

## THE PROCESS OF CONSTITUTIONAL REVISION IN THE LIGHT OF LITHUANIA'S ACCESSION TO THE EUROPEAN UNION

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### Abstract

EU accession challenges traditional interpretations of sovereignty and independence as laid down in the Lithuanian constitution. From a comparative perspective, different options for constitutional revision are distinguished to modify this traditional approach. Furthermore, this article examines a number of technical issues that have to be tackled in order to prepare the Lithuanian constitution for EU Membership.

### Introduction

The Copenhagen European Council of June 1993 set out the framework for the enlargement process of the European Union. On that occasion, the EU accepted for the first time that the associated countries of Central and Eastern Europe, being the countries with whom Europe Agreements had been signed, could apply for membership. Furthermore, the presidency conclusions laid down the basic criteria for examining the accession requests. Under these criteria, membership requires that a candidate country guarantees democracy, the rule of law, human rights, respect for minorities (political criteria); the existence of a functioning market economy (economic criteria); and, last but not least, the ability to take on the obligations of membership. This latter condition refers to the implementation of the Union's legislation, known as the *acquis communautaire*. In order to meet this challenge, the candidate countries have to pass a long process to harmonise their national legislation to European Community law. Noteworthy in this regard is a soft law obligation to legal approximation in the Europe Agreements and the 1995 White Paper on the Preparation of the Associated Countries from Central and Eastern Europe for Integration into the Internal Market of the Union. Although this programme is presented as voluntary, it obviously creates an indispensable and irreversible legal framework for integration. Moreover, it can be argued that the closing of chapters in the accession negotiations is largely determined by the fact whether the candidate has accomplished the approximation process. As a result, harmonisation of Lithuanian law with Community law cannot be underestimated. It would, however, be paradoxical if close attention is paid to the detailed transposition of the *acquis communautaire*, while little interest is shown in the constitutional provisions needed to make them effective.

Although the European Union does not, and cannot, impose conditions on constitutional amendments in the candidate countries, it is a legal and political necessity to avoid conflicts between the constitution and obligations which stem from EU membership. According to the case law of the European Court of Justice, the validity of Community measures cannot be affected by allegations that it runs counter to constitutional provisions of a Member State. The constitution, however, is the basic legal document of every independent and democratic country, with constitutional courts guarding their application. Hence, the process of accession to the European Union should evolve according to these constitutional limits and, where necessary, constitutional amendments should be made prior to enlargement.

## **1. The principle of sovereignty and EU Membership**

### **1.1. Delegation of sovereign powers**

According to Article 136 of its constitution, the Republic of Lithuania may accede to international organisations *'provided that they do not contradict the interests and independence of the State'*. Proceeding from the general objectives mentioned in Article 2 of the EC and EU-Treaty as well as the objectives of the Common Foreign and Security Policy, set out in Art.11,1 of the EU-Treaty, it can be argued that accession to the Union serves Lithuania's national interests as established in Article 135 of its constitution. The European Union, however, is hardly comparable to traditional international organisations. In its famous *Van Gend en Loos* judgment of 1963, the European Court of Justice concluded that *'the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights'*. This view was elaborated in *Costa vs. Enel* and *Simmenthal*, where the Court established the principle of supremacy of Community law:

*'the transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail'*.

The far-reaching consequences of this principle became obvious in later judgments, when the Court set out that the legal status of a conflicting national measure is irrelevant to the question whether Community law should prevail: even a fundamental rule of national constitutional law cannot be invoked to challenge the supremacy of a directly applicable Community law.

In the light of these characteristics, the question arises whether the accession of Lithuania to the European Union, and its subsequent transfer of sovereignty, is in conformity with the effective constitutional provisions? Apart from Article 136, which refers to the country's interests and independence, several similar constitutional safeguards can be observed. It has even been argued that such provisions, which can also be found in the constitutions of Latvia and Estonia, are a specific feature of the Baltic constitutions. Particularly interesting in this regard is the division between 'independence' and 'sovereignty' as mentioned in the first articles of the constitution. According to Article 1 Lithuania shall be an independent state, whereas Article 2 proclaims that 'sovereignty shall be vested in the People'. Moreover, 'no one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the People' (Art. 3).

