitution in legal system, to understand that Constitution is the act of norms of the highest legal power, which is applied directly, that every person can defend its rights on the basis of Constitution.

Without any doubt, orientation of Central and Eastern European countries into the countries of European Union and into dominating of constitutional standards in them, stimulates constitutionalization of national law. On the other hand in this group of European countries there are more discussions on the other legal phenomenon, e.g. the influence of the law of European Union on national law. What results will bring the presentation of bigger competence to the institutions of the European Union, whether the countries after passing the competence will remain independent, how the general European standards will consolidate in the national law? So the Central and Eastern European countries, which link their future with the European Union, cannot overlook the fact that this second tendency can make danger to the other. Without any doubt they are interested how the superiority of constitution based on national law will be combined with the straightly applied law of the European Union.

National law, the priorities of which are independence and sovereignty of the country, feels the influence of *droit communautaire*¹ (1) as never before. So the realities of the process of integration induce to look through the constitutional regulation. The most problematic thing is the passing of competence, which up till that time belonged to national institutions, to the institutions of the European Union. It must be mentioned that four countries (Spain, France, Portugal and Germany) before ratifying Maastricht agreement had to change their constitutions in order to insure legal premises for further integration. Not occasionally some Central and Eastern European countries, which are orientated into the European Union, already fixed those provisions in the constitution beforehand, which are favourable for integration.

So the importance of law of the European Union visibly is growing. Not occasionally the opinions are heard about the reduction of the importance of national law, erosion of sovereignty, gradual disappearance of the identity of constitutional systems. It seems that we can look upon national law (also upon constitution) as a fortress surrounded by the law of the European Union, which loses one by one the defense positions. “The view is not very nice for the constitutionalist”. Only again we see one tendency, which forces “to read the national constitution anew”. But we must not be in a hurry to overestimate the influence of the law of European Union. European Union is the union of all the member countries. In this case the identity of the state and also of national law is doubtless. Legal system based on the superiority of constitution cannot be denied. Constitutional system is protected by the institute of constitutional justice. Namely constitutional courts will have to insure further on the protection of constitution. The control of the equivalence of international agreements and contracts to the Constitution is the national mechanism of the control of integration. The law of the European Union is not above the national law, but it is the law going aside with national law. The constitutional courts without any doubt will have to guarantee the compatibility of the national law and the law of the Union from the constitutional point of view. It seems that there will not be so many problems with norms but with legal level of

¹ *Droit communautaire* (French) or Community Law (Engl.) is the legal order made on the basis of founding of the agreements of the European Communities.

jurisprudence. The role of the constitutional court, which protects the limits of national law is getting clearer in the decisions of constitutional courts of the Federal Republic of Germany and Italy and of the French Constitutional Council. That is, the Federal Constitutional Court of Germany, while evaluating the Maastricht agreement, submitted critical view on the jurisprudence of Luxembourg justice trial, by which attempts are made to make good conditions for the widening of the competence of communities, and it made the decision that such interpretation of norms, which estimates competence, will not raise obligatory consequences for Germany [23, p. 118-119].

Besides, talking about the influence of international law, which functions aside with national law, we must not forget also the influence of the law of the European Convention on the Protection of Human Rights. So we see one more system. We should talk about the interrelations of various legal systems, replenishment by one another and the coordination. Of course functioning of various legal systems at a time raise by themselves problems of their competition and neutralization by one another. The searching for solving of these questions only begins.

So far the dynamics of European integration makes to look through only some aspects of constitutional regulation, no changes in the concept of the constitution itself. When the interrelations between international and national law are growing, undoubtedly will grow the role of the constitutional court, as a constitutional preference and the protector of the limits of national legal regulation.

X. But such kind of futurology usually is the weakest part of the research. If any conclusions about the evaluation of the previous or contemporary situation of the event are valuable only because they open some definite peculiarities of it, so making prognosis of the development of the phenomenon is much more risky preoccupation. Now the distinct tendency can become weaker because of the influence of other tendencies, and the new and at that time hardly foreseen tendencies can become clearer. It is easy to submit to undue optimism or to overestimate the dark side of reality. So I am not going to formulate how the Lithuanian constitutional reality could look like after several decades. But I have no doubts that changes of constitutionalism in the whole world and Europe will determine also changes in the Lithuanian constitutional law. I am not trying to examine possibility of the appearance of new constitutional institutions, but most probably I will not make a mistake saying, that the revolutions of communications, globalization of economy, changing public mentality will make influence on state and law. Changes in the life of the state are always connected with the constitutional regulation. Even more, nowadays future of the constitution is the future of the state. It is important not to be afraid of the possible changes. If the organized society by the state will solve all the appearing challenges, the uniting centre of the society will remain constitution.

XI. I would not like to destroy usual scheme of the scientific work. So at the end of the article it is inevitable to make such conclusions:

- 1) Research of the 1992 Constitution of the Lithuanian Republic also should be supplemented by its analysis in the context of the wider constitutional development. Constitution of our country is the concrete case of the constitutionalism in general, the European constitutional model and the Central and Eastern European constitutional regulation. Research of the Constitution of the Lithuanian Republic, as the concrete personification of the European constitutional model of Central and Eastern European variation, is extremely important. According to the author, evaluation of the constitution on the scale of various developments of constitutionalism in the world, Europe and Central and Eastern European region, will allow to understand better real measures of the dimensions of constitutional regulation of the country, to clear out tendencies and perspectives of the development of constitutional law.

- 2) Collision of two tendencies – constitutionalization of national law and the right of coordination of the problems of Central and Eastern European national law with the law of European Union, in the nearest future should determine the development of national law based on constitution. So the further projects of the development of the constitutional law of the country should be made with the considerations of these tendencies. Also it should be noticed, that we cannot overestimate any of these tendencies, legal reality is always the result of many factors.
- 3) Looking at the Constitution of Lithuanian Republic in the wider context of the constitutional development and taking into consideration the two development tendencies of national law mentioned above, we could plan the future of the role of special protection institution of Constitution – The Constitutional Court. Constitutional Court is the most important instrument of the constitutionalization of law. It should also become the main guardian of the boundaries between national law and the law of European Union.



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