

THE CONSTITUTIONAL FOUNDATIONS OF THE FINANCIAL SYSTEM OF THE STATE OF LITHUANIA

Dalia Vasarienė

Mykolas Romeris University, Faculty of Law,
Department of Civil and Commercial Law
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 271 4587
E-mail: daliavasariene@mruni.eu

Received on 5 June, 2012; accepted on 15 August, 2012

Abstract. *The paper focuses on the constitutional foundations of the finance system of the Republic of Lithuania. Constitutional jurisprudence pays due respect to the issues of budget system, and to interpret and analyse tax problems. The main purpose of this paper is to analyse separate institutes of the financial system of Lithuania, reflected in the main law of the country – the Constitution, and how these norms are interpreted in the constitutional doctrine. Notably, although the main analysed provisions are entrenched in the Chapter XI “Finances and state budget,” the paper is not restricted only on the analysis of these norms, but also provides a complex analysis of other connected norms and their interpretation in the constitutional jurisprudence.*

Keywords: *Financial system, constitutional foundations of finances, constitutional foundations of taxes, constitutional budget finances, constitutional doctrine, constitutional jurisprudence, tax system, state budget.*

Introduction

There are not many provisions in the Constitution of the Republic of Lithuania which relate directly with finances, taxes, budget, the Bank of Lithuania or the National Audit Office – they can be counted on fingers. Nevertheless, as the professor E. Kūris said: „the Constitution is the basis of all areas of the state life. It constrains legislator, who is not free to treat these or those functions of institutions, this or that relationship with other institutions.“ Therefore the author of this paper has had an idea to analyze what are the constitutional foundations of the state financial system and how are they interpreted by the Constitutional Court in its constitutional doctrine. Often the discussions on taxes, budget, and other elements of finance system are rarely based on constitutional foundations, which are fundamental and essential in respect of other legislative norms.

1. Constitutional Regulation of State Budget

Chapter XI of the Constitution “Finances and the state budget” entrenches the fundamental provisions of the financial system of the Republic of Lithuania that are related with the budgetary system of the state, separate types of budgetary revenue, the procedure of budget, the Bank of Lithuania as the main financial institution of the state, the state loan and the state property.

The state’s financial system consists of a number of financial chain elements, which are aimed at ensuring monetary funds for the state, necessary for its economic, social and political functions.¹ The main financial chain elements are: the central bank, the Ministry of Finance, and other state financial institutions. The monetary assets that circulate in the state finance system are called “public finances.” These are the state and municipality budgets, non-budgetary funds, state credit, state company finances, and structural funds. The public finances are aimed at ensuring the implementation of the four main state functions: 1. Ensuring provision of the necessary services; 2. Promoting or controlling separate economic areas; 3. Ensuring social policy; 4. Encouraging the growth of the entire state economy. One of the main tasks of the state finance system is an effective management of the public finances. The main chain element in this system is the state budget. It interconnects the main financial elements – taxes, debts, and expenditure.² All governments of the world plan the collection and distribution of revenues in their budgets. The budget is a special and essentially fundamental instrument of state planning.³ It reflects the sums of all state’s future revenue, its sources and all expenses for various public aims. In other words, the budget is the income-expenditure plan for a specific time period. In states aimed at market economy, the budget is understood as:

1 Levišauskaitė, K.; Rūškys, G. *Valstybės finansai* [State finances]. Kaunas: Vytauto Didžiojo universiteto leidykla, 2003, p. 18.

2 *Ibid.*, p. 19.

3 Šileikis, E. *Alternatyvi konstitucinė teisė* [Alternative constitutional law]. Vilnius: Teisinės informacijos centras, 2003, p. 361.

1. An effective decision-making plan; 2. Distribution and re-distribution of expenditure; 3. Maintaining of stable environment; 4. Entrenchment of state responsibility on different levels; 5. Ensuring adequate recording of revenues and expenditure; 6. The main state instrument for implementation of economic policy; 7. The instrument for promotion or slowing down of economic growth; 8. The instrument aimed at counterbalancing politically competing interests. The Constitutional Court revealed the importance of the budget in the country. It stated that the part of the national revenues accumulated in the budget of the Republic of Lithuania creates the necessary conditions for implementation of programmes of state education, culture, science, health care, social maintenance and social assistance, protection of environment, as well as for development of economy, maintenance of state government and state administration institutions and strengthening the defence of the country.⁴

The Constitution of the Republic of Lithuania entrenches that: “[t]he budget system of Lithuania shall consist of the independent State Budget of the Republic of Lithuania as well as independent municipal budgets.” This means that the budgetary system of our country consists of⁵: 1. The state budget – centralized state financial resources’ fund aimed at common state needs, and 2. The municipality budgets.

Article 94 of the Constitution provides that the Government shall prepare a draft state budget and submit it to the Seimas, which in accordance with provisions of Article 67, shall approve the state budget and supervise its execution. The Government also executes the state budget and submits to the Seimas a report on the execution of the budget.

The Constitution establishes the sources for collecting the state budget income. Article 127 (2) provides that “[t]he State budget revenue shall be raised from taxes, compulsory payments, levies, income from State property and other income.” Moreover, Article 65 (15) and 127 (3) of the Constitution establish provisions that the Seimas establishes State taxes (the biggest part of state budget income) and other compulsory payments.