The terms 'sovereignty' and 'independence' are closely related and often confused. According to James Crawford, 'it seems preferable to restrict 'independence' to the prerequisite of statehood, and 'sovereignty' to its legal incident'. The legal conditions for statehood have been codified in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States and imply the existence of a permanent population, a defined territory, a government and the capacity to enter into relations with other States. Membership of the European Union does not deprive a State of these characteristics and, therefore, does not contradict Articles 1 and 136 of the Lithuanian constitution. Concerning sovereignty, which

could be defined as 'the collection of functions exercised by a state', the situation is much more complicated. Accession to the European Union undeniably implies a transfer of sovereign rights to the EU institutions. Hence, the question arises on what grounds the Republic of Lithuania could delegate a part of its competences, taking into account that the constitution proclaims that 'no one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the people' (Art.3) and, even more important, that these powers shall be exercised directly, through democratically elected representatives, by the Seimas, the President, the Government and the Judiciary (Art. 4-5)?

The answer to this question can be found in a conceptual interpretation of sovereignty as it has been developed in the constitutions of the original EU Member States. The basic idea is that only the exercise of delimited sovereign powers can be transferred to international institutions, whereas sovereignty itself continues to reside in the people and may therefore not be alienated. From this perspective, accession to the EU is not an infringement of Articles 2 and 3 of the Lithuanian constitution. This, however, does not exclude the necessity to introduce so-called 'Community clauses'. From a legal point of view, clear provisions on the transfer of sovereignty will avoid questions about the constitutionality of such transfer, particularly in the light of Articles 4 and 5 of the constitution. Furthermore, it would be politically unsound to confront the constitutional implications of EU membership only after accession.

## 1.2. Options for constitutional revision

In Lithuania, the process of constitutional revision in the light of EU accession started in 1998, when the Chancellery of the Seimas established a working group which submitted the first draft concerning amendments to Articles 135 and 138 of the constitution. In fact, two broad options could be considered. On the one hand, a minimalist approach would imply a very limited amendment of the constitution, even without a specific reference to the European Union. This option is particularly clearly illustrated by the Belgian constitution. In 1970, and as a reaction to constitutional misgivings expressed in legal writing, a new article (Article 25bis, now renumbered as 34) was introduced stating that '*the exercise of delimited powers can be attributed by treaty or by law to institutions of public international law*'. This new provision was inserted immediately after Article 25 (now renumbered as 33), which dated from 1831 and proclaims that '*All powers proceed from the Nation. They are exercised in the manner laid down by the Constitution*'.

The introduction of the subsequent Article 25bis in 1970 is completely in line with the expressed conceptual interpretation of sovereignty (see above). But since 1970 the process of European integration has moved on. Although new constitutional provisions were included in the wake of the Maastricht Treaty, no amendments to Article 25bis were taken into consideration. Taking into account the limitations of this provision, the far-reaching decision-making powers of the Commission and the European Parliament, who operate independently from the States, and the fact that the Council increasingly decides by qualified majority, the constitutional basis for the transfer of sovereignty is rather disappointing. Furthermore, it is striking that no explicit reference is made to the European Communities or European Union but only to 'institutions of public international law'. Although there is no doubt that the EU falls within the scope of this provision, such a general approach fails to stress the specific character and the far-reaching consequences of European Community law. Even more important is the observation that the constitution remains entirely silent on the question of the domestic effect of EC law and its primacy over all national legislation.

