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THE NECESSITY OF PARLIAMENTARY OVERSIGHT AND THE MAIN SUBJECTS OF PARLIAMENTARY OVERSIGHT IN LITHUANIA: PERMANENT COMMITTEES OF THE SEIMAS

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Abstract. *The article analyses parliamentary oversight exercised by the Seimas (Lithuanian parliament). As a legal institute of a constitutional status, parliamentary oversight is complex in its nature in that it influences the executive branch by means of established oversight instruments in a systemic and independent manner and ensures the continuous and effective functioning of the executive power.*

Based on the doctrine of the sovereignty of the nation, the Seimas is the only governmental body that can exercise parliamentary oversight. This function of the Seimas is therefore very significant. In the article, the author analyses the function of parliamentary oversight exercised by the Seimas and the legal and practical conditions necessary for the permanent committees of the Seimas to exercise the function effectively and continuously.

Keywords: *parliamentary oversight, function of oversight, subject of parliamentary oversight.*

Introduction

The exercise of parliamentary oversight by the Seimas of the Republic of Lithuania raises a number of questions. In 2007 alone, seven minister interpellations were initiated in contrast to the 2000–2004 term, when such initiatives were rendered twice. Not only did scholars and the media notice this parliamentary activity but so did the then representative of the executive branch—the Prime Minister.¹ However, parliamentary oversight conducted by the Seimas remains undefined and inconsistent, and more importantly, often times ineffective. For example, in December of 2006, after the investigation of the State Security Department’s activity, the Committee on National Security and Defence of the Seimas requested this Department to provide 12 analytical statements on economic and other events in Lithuania. As of 5 January 2010, these statements have not yet been submitted to the Seimas. This begs the question of whether the legal regulation of the institute of parliamentary oversight in Lithuania is adequate, and whether the parliamentary use of this institute is effective. All other functions of the Seimas are dependent upon effective parliamentary oversight. Parliamentary investigations conducted by the Seimas of the Republic of Lithuania are often cause for reasonable concerns as to whether they are legal, how they relate to the judicial and pre-trial investigations, and whether a parliamentary investigation is adequate for producing ‘legally relevant’ facts.² It should further be emphasized that the exercise of parliamentary oversight must maintain the balance between the legislative and the executive branches. Parliamentary oversight must not meddle in governance, while the executive must not violate the legality principle and must execute the laws passed by the Parliament.

In our opinion, Lithuanian scholarly effort in this field is visibly lacking.³ Though, admittedly, the analysis of this parliamentary institute is gaining momentum in the jurisprudence of the Constitutional Court.⁴ This subject deserves more attention, as the consolidation of democracy in Lithuania quite directly depends on the practicability and effectiveness of parliamentary oversight.

The goals of the article are to analyse the doctrine of the Constitutional Court and provisions of the Statute of the Seimas and other laws regulating the implementation of

1 Šileikis, E. Topicalities of parliamentary control and necessity of a new scientific concept in Lithuania. In *The Parliament and organization of State institutions*. Vilnius: Mykolas Romeris University, 2008, p. 360. This is also evidenced by actions of the Parliament taken in the creation of temporary investigation commissions. Within the time period from 2005 to 2007 there were 13 temporary commissions of the Seimas established.

2 *Ibid.*, p. 363.

3 Noteworthy on this subject are scholarly articles by T. Birmontienė and E. Šileikis in the monograph *Parliament and organization of State institutions* published at Mykolas Romeris University in 2008.

4 The following three rulings of the Constitutional Court may be considered as major ones:

1) Ruling of the Constitutional Court of the Republic of Lithuania of 13 May 2004. *Official Gazette*. 2004, No. 81-2903.

2) Ruling of the Constitutional Court of the Republic of Lithuania of 4 April December 2006. *Official Gazette*. 2006, No. 38-1349.

3) Ruling of the Constitutional Court of the Republic of Lithuania of 21 November 2006. *Official Gazette*. 2006, No. 127-4849.

parliamentary oversight, to assess the practicability of existing parliamentary oversight, to define the limits of parliamentary oversight exercised by the committees of the Seimas, and to identify related problems.

The object of study is the institute of parliamentary oversight and its implementation.

The article uses system analysis, comparative, analytical and other methods.

1. The Uniqueness and Necessity of Parliamentary Oversight as a Function of the Seimas

Article 5(1) of the Constitution of the Republic of Lithuania ('the Constitution') establishes that state power is held by the Seimas, the President of the Republic, the Government, and the Judiciary. The constitution establishes this distribution of powers as a fundamental principle of a democratic Rechtsstaat. The Constitutional Court of the Republic of Lithuania ('the Constitutional Court') has noted in its rulings that this principle dictates the separation of legislative, executive and judicial powers, their adequate independence and a certain balance among them. *Each power is exercised through institutions bestowed with competence corresponding to their purpose.*⁵ In its rulings, the Constitutional Court has repeatedly stated that Article 5 of the Constitution (as well as other articles of the Constitution defining the powers of state institutions charged with governing the state) establishes a separation of powers, which means that a state institution cannot relinquish powers assigned to it by the Constitution, delegate them to any other institution, and the scope of such powers cannot be changed or limited by laws.⁶ The exact scope of the institution's authority depends on its place among other state institutions, the relation of its powers to those of other institutions.⁷

According to Article 2 of the Constitution, sovereignty belongs to the nation. The nation exercises its supreme sovereign power either directly or through its democratically elected representatives (Article 4 of the Constitution). As provided for in Article 55 (1) of the Constitution, the nation's sovereign will is carried out by the members of the Seimas. Thus, according to the Constitution, the Seimas is the nation's sole representative, through which the nation exercises its supreme sovereign power, namely the functions of constituent power.⁸ The Seimas, as the nation's representative, acts on the basis of authority the nation has granted them in the Constitution.⁹

5 Ruling of the Constitutional Court of the Republic of Lithuania of 18 October 2000. *Official Gazette*. 2000, No. 88-2724.