The distribution of funds among appropriation managers depends on the budget policy. These decisions, taken at the time of budget process, have an effect on the whole population of the country, thus the Seimas establishes the budgetary decisions by law. Each law on state budget and municipality budgets is valid and applied for a certain set period. Funding of assignment managers from the adequate year’s state budget and municipality budgetary funds is finished with the end of the adequate budget year.⁶

As previously mentioned, it is universally accepted that the state budget is a financial plan of the state, by which the public funds are re-distributed. Adequately, municipality budgets are income-expenditure plans of these municipalities for a certain set period.

4 Constitutional Court of the Republic of Lithuania, Ruling of 10 July 1997. *Official Gazette*. 1997, No. 67-1696.

5 The term “consolidated budget” is used in the literature, which means the budget comprised of state budget and municipality budgets.

6 Constitutional Court of the Republic of Lithuania, Ruling of 13 November 2007. *Official Gazette*. 2007, No. 118-4830.

According to the Article 129 of the Constitution, this period is one budget year that starts on the 1st of January and ends on the 31st of December.

The budget process means activities on forming and executing state and municipal budgets of competent state and municipal institutions, agencies and organizations, regulated by laws. This process is organized in accordance with the Constitution, the Law on the budget structure of the Republic of Lithuania (further – Law on the budget structure), rules on budgeting approved by the Government, and orders of the Minister of finance.

The Constitution establishes the following stages of the budget process: 1. *Preparation of the draft budget* (Articles 94(4) and 130 of the Constitution); 2. *Submission of the draft budget to the Seimas and its consideration at the Seimas* (Articles 94 (4), 130, 131 of the Constitution); 3. *Approval of the budget by law* (Articles 131 (1), 67 (14) of the Constitution); 4. *Execution of the budget* (Articles 131 (1), 94 (4) of the Constitution); 5. *Supervision and control of the budget execution* (Articles 67 (14), 94 (4), 134 of the Constitution). The Constitutional Court in its ruling of 14 January 2002 stated that the constitutional concept of the of the state budget implies the presumption that the drafting (forming) of the state budget, its consideration in the Seimas and its approval by law, as well as its execution, are all separate steps of the budgetary process. In the same ruling, the Court also stated that while drafting (forming) the state budget as well as while considering and approving it, the powers of the Seimas as a legislative body and the powers of the Government as an executive body are separated; the constitutional principle of the separation of powers has to be ensured in this area.⁷

Article 121 of the Constitution establishes that municipalities shall draft and approve their budgets, which are, in accordance with Article 127 (2), independent. Municipal budgets are centralized financial funds of municipalities, which are used for funding of local programs and municipal agencies. They use the appropriations stipulated by municipal laws independently and in accordance with the Constitution and the laws.⁸ Independence becomes relative in execution of municipal budgets, because if a municipality lacks some money, it may receive grants and loans from the state budget.

Municipal draft budgets are prepared by the executive bodies of the municipalities. The draft budgets are submitted to municipal councils, which consider and approve them. The budget is approved by the municipality council's decision. Municipality councils approve the budgets in two months after the approval of the state budget and municipality budgets' financial indicators.⁹ In the event of a failure to timely approve a budget, monthly appropriations at the beginning of the year until the approval of budgets may not exceed 1/12 of the last year's appropriations of these budgets. Directors of

7 Constitutional Court of the Republic of Lithuania, Ruling of 11 July 2002. *Official Gazette*. 2002, No. 72-3080.

8 Constitutional Court of the Republic of Lithuania, Ruling of 8 November 2000. *Official Gazette*. 2000, No. 96-3042.

9 The Law on the budget structure of the Republic of Lithuania stipulates that the Seimas approves financial indicators of municipality budgets for one budget year by the law and no later than 14 days prior calendar days to the beginning of the budget year.

municipal administrations submit approved budgets and estimates of the privatisation fund of municipalities to the Ministry of Finance. The executive bodies of municipalities are accountable to municipal councils with the view of proper execution of the budgets.

Appropriations of municipal budgets are allocated to: funding of municipal programs on education, culture, health care, sport and environmental care programs and social care; development and regulation of local municipalities economy; sustaining local municipalities' competent authorities and executive bodies; and other measures under the law of the Republic of Lithuania and municipality council decisions.

Implementation of municipal budget is controlled by the state control institutions. In fact, the control function is undertaken by all authorities and managerial institutions, and special institutions are underlined: the National Audit Office, municipal controller and their institutions, internal audit offices of municipal companies and bodies. Municipal controllers provide annual conclusions to the municipal councils on the submitted annual budget implementation and undertake auditing of implementation of municipal budgets.¹⁰

The municipal finance councils undertake accounting of municipal budgets. Annual municipal budget reports are drafted by municipality administrations, and approved by councils under municipal regulations.

2. Constitutional Regulation of Taxation

Article 127 (2) of the Constitution of Lithuania establishes that “[t]he State budget revenue shall be raised from taxes, compulsory payments, levies, income from State property and other income.” Thus taxes constitute one of the main sources of the state budget.¹¹

Article 67 (15) of the Constitution establishes the rule that the Seimas establishes state taxes and other compulsory payments, and Article 127 (3) states that taxes, other payments to the budgets, and levies are established by the laws of the Republic of Lithuania. Thus, it is the exclusive and constitutional competence of the legislator to establish taxes. The content of this constitutional norm complies with the provision of Article 1 of the Protocol 1 of the European Convention on Human Rights (further – the Convention) which states that countries have the right to apply the laws to secure the payment of taxes or other contributions.¹² Taxes are the necessary condition of the functioning of the state, thus it is the constitutional duty to pay statutory taxes, established as a state obligation to all tax payers. The taxpayers must transfer part of their property, which is expressed by a certain sum of money, to the budget of the state or municipality, because otherwise the public interest of the rights and interests of the persons protected by laws may be infringed. The said Article of the Convention protects the right to private property.