A solution was found in the famous *Le Ski* judgment of the national *Cour de Cassation*, which stated that:

*'in the event of a conflict between a norm of domestic law and a norm of international law which produces direct effects in the domestic legal system, the rule established by the treaty shall prevail. The primacy of the treaty results from the very nature of international law.'*

After asserting this monist approach to international law in general, the Court proclaimed the supremacy of both the primary EC treaties and secondary EC legislation. The terms of the judgment are similar to the ECJ ruling in *Costa v. Enel*, except from a striking limitation to the transfer of '*the exercise of sovereign powers*' instead of what is mentioned in *Costa v. Enel* as '*a permanent limitation of sovereign rights*'. This difference is not a coincidence since the already mentioned conceptual interpretation of sovereignty implies that only the exercise of powers can be transferred to an international institution, which presumably means that they can return to the institutions of the State upon termination of the Treaty or some other event in the future. Although this interpretation provides a legal basis for the direct effect and supremacy of Community law, *Le Ski* did not rule explicitly on the relation between Community law and the constitution. Notwithstanding several critics, legal doctrine supports the view that the reference to 'norms of domestic law' also includes constitutional law.

The example of Belgium demonstrates the problems of a minimalist approach to constitutional amendments in the light of EU Membership. Furthermore, new constitutional obstacles will have to be tackled in the event of a further deepening of European integration and a general revision of the constitution may be recommended in order to recognise the importance of European Community law.

As integration continues, the need for clear constitutional provisions becomes increasingly indispensable. The candidate countries have a unique opportunity and even a democratic duty to introduce such clear provisions on the transfer of sovereignty and the supremacy of Community law before accession takes place. Often cited points of reference in this regard are Article 23,1 of the German and 88-1 of the French constitution.

"Article 23 (European Union)

*To realize a unified Europe, Germany participates in the development of the European Union which is bound to democratic, rule of law, social, and federal principles as well as the principle of subsidiarity and provides a protection of fundamental rights essentially equivalent to that of this Constitution. The federation can, for this purpose and with the consent of the Bundesrat, delegate sovereign powers. Article 79 (2) and (3) is applicable for the foundation of the European Union as well as for changes in its contractual bases and comparable regulations by which the content of this Constitution is changed or amended or by which such changes or amendments are authorized".*

"Article 88-1:

*The Republic shall participate in the European Communities and in the European Union constituted by States that have freely chosen, by virtue of the treaties that established them, to exercise some of their powers in common".*

These Community clauses were introduced to avoid constitutional complications after the entry into force of the 1992 Maastricht Treaty. Whereas in the previous period membership of the European Communities was based on general post-World War constitutional provisions permitting limitation of sovereignty necessary for the realisation and the defence of peace, the new amendments implied an explicit recognition of the European Union. However, still no specific reference is made to the domestic effect of Community law. In this regard, Article 29.4.10 of the Irish constitution may serve as an interesting example:

*'10° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State'.*

The introduction of this provision was necessary to avoid conflicts between the Irish constitution and Community law. Statements that the Irish parliament (*the Oireachtas*) has exclusive law-making powers (Article 15.2.1) and that the judicial power of the State may be exercised only by the judiciary (Article 34) were clearly incompatible with the law-making powers of the Community institutions and the judicial power of the European Court of Justice

and Court of First Instance. The introduction of Article 29.4.10 solved this constitutional problem. This example is highly relevant for Lithuania because Articles 4 and 5 of the Lithuanian constitution are very similar to the above mentioned articles 15.2.1 and 34 of the Irish constitution. As a result, an amendment of the Lithuanian constitution with a provision devoted to the transfer of sovereignty to the Community institutions seems indispensable. The European Law Department of the Lithuanian Government already submitted an interesting draft in this regard. Particularly relevant are the proposed Community clauses:

*(1) With the view of taking part in European integration and common European affairs, thus assuring the security of the Republic of Lithuania and the welfare of its citizens the Republic of Lithuania shall participate in the European Union and transfer to the European Union sovereign powers in the spheres defined by the constituent treaties of the European Union in order to exercise these powers in common with other States Members to the European Union.*

*(2) Binding rules of law of the European Union shall be constituent part of the legal system of the Republic of Lithuania and shall have supremacy over the rules established by the laws and other legal acts of the Republic of Lithuania.*

The first provision lays down the transfer of sovereignty to the EU level, whereas the second sentence clearly spells out the domestic effect of European legislation. This latter element is very interesting since the explicit recognition of the primacy of EC law may avoid constitutional difficulties as happened in several Member States. Furthermore, these community clauses perfectly fit with other constitutional provisions. For instance, the reference to 'the security of the Republic of Lithuania and the welfare of its citizens' is clearly related to the constitutional safeguard that participation in international organisations may not contradict the interests and independence of the state (Article 136) and the basic guidelines of Lithuanian foreign policy as laid down in Article 135 of the constitution.