6 Ruling of the Constitutional Court of the Republic of Lithuania as of August 23, 2005. *Official Gazette*. 2005, No. 152-5605.

7 Ruling of the Constitutional Court of the Republic of Lithuania as of April 25, 2004. *Official Gazette*. 2001, No. 37-1259.

8 See also Butvilavičius, D. Constitutional disjuncture of constituent and constituted power. *Social Sciences Studies*. 2009, 2(2): 79–99.

9 Ruling of the Constitutional Court of the Republic of Lithuania as of May 25, 2004. *Official Gazette*. 2004, No. 85-3094.

Oversight is among the four distinct functions of the Seimas as identified in the doctrine of the Constitutional Court (the others being legislative, constituent and budgetary). This role entails the parliamentary oversight of the executive and other authorities (with exception of the courts).¹⁰ Some oversight powers held by the Seimas are specifically defined in the Constitution: the Seimas can establish certain State institutions (Article 67 (5))¹¹, approve or reject the candidature of a Prime Minister nominated by the President of the Republic (Article 67 (6)), *supervise the activities of the Government*, issue a motion of no confidence in the Prime Minister or other ministers (Article 67 (9)), approve the state budget and supervise its implementation (Article 67 (14)). The provision of Article 67 (9) that the Seimas ‘may issue a vote of no confidence in the Prime Minister or other ministers’ is further defined in Article 61 (3) of the Constitution: ‘Upon considering the response of the Prime Minister or minister to an interpellation, the Seimas may decide that the response is not satisfactory, and, by an absolute majority vote, pass a motion of no confidence in the Prime Minister or a minister.’ The Seimas not only empowers the Government but also, following Article 67 (9), supervises its activity. According to Article 101 (1) of the Constitution, upon the request of the Seimas, the Government or individual ministers must report about their activities to the Seimas. The Seimas may pass a motion of no confidence in the Government by an absolute majority vote in a secret ballot (Article 101 Part 3 Item 2)¹². The Constitution also specifies other ways of implementing the Government’s supervision. This activity is derived from the duty of the Seimas as a parliament, from its constitutional functions and constitutional powers.¹³ As emphasized by Toma Birmontienė, the function of parliamentary oversight of the executive branch is one of the key elements of the separation of powers doctrine. The independence and discreteness of the functions of State power does not preclude the possibility (or even the necessity) of parliamentary oversight, though it is important that interactions between State powers not distort the very character of those branches of government and thus create a hierarchic system of inter-subordination.¹⁴ From this perspective, parliamentary oversight may be seen as a duty to ensure inter-institutional cooperation between the legislative and executive branches. As J. Alder has noted, the entire system of the State government is like a living organism, and if it can evolve, change and survive, then the State government remains democratic.¹⁵

10 Ruling of the Constitutional Court of the Republic of Lithuania as of April 4, 2006. *Official Gazette*. 2006, No. 38-1350.

11 The Constitutional Court, interpreting the legal regulation provided for in Article 67 of the Constitution, has stated that this clause *inter alia* means that the Seimas is empowered to stipulate State institutions whose heads are appointed and dismissed by the Seimas, also that the Seimas has the powers to appoint and dismiss heads of such institutions. Ruling of the Constitutional Court of the Republic of Lithuania as of January 24, 2003. *Official Gazette*. 2003, No. 10-366.

12 Ruling of the Constitutional Court of the Republic of Lithuania as of April 20, 1999. *Official Gazette*. 1999, No. 36-1094.

13 Ruling of the Constitutional Court of the Republic of Lithuania as of May 13, 2004. *Official Gazette*. 2004, No. 81-2903.

14 Birmontienė, T. The Concept of Parliamentary control in the Jurisprudence of the Constitutional Court. In *The Parliament and organization of State institutions*. Vilnius: Mykolas Romeris University, 2008, p. 115.

15 Alder, J. *Constitutional and Administrative Law*. 5th edition. London: Macmillan, 2005, p. 145.

A prominent Lithuanian legal scholar, P. Leonas has applied Montesquieu's theories on this subject, emphasizing that all State powers and their functions—legislation, adjudication and governance—are closely related. According to P. Leonas, the legislative branch not only passes laws but also carries out parliamentary oversight of the administrative branch.¹⁶ He also names certain conditions integral to a truly democratic order, including: 1. the protection of the citizen's public freedoms—freedom of conscience, expression, and press; 2. the government must belong to the nation, namely, laws must be passed by the representatives of the nation, and *laws must be implemented with oversight by the representatives of the nation*; 3. representatives of the nation must be elected in general elections.¹⁷ In his analysis of the workings of democracy, P. Leonas emphasizes that executive government must be constantly supervised by the legislative branch and can govern only so long as the parliament holds confidence. If the parliament passes a motion of no confidence or if there is some difference of opinion between the parliament and the government on an important issue, the government must resign.¹⁸ It is the nation itself that passes laws and continuously supervises the implementation of these laws. Here, P. Leonas distinguishes two subjects: the nation as civic society that constantly scrutinizes the government through public expression, the press and exercise of other freedoms and, on the other hand—the parliament, which supervises the execution of laws.¹⁹