10 Law on local government of the Republic of Lithuania. *Official Gazette*. 1994, No. 55-1049.

11 Constitutional Court of the Republic of Lithuania, Ruling of 10 July 1997. *Official Gazette*. 1997, No. 67-1696.

12 European Convention on Human Rights and Fundamental Freedoms. *Official Gazette*. 1995, No. 40-987.

The state's prerogative to determine taxes, i.e. to tax private property, can be treated as exclusive in order to protect the right to private property. The European Court of Human Rights has taken a number of decisions that restricted the state to implement its right on determining taxes.¹³ One and the most important aspect of the protection of private property is the constitutional provision that taxes can be established only by laws, i.e. they can only be set by the Seimas. The Constitutional Court in its rulings also has repeatedly stated that such essential elements of a tax like the tax object, the subjects of tax relations, their rights and duties, tax rates (tariffs), payment terms, exceptions and benefits, penalties and interests, can also be established exclusively by law.¹⁴

While determining taxes, the legislator is bound by state obligations that arise from international treaties of the Republic of Lithuania, *inter alia* from the bilateral and multilateral agreements on avoidance of double taxation of income and/or capital), as well as by the requirements arising from the Lithuanian membership in the European Union.¹⁵

Taxes, compulsory payments and levies make the biggest part of the state budget revenues. They are collected from private and legal persons for the purposes of funding state services that the state has an obligation to provide. In very rare cases the governments use other sources of funding than taxes. The subject-matter of state taxing activity in the areas of budget formation and taxes is first of all the property, income, profit, cumulative financial resources, and etc.¹⁶ As seen, the taxed objects can be very different.

There is no definition of "tax" in the text of the Constitution, but the Constitutional Court provides a rather wide concept while interpreting the features of taxes,¹⁷ such as: (i) taxes and other obligatory payments are obligatory and gratuitous payments, established by the law, of respective amount by legal and natural persons at the set time to the state (municipal) budget;¹⁸ taxes are paid providing there exists a permanent object subject to taxation;¹⁹ (ii) state taxes and other obligatory payments are a monetary obligation of legal subjects to the state; according to the Constitution, only the Seimas may establish state taxes and other obligatory payments and only by a law, which is an important guarantee of the protection of individuals' rights;²⁰ (iii) By taxes the socio-economic processes which take place in society are regulated, useful economic efforts

13 See, for instance, *SPACEK s.r.o. v. Czech Republic*, 09/11/99.

14 Constitutional Court of the Republic of Lithuania, Ruling of 2 September 2004. *Official Gazette*. 2004, No. 135-4903.

15 Constitutional Court of the Republic of Lithuania, Ruling of 22 December 2006. *Official Gazette*. 2006, No. 141-5431.

16 Constitutional Court of the Republic of Lithuania, Ruling of 18 June 1998. *Official Gazette*. 1998, No. 57-1605.

17 Constitutional Court of the Republic of Lithuania, Ruling of 12 February 2010. *Official Gazette*. 2010, No. 20-935.

18 Constitutional Court of the Republic of Lithuania, Ruling of 24 January 2006. *Official Gazette*. 2006, No. 10-369.

19 Constitutional Court of the Republic of Lithuania, Ruling of 15 March 1996. *Official Gazette*. 1996, No. 25-630.

20 Constitutional Court of the Republic of Lithuania, Ruling of 3 June 2002. *Official Gazette*. 2002, No. 55-2199.

are promoted, the development priorities of national economy are supported;²¹ the characteristic of taxes is that they are paid regularly during established time limits, and their nature is not that of direct recompense, i.e., after they had been paid to the state which accepted the said tax, the aforementioned institution has no obligation to perform any actions or render any particular service for the tax payer;²² tax relations are a matter of regulation by public law; tax relations are legal relations of commanding character between the taxpayer and institutions of the executive power of the state;²³ the method of administrative legal regulation is applied for their realisation first of all.²⁴ Professor V. Sinkevičius claims that a rather comprehensive constitutional doctrine on taxes and other obligatory payments is provided for in the ruling of the Constitutional Court of 3 June 2002.²⁵

The state tax system is comprised of closely interconnected taxes, levies and obligatory payments to the state or municipality, regulated by laws.²⁶ Different states have chosen various ways to regulate the tax legal relations, to establish the tax system's infrastructure, the main principles of tax administration, the rights and duties of tax payers and tax administrators, and etc. In some of the states, these relations are regulated by tax codes (Russia, France, Romania), in others – by state income laws (United States of America, Great Britain), and in some others, like Lithuania – by special tax laws. The main legal act that establishes the tax system in our country is the Law on tax administration of the Republic of Lithuania (further – the LAD). This law provides for the main concepts and rules, which are necessary to comply with, in order to implement the tax laws, the tax administrator's functions, rights and duties, the taxpayer's rights and duties, while calculating and paying taxes, undertaking compulsory exaction of related sums, and considering tax disputes. Moreover, besides the regulation of these issues, the LAD provides for the system of tax obligations to the state, which comprises of various taxes, like added value tax, excise duties, income tax, immovable property tax, and others.²⁷

Taxes are classified on many bases. However, the main and most significant classification of taxes involves separation of direct and indirect taxes. The European Union has provided for a strict regulation of indirect taxes in the member states. Indirect taxes include the value added tax (further – VAT), excise duties, and customs duties.