The wording of the first provision is clearly inspired by the conceptual approach to sovereignty, which implies that only the exercise of delimited sovereign powers can be transferred whereas sovereignty itself continues to reside in the people. From this perspective, European integration is seen as the joint exercise of sovereign rights. This point of view, which is also expressed in Article 88-1 of the French constitution, can be found in the proposed amendment. As a result, accession to the EU does not violate the sovereignty clauses of Articles 2 and 3 of the Lithuanian constitution. The question, however, remains whether European integration can still be seen as nothing but the common exercise of sovereign powers. Particularly in the light of further European integration, and the prospective adoption of a European constitution, new constitutional obstacles will have to be tackled.

In order to guarantee the democratic character of such new steps in the process of European integration, a duty to inform parliament on European affairs might be recommended. Article 168 of the Belgian constitution entails such an obligation in case of a treaty revision:

Article 168:

*"The Chambers are informed from the beginning of negotiations concerning any revision of the treaties establishing the European Community in addition to treaties and acts which may have modified or completed the latter. They are aware of the planned treaty prior to signature".*

The constitutions of France and Germany even provide a general framework of co-operation between the Parliament and the Government on proposals of Community legislation.

Article 88-4 (French constitution)

*"The Government shall lay before the National Assembly and the Senate any drafts of or proposals for instruments of the European Communities or the European Union containing provisions which are matters for statute as soon as they have been transmitted to the Council of the European Union. It may also lay before them other drafts of or proposals for instruments or any document issuing from a European Union institution. In the manner laid*

*down by the rules of procedure of each assembly, resolutions may be passed, even if Parliament is not in session, on the drafts, proposals or documents referred to in the preceding paragraph”.*

Article 23 (2) – (3) (German constitution)

*“(2) The Bundestag and the Länder, by their representation in the Bundesrat, participate in matters of the European Union. The Federal Government has to thoroughly inform the Bundestag and Bundesrat as soon as possible.*

*(3) The Federal Government shall give the Bundestag the opportunity to state its opinion before it takes part in drafting the European Union laws. The Federal Government shall take account of the opinion of the Bundestag in the negotiations. Details shall be regulated by federal statute”.*

Proceeding from the generally acknowledged importance to involve national parliaments in the process of European integration the introduction of similar provisions should be contemplated. Although there is no obligation to arrange this issue through an amendment of the constitution, such a step would have the advantage of greater transparency. Moreover, this would be in line with the importance attributed to the democratically elected representatives as mentioned in Article 4 of the constitution. In this regard, the European Law Department of the Lithuanian Government proposed the introduction of the following sentence:

*“In order to guarantee the protection of the interests of the Republic of Lithuania and its participation when passing the binding legal acts of the organs of the European Union, the Government shall submit to the Seimas the proposals to adopt such acts and shall take into account the resolutions adopted by the Seimas on the proposals during the process of adoption of such legal acts. “*

In fact, this provision contains a modern safeguard of national sovereignty in the light of membership to international organisations such as the European Union. Traditional interpretations of sovereignty, which go back to the state theories of the interwar period, imply that state decision-making must not be subjected to a higher power. The process of internationalisation after the Second World War has modified this traditional approach. On the basis of efficiency the exercise of delimited powers can be transferred to international organisations. The proposed amendments to the Lithuanian constitution mirror this new approach and impose certain democratic conditions on the transfer of sovereignty.

## **2. Consistency of constitutional provisions with the *acquis communautaire***

Apart from the legal questions relating to the transfer of sovereignty a number of technical issues have to be tackled in order to prepare the Lithuanian constitution for EU membership. Particularly article 47 (concerning the right to acquire land property), article 119 (concerning the right to take part in municipal elections) and article 125 (concerning the exclusive right of the Bank of Lithuania to issue bank notes) are relevant in this regard.