M. Romeris has also reflected on the nature of various regimes and relations between the parliament and the executive. M. Romeris emphasizes that the cabinet should not receive commands from the parliament and has no obligation to consult with the assembly on what actions it intends to take. The parliament is not to provide instructions for the ministers; they must act on their own initiative. The cabinet *receives no orders* from the parliament, though *it is supervised* by the latter.²⁰ M. Romeris examined the scope of such supervision. He contended that 'the cabinet must act on their own initiative and be liable for their work *post factum* only, namely, after an act is committed. However, the cabinet governs only so long as the parliament voices confidence in it.'²¹ In a parliamentary regime, M. Romeris distinguishes four types of oversight measures: inquiries, interpellations, questionnaires and check-up, and permanent commissions. These measures are deemed effective with respect to the government.²² Scholars of constitutional law in interwar Lithuania developed not only ideas of statehood but also models of parliamentary oversight.

16 Leonas, P. *Raštai II tomas (Teisinės enciklopedijos paskaitos, sociologijos paskaitos)* [The Complete Works vol. II (Lectures on the Encyclopedia of Law, Sociology)]. Vilnius: Teisinės informacijos centras, 2005, p. 94–95.

17 Leonas, P. *Raštai III tomas (Teisinė publicistika pergyvenimai ir atsiminimai, teisinis palikimas. Bibliografija)* [The Complete Works vol. III (Legal reflections, experiences and memoirs, legal legacy)]. Vilnius: Teisinės informacijos centras, 2005, p. 182–186.

18 *Ibid.*, 186–188.

19 *Ibid.*, 187.

20 Romeris, M. *State Law, stenographs*. Kaunas, 1930, p. 61–62.

21 *Ibid.*, p. 62.

22 *Ibid.*, p. 63.

Modern Lithuanian scholars of constitutional law are usually concerned with separate aspects of parliamentary oversight, for example, the place of parliamentary oversight in the overall system, oversight in the context of constitutional law, its relationship with parliamentary oversight. Hence, the present article is intended as an integral analysis of parliamentary oversight, linking it with other institutes of the parliamentary law and the separation of powers. Of note is the monograph *The Parliament and Organization of State Institutions (Parlamentas ir valstybinės valdžios institucijų sąranga)*. In this publication, T. Birmontienė and E. Šileikis comprehensively analyse the concept and reality of parliamentary oversight in the Republic of Lithuania. T. Birmontienė analyses the jurisprudence of the Constitutional Court, emphasizing parliamentary oversight as a constituent area in the constitutional competence of the Seimas. Oversight must be exercised on the basis of constitutional principles and in accordance with the doctrine of the balance of constitutional powers.²³ In addition to his analysis of the concept of parliamentary oversight in Lithuania, E. Šileikis also evaluates the activity of the Seimas and parliamentary investigations. E. Šileikis examines particular mechanisms of oversight and their use in the parliament. However, there are some differences of opinion on the definition of parliamentary oversight and the shapes that it may take. T. Birmontienė considers the institute of state oversight to be a separate form of parliamentary oversight,²⁴ whereas E. Šileikis only identifies members of parliament, committees and commissions in his definition of parliamentary oversight and its subjects.²⁵

The implementation of parliamentary oversight is directly related to the constitutional principles of responsible government, power distribution, Rechtsstaat and democracy. Without the institute of parliamentary oversight and its proper implementation, the principle of separation of powers would be threatened, as would the legality and effectiveness of the entire state apparatus. If parliamentary oversight were not exercised by the legislative branch, there would be a simple and direct constitutional connection between the legislative and executive branches.

Parliamentary oversight is a particularly important part of the Seimas' competence. Supervision of the executive branch exercised by the Seimas itself, its structural formations and its members may be recognized as 'one of the basic conditions of parliamentary democracy'.²⁶ Parliamentary oversight as a constitutional institute allows the Seimas to systematically and independently influence the executive, ensuring continuous cooperation between the legislative and executive branches and the successful functioning of the separate branches.

Only the Seimas, as the nation's rightful representative, may exercise parliamentary oversight. In summary, based on the doctrine of the Constitutional Court, parliamentary oversight is the privilege of the Seimas to ensure the continuous and effective functioning of the legislative and executive branches and the execution of laws passed by the Seimas.

23 Birmontienė, T., *supra* note 14, p. 115.

24 *Ibid.*, p. 129.

25 Šileikis, E., *supra* note 1, p. 375–376.

26 *Ibid.*, p. 116.

2. Constitutional Principles and Legal Restrictions on the Exercise of Parliamentary Oversight by the Committees of the Seimas

In its exercise of legislative and oversight functions, the Seimas requires a certain structure to properly conduct its work. Following Article 76 of the Constitution, the structure of the Seimas and its rules of procedure are determined by the Statute of the Seimas. The structure of the Seimas is a system of internal divisions established in the Statute of the Seimas that should ensure the working capacity of the parliament, its efficient functioning. Namely, it should ensure the conditions required for the uninterrupted exercise of the functions of the Seimas as defined in the Constitution.²⁷ This constitutional provision establishes that the Seimas itself has the sole power to define its own structure and rules of procedure, and no other state institution may participate in this process. This implies that the establishment of the mechanisms of parliamentary oversight and the procedure of their implementation is the sole prerogative of the Seimas. Otherwise, we would have a situation where the institute of parliamentary oversight, being an integral component of the legislative branch and parliamentary law, would be regulated by laws not approved by the Seimas. Another constitutional requirement applying to the internal structures of the parliament is to follow the principles of equality of the members of the parliament and their independent mandate.²⁸ Because the Seimas has the constitutional status of the legislative branch, it requires a structure and a set of procedural rules based on democratic principles so that, regardless of the situation in the country, the rightful representative of the nation can implement the supreme sovereign will of the nation in a constructive, effective and sustained way and ensure the conditions for each member of the Seimas to exercise his or her powers as a representative of the nation.²⁹