21 Constitutional Court of the Republic of Lithuania, Ruling of 9 October 1998. *Official Gazette*. 1998, No. 91-2533; Constitutional Court of the Republic of Lithuania, Ruling of 17 November 2003. *Official Gazette*. 2003, No. 109-4887.

22 Constitutional Court of the Republic of Lithuania, Ruling of 15 March 1996. *Official Gazette*. 1996, No. 25-630.

23 Constitutional Court of the Republic of Lithuania, Ruling of 17 November 2003. *Official Gazette*. 2003, No. 109-4887.

24 Constitutional Court of the Republic of Lithuania, Ruling of 10 July 1997. *Official Gazette*. 1997, No. 67-1696.

25 Sinkevičius, V. Mokesčių konstitucinė doktrina: kai kurios formavimosi problemos [The Constitutional Doctrine of Taxes: Some Problems of its Development]. *Societal Studies*. 2009, 3(3): 45.

26 Buškevičiūtė, E. *Mokesčių sistema* [Tax system]. Kaunas: Technologija, 2003, p. 25.

27 Law on tax administration of the Republic of Lithuania. *Official Gazette*. 2004, No. 63-2243.

The development of direct taxes has been much less dependent on the tax systems of the member states of the European Union, although drafting of new tax laws always involves consideration of international experience.

The State Tax Inspectorate of the Republic of Lithuania (further – the STI) administers the taxes applicable in Lithuania: VAT, profit tax, resident's income tax, excise duties, various property taxes. The STI is comprised of the central tax administrator – the State Tax Inspectorate under the Ministry of Finance and 10 territorial state tax inspectorates.

The Constitution separates levies from taxes and other obligatory payments, because their legal nature is essentially different. The Law on fees and charges describes state fees and charges as mandatory payment for services provided by state and municipal institutions, agencies, offices or organisations, with the exception of courts; the state fee and charge is credited to the budget from which the institution providing a service is maintained. The Constitutional Court has stated that the levies are seen as having a two-fold nature character, as the subjects of the legal relations which occur after the levies have been paid have the corresponding rights and obligations; there are two bases for payment of levies: the object subject to taxation and the actions performed, or services rendered by the competent institutions of the state to legal, as well as natural persons; as a rule, most levies are voluntary payments, i.e., a person, who desires to acquire some service or a particular action from a state office, consents to pay a levy before the actions are performed, or documents bearing legal power are granted, and on such basis he becomes entitled to demand that the requested actions be performed, or that the documents he wants be granted.²⁸

Taxes are obligatory and gratuitous payments, which are unilateral, and tax relations are legal relations of commanding character between the taxpayer and institutions of the executive power of the state. Meanwhile, a state levy under Article 127 (2) and (3) is a compulsory payment to the state budget for actions performed or services rendered by the competent institutions of the state to legal, as well as natural persons.²⁹

The statutory penalties for infringement of tax laws can be of such amount as necessary for legal and universally significant aim of ensuring the fulfilment of the constitutional duty to pay taxes. In order to ensure the fulfilment of this duty, the state establishes legal responsibility for infringement of tax laws. Financial, administrative and even criminal responsibility may be applicable for these infringements. As an expression of financial responsibility, fines and interests are applied to the violator. While establishing the rates of fines applicable for infringement of tax laws, the legislator is bound by the constitutional principles of justice and the rule of law, and other constitutional requirements. In accordance with the criterion of economic efficiency, the legislator may react to changes on the market by setting the interest rates for non-payment or late payment of taxes.

28 Constitutional Court of the Republic of Lithuania, Ruling of 15 March 1996. *Official Gazette*. 1996, No. 25-630.

29 Constitutional Court of the Republic of Lithuania, Ruling of 12 February 2010. *Official Gazette*. 2010, No. 20-935.

If taxes are paid late, or not paid at all, the public treasury fails to receive income, the budget deficit is rising, and the possibilities to implement state objectives and functions, highly important to the citizens, nation and state, are reduced or even jeopardized. Moreover, when some economic subjects fail to pay taxes, other subjects – honest taxpayers are put in unfavourable position, and the principles of free market, based on just competition, are infringed.³⁰ Therefore, the legal relations among economic subjects, on the one hand, and the state or municipality, its institutions, on the other hand, are protected by setting responsibility of economic subjects for infringements of tax laws.³¹

The state income may be raised by lending temporary free other subjects' funds. Such loans are usually aimed at: covering the shortage of own funds; receiving funds for state investments; balancing revenues and expenditure of the state monetary funds; increase of companies and other subjects turnover; receiving funds for administration of the current state loan. The state loan funds are state income, and covering of loans – state budget expenditure. Article 131 (1) of the Constitution consolidates the exclusive right of the Seimas in the sphere of the state budget: the Seimas shall approve by law the state budget, i.e., the amount of state revenue and that of state expenditure. Regulation of the state budget is based on the principles of rational financial planning, those of balancing the entirety of public revenue and expenditure, and their qualitative and quantitative equalizing. The financial control accomplished by the Seimas helps to implement the aforesaid principles. Therefore, as a rule, decisions concerning state loans are adopted by law when the state budget is being approved.³²

3. State Loan and Other Basic Property Liabilities

Article 128 (1) of the Constitution establishes that decisions concerning State loans and other basic property liabilities of the State shall be adopted by the Seimas on the recommendation of the Government. The state loan is financial means which are received under the name of the state under loan agreements or other loan liabilities and which are returned in respective currency. The state participates in such relations as a debtor, i.e. it receives funds from subjects that are so-called internal or foreign creditors. Internal creditors are legal and natural persons, who lend their funds to the state under loan agreements or other loan liabilities. Foreign creditors are foreign countries, international financial organizations, and foreign banks, other foreign legal and natural persons, who lend their funds to the Lithuanian state under loan agreements or other loan liabilities. Loans taken by the state are not usually ensured by property (existing or future), state gold resources, or foreign currency reserves. Thus, the state loans must be returned only

30 Constitutional Court of the Republic of Lithuania, Ruling of 17 November 2003. *Official Gazette*. 2003, No. 109-4887.