## 2.1. Article 47

Article 47, para 1 proclaims that *'land, waters, forests, and parks may only belong to the citizens and the State of the Republic of Lithuania by the right of ownership'*. According to the 1992 constitution, plots of land could only belong to a foreign state for the establishment of diplomatic and consular missions (Art 47, para 2). These very restrictive provisions, which basically exclude foreign citizens from the right of ownership, clearly fall within the scope of Article 43 of the EC-Treaty. According to this article, *'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited'*. The second paragraph of Article 43 refers to the right of establishment *'under the conditions laid down for its own nationals'*. Article 44 of the EC-Treaty requires the Council to issue directives in order to implement the right of establishment. Furthermore, this article stipulates that the Council and the Commission shall carry out their duties in this field *'by enabling a national of a Member State to acquire and use land and buildings situated in the territory of another Member State'*.

The elimination of discriminatory restrictions to acquire property was already included as a primary objective in the General Programme for the Abolition of Restrictions on the Freedom of Establishment, adopted in December 1961. In the *Commission v. Greece* case of May 1989 the European Court of Justice declared the right to acquire immovable property on the territory of a Member State to be *'the corollary of freedom of establishment'*. Accordingly, the Greek legislation, which made the exercise of the right to purchase or use immovable property by nationals of other Member States subject to restrictions not imposed on Greek nationals, infringed Article 43 of the EC Treaty. Moreover, the Court found that access to ownership and the use of immovable property is also guaranteed by Article 49 (freedom of services) and 39 (free movement of workers) of the EC-Treaty. In the more recent *Klaus Konle v. Republic of Austria* case the Court reiterated its view expressed in its previous case law:

*'it is common ground that national legislation on the acquisition of land must comply with the provisions of the Treaty on freedom of establishment for nationals of Member States and the free movement of capital.'*

The latter freedom includes investments in real estate on the territory of a Member State by non-residents. In order to defend their case, the Austrian and Greek governments referred to Article 295 EC, which leaves the Member States in control of the system of property ownership. The Court did not accept this argument and clearly stated that Article 295 EC does not exempt this system from the fundamental rules of the Treaty. A system of prior authorisations for the acquisition of land can only be justified in exceptional circumstances for the public interest only if it is applied in a non-discriminatory manner and if the same result cannot be achieved by other less restrictive measures.

In the light of these rules, it can be argued that Article 47 of the Lithuanian constitution infringes the fundamental freedoms of the internal market and should be amended prior to enlargement. A first amendment in this regard was adopted on 20 June 1996, in connection with the ratification of the Europe Agreement. It reformulated Article 47, para 2 as follows:

*'Foreigners may be permitted to acquire ownership of non-agricultural land plots required for the construction and operation of buildings and facilities for their direct activities'*.

According to the related Constitutional law on the implementation of Article 47, para 2, this expression encompasses the citizens and legal persons of the EU and its associated countries, NATO and the OECD and gives them a right to acquire non-agricultural land for the purpose of carrying out economic activities. These activities have to be established and registered in accordance with Lithuanian legislation. Although these adjustments obviously extend the very limited scope of Article 47, a further amendment of this provision is again on the Parliament's agenda. As the European Commission concluded: *'there is still a need to abolish the constitutional restrictions on the acquisition of agricultural land by foreigners and foreign legal persons and the authorisation procedures restricting the acquisition of non-agricultural land by foreigners'*.