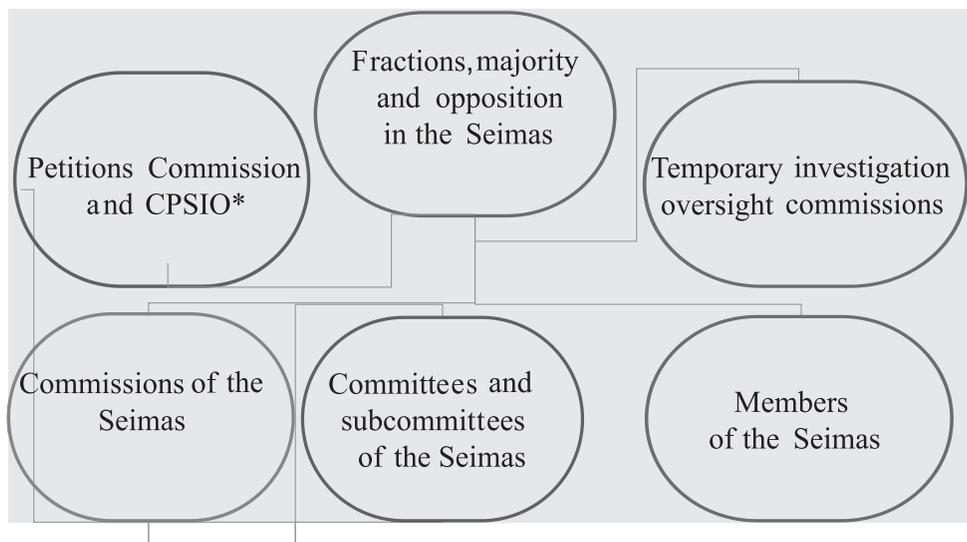
Usually, parliaments of democratic countries have two types of structural formations: committees (commissions) and fractions (groups of deputies). Committees and commissions are created according to the principle of parliamentary work specialization, which ensures the proper and detailed consideration of issues and due deliberation in the parliament. Fractions, on the other hand, help members of the parliament exercise their political inclinations, achieve their goals and ensure structured relations between groups of representatives and the political parties they represent.

The main standing subject of parliamentary oversight in the Lithuanian model of parliamentary oversight is a committee of the Seimas (ref. Diagram 1). According to Vytautas Sinkevičius, most parliamentary work takes place in fractions and committees—where the groundwork for all future decisions of the Seimas is laid down. The

27 Ruling of the Constitutional Court of the Republic of Lithuania as of February 24, 1994. *Official Gazette*. 1994, No. 16-271.

28 Ruling of the Constitutional Court of the Republic of Lithuania as of November 26, 1993. *Official Gazette*. 1993, No. 66-1260.

29 Ruling of the Constitutional Court of the Republic of Lithuania as of February 24, 1994. *Official Gazette*. 1994, No. 16-271.



* Commission for Parliamentary Scrutiny of Intelligence Operations

Diagram 1. Structural formations of the Seimas participating in parliamentary oversight

plenary sessions of the Seimas where laws are passed are only the top of the iceberg.³⁰ The specificity of the activities carried out by the Seimas' committees and their purpose requires the establishment of a committee system that would encompass the totality of the state's functions. When establishing committees, the total number of parliamentarians and the rights of the political minorities must be taken into account. The committees should not become too narrowly specialized, duplicate the system of ministries or become quasi-ministries as this would prevent them from having a sufficiently broad perspective on problems and may result in their interference in the work of ministries.³¹

30 Sinkevičius, V. Lietuvos Respublikos Seimo, kaip tautos atstovybės, konstitucinė koncepcija. In *Lietuvos konstitucinė teisė: raida, institucijos, teisių apsauga, savivalda*: kolektyvinė monografija [The Constitutional Conception of the Seimas of the Republic of Lithuania as the Representative of the Nation. In Lithuanian Constitutional Law: Development, Institutions, Protection of Rights, Self-governance (a compiled monograph)]. Vilnius: Mykolas Romeris universitetas, 2007, p. 217.

31 *Ibid.*, p. 217. In the Seimas, there function 15 permanent specialized committees that not only directly participate in the legislative work but also, as indicated in the Statute of the Seimas, exercise parliamentary oversight within the scope of their competence. Article 71 of the Statute of the Seimas unreasonably establishes that the initiative to establish these temporary formations belongs also to permanent committees of the Seimas. Article 56 (4) of the Statute of the Seimas states that, when exercising parliamentary scrutiny over instruction of the Seimas, the committees shall act in compliance with the rules of procedure of the Seimas Oversight Commission or ad hoc investigation commissions, set forth in Articles 75–76 of this Statute, and shall enjoy the same powers. It is reasonable to question whether a temporary committee may be a subject of the initiative to establish a temporary formation when the same permanent committee, being a formation of the internal structure of the Seimas, *ad hoc* becomes a constitutional formation of a temporary type. It should be noted that the constitutional status of temporary investigation commissions and permanent committees

Notwithstanding, the system of committees operating in the Seimas does resemble the system of ministries. Moreover, commissions of the Seimas are involved in the implementation of parliamentary oversight as are other *ad hoc* bodies of the Seimas.