31 Constitutional Court of the Republic of Lithuania, Ruling of 6 December 2000. *Official Gazette*. 2000, No. 105-3318.

32 Constitutional Court of the Republic of Lithuania, Ruling of 17 June 1997. *Official Gazette*. 1997, No. 58-1351.

from the state's income. According to the general rule, state loans are received in money. However, recently trade or service credits are taken, i.e. a credit is taken in goods or services, and returned in money. The state can also borrow in gold as an exception, but this situation can only occur in case of a national currency crisis. The funds that state borrows, differently from other state income, do not turn into the state's property.

When state borrows from other subjects, the state debt is formed, which is understood as the sum of all spent and not returned of state debts, together with interests payable on the set time or to the set term.³³

The Law on state debt of the Republic of Lithuania regulates borrowing on behalf of the State, management of the obligations assumed, provision of state guarantees, as well as the relations concerning the state's right of claim in respect of State borrowers and State guaranteed borrowers.

According to the Law on state debt, the state debt is the sum of the internal and foreign debts.³⁴ Internal debt means the consolidated sum of taken obligations to return the funds to internal creditors, which are not yet fulfilled. Foreign debt means the sum of taken obligations to return the funds to foreign creditors, which are not yet fulfilled.³⁵

In accordance with its nature, the general and operative state debts can be distinguished. The general or capital state debt means the sum of all state debts. The operative state debt comprises of the loans received during the on-going year, minus the loans returned during the on-going year, and grants received during the on-going year, minus the loans with state guarantee returned during the on-going year, and short-term loans received during the on-going year, minus the part of long-term loans with interests that was returned during the on-going year.

Another type of state's property obligations is the granting of state guarantee, i.e. the obligation of the Lithuanian state to return all loans of the debtor, if the debtor fails to fulfil its obligation. The Law on state debt provides that state guarantee means the property obligation of the State to repay a debt wholly or in part and to pay interest on the debt or part thereof to be repaid to a domestic or foreign creditor for a borrower the discharge of obligations whereof is guaranteed by the State in the event of this borrower's full or partial default on obligations under a loan agreement or other debt instruments.³⁶ In case of the loan which exceeds LTL 40 million, the decision on state guarantee has to be adopted by the Seimas, and in other cases the decision is adopted by the Government. Municipalities, state monetary funds and legal persons have the right to apply for a state guarantee. Usually loans with state guarantee are taken for funding of investment projects, covering of debt obligations of state companies and state controlled public liability companies. In this case, the requirement applies that the debtor company is taking a significant place in the state, and the failure to fulfil its financial obligations may result in negative social consequences and have a negative impact on collection of state budget revenues.

33 Levišauskaitė, K.; Rūškys, G., *supra* note 1, p. 138.

34 Law on state debt of the Republic of Lithuania. *Official Gazette*. 1996, No. 86-2045.

35 *Ibid.*

36 *Ibid.*

State guarantee may be granted to municipalities only on the condition that the investment project, for which the loan is taken, is included in the state investment program, and the municipal budget provides for resources for the return of the loan.

The conditions of utilisation of state loans on behalf of the state and state loans with state guarantee are provided in the loan agreement or in the guarantee letter, and the fulfilment of such conditions is monitored by the Ministry of Finance, the National Audit Office, and the State enterprise Turto bankas.

The state undertakes property obligations by issuing government securities, i.e. securities issued on domestic or foreign markets by the Government on behalf of the State attesting to the right of holder thereof to obtain, within the time limits provided for, an amount corresponding to nominal value thereof, interest or another equivalent. The securities may be distributed by auction and otherwise (saving bonds).

There are three types of government securities: state treasury bills, which are securities with term of validity not exceeding one year; government obligations – securities with term of validity over one year; saving bonds – securities issued by the government and distributed on retail basis. They can be acquired by residents, individual companies, partnerships, cooperative companies, public agencies, associations, charity and support funds, and civil organizations. Investors who acquire saving bonds do not pay the levies for the conclusion of contract on securities, storage of the saving bonds, and opening of securities account.

All securities may be issued both in national and foreign currency. They are valid in Lithuania and international markets, where such securities are included into international classifications.

Government securities are not issued in a material form, thus the investors do not receive the securities. Securities accounts are opened instead.

4. The Constitutional Status of the Bank of Lithuania

Article 125 (1) of the Constitution establishes that “In the Republic of Lithuania, the Bank of Lithuania shall be the central bank which belongs to the State of Lithuania by right of ownership.” It is established by the Seimas and dissolved by it. When Lithuania acceded to the European Union on 1 May 2004, the Bank of Lithuania became the member of the European system of central banks, which comprises of the European Central Bank (ECB) and national central banks of all the member states of the EU. This results in more coherent cooperation in decision making over the procedure of national central bank operations, statistics, accounting and other areas. The head of the board of the Bank of Lithuania participates in the work of the ECB’s general board, the representatives of the Bank of Lithuania participate in activities of various ECB committees. However, until the state has introduced the Euro, they cannot directly participate in establishing and implementing the general monetary policy.³⁷

37 Paulikas, V. *Europos Sąjungos institucijos ir valdymas* [European Union institutions and management]. Vilnius, 2004, p. 98.