The only – temporary – alternative is the introduction of transitional periods after accession. Such a practice is not uncommon and has been applied in previous enlargements as well. In the current enlargement negotiations only the three Baltic States and Slovenia did not ask for any transitional arrangements in this area. As a result, these countries were among the first to conclude the chapter on free movement of capital. The only option left was to amend the constitution in time in order to allow foreign natural and legal persons to acquire agricultural land in Lithuania. A draft amendment was approved by the Government on 14 January 2002 and passed the first parliamentary reading by a vote of 119 to 4 on 7 March 2002. In order to be adopted, the amendment must gain the approval of at least two-thirds of all parliamentarians in a second vote, following an interval of at least three months. This second vote, however, has been postponed as the Parliament adopted a resolution calling for the reopening of negotiations with the EU on the previously closed chapter of free movements of capital. Taking into account that a 7-year transitional period for agricultural land and forests had been agreed with several candidate countries, Lithuania called for an equal treatment. On the brink of the crucial Copenhagen European Council of 12 and 13 December 2002, the Danish presidency proposed comprehensive and tailor-made compromise packages in order to conclude the negotiations with the ten ‘first wave’ applicant countries. This deal allows Lithuania, as well as the other candidate countries, to restrict land acquisitions during a period of up to ten (7+3) years after membership. In spite of the importance of this agreement for Lithuanian farmers, it does not change the basic necessity to amend Article 47 of the constitution in order to bring it in line with the rules of the internal market. In this regard, the example of Slovenia might be relevant. The original Article 68 of the Slovenian constitution also restricted the property rights of foreigners but was amended in 1997 prior to the ratification of the Europe Agreement.

## **2.2. Article 119**

Lithuania’s accession to the EU already resulted in an amendment of its constitutional rules on local elections. According to the original Article 119, para 2 ‘Members of local government Councils shall be elected for a two-year term on the basis of universal, equal and direct suffrage by secret ballot by the residents of their administrative unit *who are citizens of the Republic of Lithuania*’. This latter provision is in clear contrast to Article 19 of the EC-Treaty, which grants to EU citizens a right to vote and to stand as a candidate in local elections in the Member State of residence. This provision, introduced in the 1992 Maastricht Treaty and worked out by Council directive 94/80 of 19 December 1994, led to constitutional amendments in Belgium, Germany, France, Ireland, Spain, Luxemburg and Portugal. It should be mentioned that Belgium and Luxemburg ratified the Maastricht Treaty without prior revision of the constitution and introduced the necessary amendments afterwards, in time for the next local elections. This approach was highly criticised since it undeniably trivialised the legal standing of the constitution. Furthermore, the postponed amendment of the constitution raised difficulties to the transposition of Directive 94/80. According to the Court’s case law ‘a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive’. As a result, the European Court of Justice concluded that Belgium had failed to fulfil its obligations.

In order to avoid similar problems, Article 119, para 2 of the Lithuanian constitution has rightfully been amended in June 2002. The amended Article gives all permanent residents of an administrative unit a right to vote in municipal elections. In this regard, Lithuania went even further than EU requirements. Under Article 19 of the EC-Treaty the right to vote in local elections is limited to EU citizens, whereas the amended Article 119 of the Lithuanian constitution guarantees this right to all residents. Simultaneously, the new constitutional provisions extend the term of local-council deputies to four years. The laws accompanying the amendments, however, provide that they do not enter into force immediately, which implies that non-citizens will be allowed to vote only in 2006.



### 2.3. Article 125

Under the Copenhagen criteria membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and *monetary union*. In the light of this provision, participation in the Euro area is the ultimate goal of new Member States. On that occasion, they will integrate into the single, stability-oriented monetary policy of the European System of Central Banks (ESCB) as laid down in Article 105 of the EC-Treaty. The ESCB has legal personality and is composed of the European Central Bank (ECB) and the national central banks (Article 107 EC). According to Article 106 of the EC-Treaty the European Central Bank has the exclusive right to authorise the issue of banknotes within the Community. This provision seems to be in conflict with Article 125 of the Lithuanian constitution, which states that 'the Bank of Lithuania shall have the exclusive right to issue banknotes'. In the light of the Member States' obligation to ensure that its national legislation is in line with the Treaty and the Statute of the ESCB, as explicitly laid down in Article 109 of the EC-Treaty, an amendment of the Lithuanian constitution seems appropriate.