Article 49 of the Statute of the Seimas defines the powers of the Seimas' committees. Item 9 of this article stipulates that in the exercise of parliamentary oversight, committees are entitled to: information and reports furnished by ministries and other state institutions on the question of how the laws of the Republic of Lithuania and other acts passed by the Seimas are being implemented; by their own initiative or on the behest of the Seimas to carry out parliamentary investigation of specific problems and present their conclusions to the Seimas; on their own initiative or on the behest of the Seimas to review yearly reports on the activities of state institutions accountable to the Seimas and present their conclusions to the Seimas. The Statute of the Seimas provides little detail on parliamentary investigation of specific problems. Within the limits of their competence, committees and commissions may initiate an investigation of any issue they deem important upon a majority vote by the members of the body. However, some difficulties arise because the Statute of the Seimas does not explicitly define a system of procedural norms that would regulate the procedure of committees engaged in parliamentary oversight. According to Article 48 (1), the Statute itself and other laws are to regulate the powers, procedures and areas of activity of the committees. However, neither the Statute nor other laws provide any procedural rules for the attendance of cabinet members and other officials at committee meetings, or requirements for continuous supply of information and documentation for the committees. Moreover, neither the Statute nor other laws establish any liability for the ministers and other officials if they fail to appear at a meeting of a Seimas committee or fail to present requested information. Although Article 56 (2) of the Statute of the Seimas defines a procedure for the participation and attendance of a member of the cabinet or another official, it does not stipulate any consequences upon failure by the official to attend a committee meeting and what actions may be taken by the committee if an executive official fails to participate. Article 17 of the Law on the Government stipulates that the Prime Minister and other ministers may attend the Seimas sessions, meetings of its committees, commissions and fractions, where they can express their opinions regarding the matters in question under the procedure set out in the Statute of the Seimas. It is the opinion of the authors that the proper exercise of parliamentary oversight necessitates the attendance of ministers at committee and commission hearings not merely as a right, but as a duty. Furthermore, to avoid problems related to the implementation of supervisory relations, it is essential to define what powers the committees would have when supervising the internal administration of institutions and departments headed by direct subordinates of the ministers. (ref. Diagram 2).

differs. A permanent committee follows the Statute of the Seimas in its activity and is an internal formation of the Seimas, whereas the activity of a temporary investigation commission is regulated by laws establishing authoritative powers with regard to non-subordinate subjects, and from this point of view it is no longer an internal formation of the Seimas only. Legal regulation that affords a permanent committee all the rights of a temporary investigation commission is flawed.

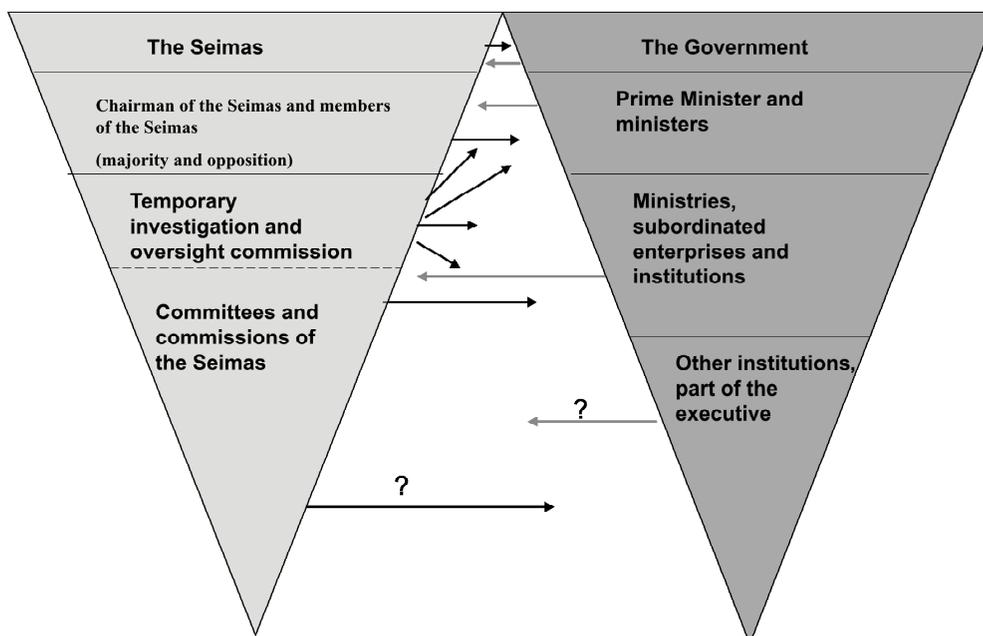


Diagram 2. Levels of parliamentary oversight relations

An analysis of the provisions of the Statute of the Seimas detailing the powers of committees reveals that the exercise of parliamentary oversight is not systematically and consistently regulated, and that the existing regulation is ambiguous. For example, Article 54 of the Statute of the Seimas, on the question of conducting hearings in the Seimas committees, stipulates that a committee may decide to conduct special hearings at the committee for the preliminary discussion of a draft law and proposed amendments in the course of a parliamentary inquiry, as well as for drafting conclusions concerning an issue under consideration. Such phrasing raises many uncertainties as it is difficult to determine whether a committee may independently perform parliamentary oversight and conduct hearings. An analysis of Article 54 of the Statute of the Seimas reveals that hearings may be arranged only when considering proposals and amendments with regard to a specific draft law (Article 54 (2)).