Article 125 (2) of the Constitution establishes that the right of issue of currency shall belong exclusively to the Bank of Lithuania. The right of emission means that only the Bank of Lithuania issues Litas into circulation and takes them out of circulation.³⁸ Moreover, only the Bank of Lithuania has the right to establish the denominations, distinctive, security and acceptance features, to withdraw banknotes and coins from circulation, to replace them with others and announce it publicly, to organize production of the currency, its transportation and storage. Furthermore, only the Bank of Lithuania may also establish procedures for withdrawing worn and damaged currency from circulation and for replacing and destroying the said currency, the arrangements for the reproduction of the banknotes and coins of the Republic of Lithuania.³⁹ The Bank of Lithuania formulates and implements monetary policy and announces the official exchange rate of the Litas. It also manages, uses and disposes of foreign reserves of the Bank of Lithuania, and acts as a State Treasury agent. In the manner and cases established by laws and other legal acts, the Bank of Lithuania issues and revokes licenses for credit institutions and payment institutions of the Republic of Lithuania as well as branches of credit institutions of foreign states, and supervise the activities thereof; it also performs other functions related to the activities of credit institutions and payment institutions, established by laws. It establishes principles and procedures for financial accounting and reporting of credit institutions and payment institutions of the Republic of Lithuania and branches of credit institutions of foreign states operating in the Republic of Lithuania, encourages stable and efficient operation of payment and securities settlement systems, and collects monetary, banking and balance of payments statistics, as well as data on Lithuanian financial and related statistics, implement standards on the collection, reporting and dissemination of the said statistics, and compiles the balance of payments of the Republic of Lithuania.

As provided for in Article 125 (3) of the Constitution, the procedure for the organisation and activities of the Bank of Lithuania as well as its powers shall be established by law. All functions of the Bank of Lithuania and its activities are regulated by the Law on the Bank of Lithuania, which was adopted in 1994.⁴⁰ This legal act obliges the Government of the Republic of Lithuania and other state institutions to respect the independence of the Bank of Lithuania. The Lithuanian legislation must ensure that the principle of independence of the Bank of Lithuania is ensured in the entire legal system of Lithuania. The independence of the banks of the member states of the European Union from the European Community and the member states' legislator and executive authorities is entrenched in Article 108 of the Treaty of establishing the European Community, Article 7 of the Protocol on the Statute of the European System

38 Litas, as the national currency of the Republic of Lithuania, was not brought back immediately upon the Restoration of Independence. In December 1990 the Lithuanian Mint was established, which started to make circulation coins in October 1992, and from 1993 – commemorative coins. Litas was introduced on 25 June 1993.

39 Law on Bank of Lithuania. *Official Gazette*. 1994, No. 99-1957.

40 *Ibid.*

of Central Banks and Article 8 of the Protocol on the Statute of the European Monetary Institute.

The primary objective of the Bank of Lithuania, as established by the Law, is to maintain price stability by choosing the base currency and keeping the fixed exchange rate of the Litas under the procedure established by laws. A fixed exchange course in Lithuania allows reaching a relative price stability in the long-term, and providing the conditions for growth of the economy without inflation. The decision on pegging the Litas to the Euro allows reaching inflation rate that is close to the Economic and Monetary Union, and also increases integration and convergence with the European Union. The Bank of Lithuania within its fields of competence supports the economic policy carried out by the Government of the Republic of Lithuania, without prejudice to the primary objective of the Bank of Lithuania. With the accession to the European Union, our state has undertaken the obligation to introduce the Euro in the future. Preparation for the introduction of the Euro is one of the main tasks of the Bank of Lithuania.

The Bank of Lithuania is an institution of executive power. Article 126 of the Constitution establishes that the Bank of Lithuania shall be directed by the board of the Bank consisting of the chairman, his deputies and members. The chairman of the board of the Bank of Lithuania is appointed for a five-year term by the Seimas upon the submission of the President of the Republic. Only citizens of the Republic of Lithuania may be the chairperson, deputy chairpersons, and members of the board of the Bank of Lithuania, provided they have not reached the age of 65 by the date of their appointment. Deputy chairpersons and members of the board of the Bank of Lithuania are appointed for a term of six years and dismissed prior to the expiration of their term of office by the President of the Republic on the recommendation of the chairperson of the board of the Bank of Lithuania

The chairperson of the board of the Bank of Lithuania may be appointed to his position for unlimited number of terms of office. The deputy chairpersons and members of the board may be appointed to their respective positions for no more than two consecutive terms.

The Bank of Lithuania shall have the right to open and manage treasury accounts of the Republic of Lithuania, and accounts of state funds established by laws or resolutions, in Litas and (or) foreign currency. On the basis of an agreement with the Ministry of Finance, the Bank of Lithuania may organise the issue and redemption of Government securities and the payment of interest, and to administer the national debt.