### Conclusion

The long process of pre-accession preparations reaches its final lap. Accession negotiations have been concluded at the Copenhagen European Council on 12 and 13 December 2002. The signing of the Accession Treaty took place in April 2003, in order to guarantee the accession of ten new Member States on 1 May 2004. This date may also serve as a deadline for the implementation of relevant constitutional amendments. For Lithuania, an amendment of Article 47 of its constitution is indispensable. Due to the obvious conflict with basic rules of EC law, Lithuania would not only risk an internal constitutional crisis but also a conviction by the European Court of Justice. However, it should be mentioned that the preparatory work of the European Law Department under the Government of Lithuania and the continued monitoring of the European Commission make such a scenario very improbable. Furthermore, the final outcome of the accession negotiations grants Lithuania a transitional period on this issue of up to ten years after accession.

The prospective accession to the EU already led to a revision of Article 119 of the Lithuanian constitution. The amendment process of this article may serve as an example to introduce changes to Article 47 and 125 of the constitution. Although the latter article is not by definition incompatible with the *acquis communautaire*, an amendment would enhance the transparency and democratic value of the constitution. Similar remarks could be made in relation to Articles 136 and 138 of the constitution and the proposed introduction of so-called 'Community clauses'. Taking into account the oppressive history of Lithuania and its numerous constitutional safeguards on independence and sovereignty, a minimalist approach to constitutional amendments should be avoided. Instead, the proposed amendments have to be recommended. They serve as the necessary basis for the transfer of sovereignty to the EU institutions and should conclude the process of constitutional revision and modernisation in the light of EU accession.



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## ***Konstitucijos pakeitimo procesas Lietuvos stojimo į Europos Sąjungą perspektyvoje***

***Van Elsuwege Peter***

*Gento universitetas, Belgija*

### **SANTRAUKA**

*Straipsnyje analizuojamas Lietuvos Respublikos Konstitucijos pakeitimo galimybių procesas Lietuvai stojant į Europos Sąjungą. Nors Europos Sąjunga nenustato ir negali nustatyti sąlygos valstybėms kandidatėms pakeisti savo konstitucijas, tačiau tai yra teisinė ir politinė būtinybė, siekiant išvengti prieštaravimų tarp valstybių kandidačių konstitucijų ir įsipareigojimų, kurie kyla iš narystės Europos Sąjungoje.*

*Straipsnyje tyrinėjama suvereniteto ir valstybės nepriklausomybės sampratų tarpusavio santykis, apžvelgiama Europos Sąjungos jurisprudencija bei Europos Sąjungos teisės viršnacionalumo principas remiantis Europos Sąjungos valstybių narių praktika ir patirtimi siekiant analogiško sprendimo. Straipsnyje pateikiami keli Konstitucijos keitimo būdai, siekiant apibūdinti, kokia apimtimi turėtų būti keičiama Lietuvos Respublikos Konstitucija. Taip pat analizuojami konkretūs Konstitucijos straipsniai, kurie prieštarauja *acquis communautaire* ir kurie turėtų būti keičiami.*

*Nagrinėjant konstitucijos 47 straipsnį, darytina išvada, kad jo pakeitimas neišvengiamas dėl neatitikties ES teisei, priešingu atveju Lietuva susidurtų ne tik su nacionalinės teisės ir Europos Bendrijos teisės normų kolizija, bet ir rizikuotų būti patraukta atsakomybėn Europos Teisingumo Teismo. Straipsnyje analizuojama 119 straipsnio pakeitimo būtinybė bei teigiamai vertinami padaryti pakeitimai. Nors 125 straipsnis bei 136 ir 138 straipsniai tiesiogiai ir neprieštarauja *acquis communautaire*, jų pakeitimas būtų labai pageidautinas. Analizuojant suverenumo problemą per narystės Europos Sąjungoje perspektyvą, daroma išvada, kad narystė Europos Sąjungoje nepažeis Lietuvos Respublikos Konstitucijos 2 ir 3 straipsnių. Vis dėlto manytina, kad aiškios konstitucinės normos, nustatančios suverenių galių perleidimą, būtų tinkamos, atsižvelgiant į Konstitucijos 4 ir 5 straipsnius ir valstybės įsipareigojimus, susijusius su naryste Europos Sąjungoje.*