Parliamentary oversight is also contingent upon the legal force of decisions taken by the committees of the Seimas. Article 55 (6) establishes that decisions adopted by committees are of an advisory nature as regards state institutions. According to Section 7 of this Article, upon receipt of recommendations or proposals from Seimas committees, state institutions must review them and inform the committees about the results of their deliberations or adopted measures within 15 days from the receipt of the proposals or within some other period of time indicated by the committees. However, there still remains the need to define the legal force of the committee's decisions, namely, their implementation mechanism in cases where ministers, heads of state institutions, primarily those heads appointed or confirmed by the Seimas, fail to follow laws or execute them

improperly. The decisions of a committee on questions of proposed laws are approved on the basis of a common procedure and there is nothing to distinguish a decision made in the course of a parliamentary investigation. If a committee analyses a certain draft law and presents its conclusions, it may finish its work. However, if a committee adopts a decision in the course of conducting parliamentary oversight, it must continue its supervisory activity to determine if its recommendations are being followed. The Statute of the Seimas should specify at least two procedures for making decisions and implementing them: in some cases—when the committee is conducting parliamentary oversight, and in other cases—when evaluating draft laws only.

The parliamentary oversight work of committees is partially regulated by Article 56 of the Statute of the Seimas. Section 1 of this article defines the competence of committees to conduct parliamentary oversight as supervision of the proper execution of laws and rulings of the Seimas, and review of annual reports provided by state institutions accountable to the Seimas. Although this Article stipulates that a committee may carry out parliamentary investigations of specific problems on its own initiative or on the behest of the Seimas, the procedure for implementing this provision is not established. Another problem arises from Article 56 (3), setting out that committees may demand state institutions (with the exception of courts) and officials to provide documents, written conclusions, reports and other necessary materials. If committees have this right to demand certain materials, then the respective subjects should be obliged to provide these documents. Applicable laws, namely, the Statute of the Seimas and other laws, do not establish the said duties for heads of state institutions and other officials. Furthermore, they fail to address the issue of sharing information classified as a state or service secret with the committee.

The current Law on State and Service Secrets³² stipulates that a committee of the Seimas can receive such information on general grounds, namely, following the same procedures as any other state institution. This implies that the outcome of such a request depends not on the committee's efforts but rather on the institution classifying this information as secret (for example, the State Security Department). Preferably, the Law on State and Service Secrets and the Statute of the Seimas should regulate the provision of secret documents to the committees in a way that would minimize the ability of an institution to conceal or withhold confidential information (on July 23, 2009, the Committee on National Security and Defence of the Seimas adopted a resolution repeatedly requesting information on the implementation of the conclusions of the parliamentary investigation of the activity of the State Security Department (decree No. X-990 of the Seimas as of December 19, 2006) and the implementation of the decree of the Seimas 'On Documents not Presented to the Committee on National Security and Defence of the Seimas by the State Security Department' (decree of No. X-1011 of the Seimas as of December 21, 2006))³³.

32 Law on State and Office Secrets of the Republic of Lithuania. *Official Gazette*. 2004, No. 4-29.

33 The website of the Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <<http://www3.lrs.lt/docs2/VMWMEREX.DOC>>. This concerns 12 'notorious' statements prepared by the State Security Department that have not been presented to the Committee on National Security and Defence of the Seimas since December 2006.

The Seimas is independent in creating internal bodies but it must ensure proper conditions for each member of the Seimas to exercise his or her power as a representative of the nation and ensure his or her independent mandate. The established internal organs must operate consistently and effectively in order to implement the supreme sovereign will of the nation. According to the Constitution, the right of the Seimas to receive necessary information and documents in the course of conducting parliamentary oversight (especially in cases where access to information and documents is related to a pre-trial investigation or a state secret) should be exercised without violating the independence of the executive branch or the rights and freedoms of individuals. On the very same basis, the executive must provide information and documents necessary for the Seimas to conduct parliamentary oversight.

The Statute of the Seimas does not establish a system for the implementation of parliamentary oversight mechanisms that would ensure the presentation of information and documents to the Seimas' committees, especially information pertaining to a state and service secrets. There is a lack of consistency in legal regulation and the procedural norms are not defined clearly enough.

3. Parliamentary Oversight as Exercised by the Permanent Committees of the Seimas

After the amendment of Articles 43, 46, 59 and 60 of the Statute of the Seimas on 2 December 2004, and with the further addition of Article 59(1), the existing system of permanent committees also includes a new Audit Committee.³⁴ The composition of the Audit Committee was approved by the decree No. X-41 of the Seimas 'On Amendment of the decree of the Seimas "On Approval of Composition of Committees"'³⁵ as of 9 December 2004.

With the powers granted by the Statute of the Seimas, the Audit Committee investigates shortcomings and problems in the activities of audited institutions or implementation of their respective programs as revealed to the Seimas and/or its committees by National Audit Office of Lithuania; coordinates the activities of the Seimas' committees and commissions as they review and present their conclusions on issues of national audit, determines whether appropriation officials are using the state budget property in a rational and efficient manner, conducts parliamentary oversight of the effectiveness of the State Property Fund and the Public Procurement Office, gives proposals and recommendations for improvements in their activity, participates in the preparation of related draft laws. Based on an analysis of reports by the Audit Committee, we may conclude that it has been active in conducting parliamentary oversight. From 17 November 2008 to 19 February 2009, this Committee has deliberated nine issues of parliamentary over-

34 On Amendment of Articles 43, 46, 59, 60 and 59(1) of the Statute of the Seimas. *Official Gazette*. 2004, No. 176-6519.