5. The Role of the National Audit Office in the Financial System of Lithuania

Chapter XII of the Constitution entrenches the status of the National Audit Office of Lithuania (State control) as the main institution of public finance control. Both in the Constitution and the main law on comprehensive regulation of the National Audit Office

of Lithuania (the Law on National Audit Office) the National Audit Office is entrusted with supervision of lawfulness of the management and use of the State property and execution of the State budget. The State Control is headed by the State Controller, his/her independence is shown by the procedure of appointment (Article 133(2) of the Constitution), accountability to the Seimas (the Law on National Audit Office). Article 134 establishes that the State Control supervises the lawfulness of the possession and use of State property and the execution of the State Budget. The State Control is headed by the State Controller who submits to the Seimas a conclusion on the report on the annual execution of the budget.

Article 2(1) of the Law on National Audit Office establishes that it is a supreme public audit institution, accountable to the Seimas which supervises the lawfulness of the possession and use of State property and the execution of the state budget. For this purpose, its officials control the economic and financial activities of the Seimas office, departments accountable to the Seimas or under it, the President's of the Republic Office, and departments under it, the Government's Office, ministries, Government institution and other financial agencies funded from the state budget, the Constitutional Court, the courts, the prosecutor's office, and the police, as well as the activities of the state companies and joint stock companies with state as the shareholder of at least a half of the shares, and distribution, utilization, return and of property privatisation, loans received on behalf of the state, and loans with the Government's guarantee, and etc. With the view of fulfilling this and other functions entrusted to the National Audit Office objectively, this institution must be independent, as stated in the jurisprudence of the Constitutional Court. Although the Constitution and the Law on National Audit Office does not provide for some special guarantees on independence, it may be claimed from the contents of the Law that it aims at ensuring objectivity in the activities of the officials of this institution and protect them from external impact. It can be seen from the rights and duties, prohibitions and restrictions that apply to the officials of the National Audit Office in accordance with the Law.⁴¹

Thus to summarize what has been said above, it can be claimed that the Constitution and the constitutional doctrine provides a special status for the National Audit Office and establishes that it is an independent, supreme-power institution which controls implementation of public property right in the state.

Conclusions

1. Currently, there is a basis to believe that the Constitution and the constitutional doctrine, and the constitutional jurisprudence, provide for adequate legal presumptions for the development of coherent and comprehensive legal regulation of the financial system of Lithuania.

41 Constitutional Court of the Republic of Lithuania, Ruling 6 December 1995. *Official Gazette*. 1995, No. 101-2264.

2. The constitutional regulation on the budget law and budget process and adequately the constitutional jurisprudence in the area builds a uniform system of legal regulation which is implemented through provisions of the Statute of the Seimas, the Law on the budget structure and other main laws.

3. The constitutional provisions on taxes have been interpreted in different ways in the constitutional doctrine. However, the foundations of the constitutional tax law that the Constitutional Court has refined in almost twenty years, ensure implementation of the principle of tax clarity.

4. To summarize the provisions of the Constitution, constitutional jurisprudence and other laws, it can be claimed that the National Audit Office is an independent, supreme-power institution which controls implementation of public property right in the state.

References

- Buškevičiūtė, E. *Mokesčių sistema* [Tax system]. Kaunas: Technologija, 2003.
- Constitutional Court of the Republic of Lithuania, Ruling 6 December 1995. *Official Gazette*. 1995, No. 101-2264.
- Constitutional Court of the Republic of Lithuania, Ruling of 10 July 1997. *Official Gazette*. 1997, No. 67-1696.
- Constitutional Court of the Republic of Lithuania, Ruling of 11 July 2002. *Official Gazette*. 2002, No. 72-3080.
- Constitutional Court of the Republic of Lithuania, Ruling of 12 February 2010. *Official Gazette*. 2010, No. 20-935.
- Constitutional Court of the Republic of Lithuania, Ruling of 13 November 2007. *Official Gazette*. 2007, No. 118-4830.
- Constitutional Court of the Republic of Lithuania, Ruling of 15 March 1996. *Official Gazette*. 1996, No. 25-630.
- Constitutional Court of the Republic of Lithuania, Ruling of 17 June 1997. *Official Gazette*. 1997, No. 58-1351.
- Constitutional Court of the Republic of Lithuania, Ruling of 17 November 2003. *Official Gazette*. 2003, No. 109-4887.
- Constitutional Court of the Republic of Lithuania, Ruling of 18 June 1998. *Official Gazette*. 1998, No. 57-1605.
- Constitutional Court of the Republic of Lithuania, Ruling of 2 September 2004. *Official Gazette*. 2004, No. 135-4903.
- Constitutional Court of the Republic of Lithuania, Ruling of 22 December 2006. *Official Gazette*. 2006, No. 141-5431.
- Constitutional Court of the Republic of Lithuania, Ruling of 24 January 2006. *Official Gazette*. 2006, No. 10-369.
- Constitutional Court of the Republic of Lithuania, Ruling of 3 June 2002. *Official Gazette*. 2002, No. 55-2199.
- Constitutional Court of the Republic of Lithuania, Ruling of 6 December 2000. *Official Gazette*. 2000, No. 105-3318.
- Constitutional Court of the Republic of Lithuania, Ruling of 8 November 2000. *Official Gazette*. 2000, No. 96-3042.
- Constitutional Court of the Republic of Lithuania, Ruling of 9 October 1998. *Official Gazette*. 1998, No. 91-2533.
- European Convention for the Protection of Human Rights and Fundamental Freedoms. *Official Gazette*. 1995, No. 40-987.