35 Decree No. X-41 of the Seimas of the Republic of Lithuania as of December 9, 2004. *Official Gazette*. 2004, No. 180-6665.

sight, focusing on the effective functioning and supervision of the Public Procurement Office.³⁶

The work of other permanent committees in the field of parliamentary oversight has been rather poor. For example, the Committee on Legal Affairs deliberated only 8 issues of parliamentary oversight from 10 March 2007 to 4 July 2007.³⁷ In 2008, however, there were 78 such issues under consideration.³⁸ The Committee on Budget and Finance deliberated only 2 issues from 10 March 2007 to 4 July 2007, and 3 in the time between 70 November 2008 and 19 February 2009.³⁹ However, the Statute of the Seimas does not procedurally differentiate between legislative and oversight motions. Therefore, it is often difficult to determine if the decision in question is directly related to parliamentary oversight or if it is merely a legislative decision. The attribution of a particular question to parliamentary oversight as opposed to the field of legislation may depend on the personal views of the members of a given committee or the employees of the Office of the Seimas.

A review of the activity of permanent committees reveals that only in some cases have the committees made an effort to carry out their oversight duties in the earnest. On 4 September 2006, the Committee on National Security and Defence initiated a parliamentary investigation of the activity of the State Security Department. Decree No. X-823 of the Seimas ‘On the Mandate of the Committee on National Security and Defence to Perform a Parliamentary Investigation of the Activity of the State Security Department’⁴⁰, coming into force on 28 September 2006, gave the committee a parliamentary mandate to carry out the investigation. The committee was commissioned to investigate and identify problems in the activity of the State Security Department. Decree No. X-990 of December 19, 2006, ‘On the Conclusion of Parliamentary Investigation of the Activity of the State Security Department Conducted by the Committee on National Security and Defence of the Seimas of the Republic of Lithuania’ approved the conclusions presented by the committee.⁴¹ This committee indicated that the State Security Department failed to present analytical statements prepared on the basis of operational information. Therefore, the committee could not definitively answer the parliament’s

36 Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <<http://www3.lrs.lt/docs2/HCT-MUAWX.DOC>>.

37 Report of spring session 2007 of the Audit Committee of the Seimas of the Republic of Lithuania (March 10, 2007–July 4, 2007) Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <<http://www3.lrs.lt/docs2/UOAKQELN.DOC>>.

38 Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <<http://www3.lrs.lt/docs2/FVW-LOMMM.DOC>>.

39 Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <http://www3.lrs.lt/pls/inter/w5_show?p_r=405&p_k=1>.

40 Decree No. X-823 of the Seimas of the Republic of Lithuania as of September 28, 2006. *Official Gazette*. 2006, No. 107-4051.

41 Decree No X-990 of the Seimas of the Republic of Lithuania as of December 19, 2006. *Official Gazette*. 2006, No. 144-5465.

Conclusions of the Committee on National Security and Defence stated that the investigation circumstances were unfavourable. This resulted from insufficient cooperation by the heads of the State Security Department (‘SSD’), first and foremost the Director General, A. Pocius.

query of whether the material held by the State Security Department contains evidence of corrupt relations, although the data collected during the hearings implied that the State Security Department had had some information on corrupt relations. The investigation only serves to highlight the pertinence of questions raised in our analysis. According to the authors of this article, there is an obvious lack of legal norms and a system that would ensure a comprehensive parliamentary investigation, especially of institutions carrying out operational and intelligence tasks.

Parliamentary oversight and investigations are rarely carried out by the committees of the Seimas because of lack of necessary legal regulation. The goals of parliamentary oversight investigations are seldom achieved. After an investigation determines ineffectiveness or transgression on behalf of the executive branch, the situation does not fundamentally change as these investigations are only episodic.

Most committees of the Seimas limit themselves to the review of the activities of institutions accountable to the Seimas (since 1992, the Seimas reviewed over 50 reports of various institutions but all of them were approved). Parliamentary oversight carried out by the Seimas' committees has been episodic and incomprehensive. To improve legal norms regulating parliamentary oversight exercised by the Seimas' committees, it is necessary to define the limits of oversight relations, establish the legal potential for committees not only to receive information but also to issue imperative orders and approve (establish) procedural norms that would allow committees to effectively and continuously exercise parliamentary supervision of how state enterprises or institutions implement the laws passed by the Seimas and whether they follow the recommendations of the committees. One viable instrument could be proposals to the Seimas or the Government to temporarily suspend a portion of the budget allocation to state institutions or individual programs if an institution fails to perform its functions properly.

Conclusions

1. According to its constitutional nature, the Seimas of the Republic of Lithuania is the representative of the Nation, the sole legislative branch and the main and only subject of parliamentary oversight (Articles 5, 55, 61 and 67 (9) of the Constitution). Parliamentary oversight exercised by the Seimas, as in other democratic parliamentary systems, is of the constitutional level (Article 61, Article 67 (9) of the Constitution). If parliamentary oversight were exercised not by the legislative branch, the direct constitutional correlation between the legislative and executive branches would be lost. The measures (instruments) of parliamentary oversight and the procedure of their implementation must be established by the Seimas.

2. Due to patchy and inconsistent provisions of the Statute of the Seimas defining the content of the relations of parliamentary oversight and the lack of procedural norms establishing the procedure for using parliamentary oversight instruments, committees of the Seimas cannot continuously and effectively exercise parliamentary oversight of exe-

cutive institutions, properly supervise how laws passed by the Seimas are implemented and whether the executive branch is not violating those laws.