- Law on Bank of Lithuania. *Official Gazette*. 1994, No. 99-1957.
- Law on local government of the Republic of Lithuania. *Official Gazette*. 1994, No. 55-1049.
- Law on state debt of the Republic of Lithuania. *Official Gazette*. 1996, No. 86-2045.
- Law on tax administration of the Republic of Lithuania. *Official Gazette*. 2004, No. 63-2243.
- Levišauskaitė, K.; Rūškys, G. *Valstybės finansai* [State finances]. Kaunas: Vytauto Didžiojo universiteto leidykla, 2003.
- Paulikas, V. *Europos Sąjungos institucijos ir valdymas* [European Union institutions and management]. Vilnius, 2004.
- Šileikis, E. *Alternatyvi konstitucinė teisė* [Alternative constitutional law]. Vilnius: Teisinės informacijos centras, 2003.
- Sinkevičius, V. Mokesčių konstitucinė doktrina: kai kurios formavimosi problemos [The Constitutional Doctrine of Taxes: Some Problems of its Development]. *Societal Studies*. 2009, 3(3).
- SPACEK s.r.o. v. Czech Republic*, 09/11/99.

LIETUVOS RESPUBLIKOS FINANSŲ SISTEMOS KONSTITUCINIAI PAGRINDAI

Dalia Vasarienė

Mykolo Romerio universitetas, Lietuva

Santrauka. Straipsnyje analizuojama Lietuvos Respublikos finansų sistemos konstituciniai pagrindai. Konstitucinėje jurisprudencijoje yra nemažai dėmesio skirta biudžetinės sistemos klausimams, mokesčių problemoms aiškinti ir tirti. Pagrindinis šio straipsnio tikslas yra išanalizuoti atskirus Lietuvos finansų sistemos institutus taip, kaip jie atspindėti pagrindiniame šalies įstatyme – Konstitucijoje, ir kaip šios normos aiškinamos konstitucinėje doktrinoje. XI Konstitucijos skirsnyje „Finansai ir valstybės biudžetas“ yra įtvirtintos esminės Lietuvos Respublikos finansų sistemos nuostatos, susijusios su valstybės biudžetine sistema, atskiromis biudžeto pajamų rūšimis, biudžeto procesu, Lietuvos banko, kaip pagrindinės šalies finansų institucijos, statusu, valstybine paskola bei valstybės turtu. Lietuvos, kaip ir daugelio kitų šalių, finansų sistemą sudaro visuma finansinių grandžių, kurių paskirtis ap rūpinti valstybę pinigėmis lėšomis, būtinomis jai vykdant ekonomines, socialines ir politines funkcijas. Pagrindinės finansinės grandys yra Centrinis bankas, Finansų ministerija ir kitos valstybės finansinės institucijos. Piniginės lėšos, cirkuliuojančios valstybės finansų sistemoje, vadinamos viešaisiais finansais. Tai valstybės ir savivaldybių biudžetai, nebiudžetiniai fondai, valstybinis kreditas, valstybinių įmonių finansai, struktūrinių fondų lėšos. Pasakytina, kad nors pagrindinės tiriamos nuostatos įtvirtintos XI Konstitucijos skirsnyje „Finansai ir valstybės biudžetas“, straipsnyje neapsiribojama vien jų analize, taip pat kompleksiskai tiriamos ir kitos, su minėtomis nuostatomis susijusios normos ir jų aiškinimas konstitucinėje jurisprudencijoje.

Straipsnio pabaigoje prieinama prie išvadų, jog, pirma, šiandien yra pagrindas manyti, kad tiek Konstitucija, tiek konstitucinė doktrina bei konstitucinė jurisprudencija sukuria tinkamas teises prielaidas nuosekliam ir išsamiam Lietuvos finansų sistemos teisiniam regu-

liavimui sukurti. Antra, konstitucinis biudžeto teisės ir biudžeto proceso reglamentavimas ir atitinkamai konstitucinė jurisprudencija formuoja darnią teisinio reguliavimo sistemą, kuri įgyvendinta per atitinkamai Seimo statuto, Biudžeto sandaros įstatymo ir kitų pagrindinių įstatymų nuostatas. Trečia, mokesčių konstitucinės teisinės nuostatos buvo nevienareikšmiai išaiškintos konstitucinėje jurisprudencijoje, tačiau per bemaž dvidešimt metų Konstitucinio Teismo išgryninti konstituciniai mokesčių teisės pagrindai užtikrina mokesčių mokėtojams aktualaus mokesčių aiškumo principo įgyvendinimą. Ketvirta, apibendrinus Konstitucijos, konstitucinės jurisprudencijos bei kitų įstatymų nuostatas galima teigti, kad Valstybės kontrolė yra savarankiška, aukščiausių galių valstybėje turinti viešosios nuosavybės teisės įgyvendinimą kontroliuojanti institucija.

Reikšminiai žodžiai: finansų sistema, konstituciniai finansų pagrindai, konstituciniai mokesčių pagrindai, konstituciniai biudžeto pagrindai, konstitucinė doktrina, konstitucinė jurisprudencija, mokesčių sistema, valstybės biudžetas.

Dalia Vasarienė, Mykolo Romerio universiteto Teisės fakulteto Civilinės ir komercinės teisės katedros docentė. Mokslinių tyrimų kryptys: nuosavybės teisė, valstybės nuosavybė, privati nuosavybė, finansų teisė, žmogaus teisių ir laisvių apsauga.

Dalia Vasarienė, Mykolas Romeris University, Faculty of Law, Department of Civil and Commercial Law, Associate Professor. Research interests: right of ownership, public property, private property, finance law, protection of human rights and freedoms.