3. Firstly, laws fail to establish actual legal possibilities for the Seimas' committees to receive information and documents necessary for parliamentary oversight, especially when the information required is related to state or service secrets. Second, there is no established and legally regulated system allowing for the proper use of such information in the work of the commission or committee while presenting conclusions. Legal regulations are lacking with regard to issues of ensuring attendance at meetings of commissions and committees by private persons and provision of information, issues of false evidence provided to the investigation or defamation of other persons. Third, it has not been stipulated whether the rules and procedures of a criminal proceeding can be applied when collecting evidence during a parliamentary oversight investigation.

References

- Alder, J. *Constitutional and Administrative law*. 5 edition. London: Macmillan, 2005.
- Birmontienė, T. The Concept of Parliamentary control in the Jurisprudence of the Constitutional Court. In *The Parliament and organization of State institutions*. Vilnius: Mykolas Romeris University, 2008.
- Butvilavičius, D. Constitutional disjuncture of constituent and constituted power. *Social Sciences Studies*. 2009, 2(2).
- Decree No. X-41 of the Seimas of the Republic of Lithuania as of December 9, 2004. *Official Gazette*. 2004, No. 180-6665.
- Decree No. X-823 of the Seimas of the Republic of Lithuania as of September 28, 2006. *Official Gazette*. 2006, No. 107-4051.
- Decree No X-990 of the Seimas of the Republic of Lithuania as of December 19, 2006. *Official Gazette*. 2006, No. 144-5465.
- Law on State and Office Secrets of the Republic of Lithuania. *Official Gazette*. 2004, No. 4-29.
- Leonas, P. *Raštai II tomas (Teisinės enciklopedijos paskaitos, sociologijos paskaitos)* [The Complete Works vol. II (Lectures on the Encyclopedia of Law, Sociology)]. Vilnius: Teisinės informacijos centras, 2005.
- Leonas, P. *Raštai, III tomas (Teisinė publicistika pergyvenimai ir atsiminimai, teisinis palikimas. Bibliografija)* [The Complete Works vol. III (Legal reflections, experiences and memoirs, legal legacy)]. Vilnius: Teisinės informacijos centras, 2005.
- Report of spring session 2007 of the Audit Committee of the Seimas of the Republic of Lithuania (March 10, 2007 – July 4, 2007) Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <<http://www3.lrs.lt/docs2/UOAKQELN.DOC>>.
- Ruling of the Constitutional Court of the Republic of Lithuania as of November 26, 1993. *Official Gazette*. 1993, No. 66-1260.
- Ruling of the Constitutional Court of the Republic of Lithuania as of February 24, 1994. *Official Gazette*. 1994, No. 16-271.
- Ruling of the Constitutional Court of the Republic of Lithuania as of April 20, 1999. *Official Gazette*. 1999, No. 36-1094.
- Ruling of the Constitutional Court of the Republic of Lithuania of 18 October 2000. *Official Gazette*. 2000, No. 88-2724.
- Ruling of the Constitutional Court of the Republic of Lithuania as of April 25, 2001. *Official Gazette*. 2001, No. 37-1259.

- Ruling of the Constitutional Court of the Republic of Lithuania as of January 24, 2003. *Official Gazette*. 2003, No. 10-366.
- Ruling of the Constitutional Court of the Republic of Lithuania as of May 13, 2004. *Official Gazette*. 2004, No. 81-2903.
- Ruling of the Constitutional Court of the Republic of Lithuania as of May 25, 2004. *Official Gazette*. 2004, No. 85-3094.
- Ruling of the Constitutional Court of the Republic of Lithuania as of August 23, 2005. *Official Gazette*. 2005, No. 152-5605.
- Ruling of the Constitutional Court of the Republic of Lithuania as of April 4, 2006. *Official Gazette*. 2006, No. 38-1350.
- Ruling of the Constitutional Court of the Republic of Lithuania of 21 November 2006. *Official Gazette*. 2006, No. 127-4849.
- Romeris, M. *State Law, stenographs*. Kaunas, 1930.
- On Amendment of Articles 43, 46, 59, 60 and 59(1) of the Statute of the Seimas. *Official Gazette*. 2004, No. 176-6519.
- Sinkevičius, V. Lietuvos Respublikos Seimo, kaip tautos atstovybės, konstitucinė koncepcija. In *Lietuvos konstitucinė teisė: raida, institucijos, teisių apsauga, savivalda: kolektyvinė monografija* [The Constitutional Conception of the Seimas of the Republic of Lithuania as the Representative of the Nation. In Lithuanian Constitutional Law: Development, Institutions, Protection of Rights, Self-governance (a compiled monograph)]. Vilnius: Mykolo Romerio universitetas, 2007.
- Seimas of the Republic of Lithuania [interactive]. [accessed 22-01-2010]. <www.lrs.lt>.
- Šileikis, E. Topicalities of parliamentary control and necessity of a new scientific concept in Lithuania. In *The Parliament and organization of State institutions*. Vilnius: Mykolas Romeris University, 2008.

PARLAMENTINĖS KONTROLĖS FUNKCIJOS BŪTINUMAS IR PAGRINDINIAI PARLAMENTINĖS KONTROLĖS SUBJEKTAI LIETUVOJE: SEIMO NUOLATINIAI KOMITETAI

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Santrauka. *Straipsnyje Lietuvos Respublikos Seimo vykdoma parlamentinė kontrolė nagrinėjama kaip konstitucinis institutas, kompleksiskai sudarantis Seimo konstitucinio statuso institutą sistemiskai ir savarankiškai veikiant vykdomąją valdžią nustatytais kontroliavimo pobūdžio instrumentais bei užtikrinant nepatraukiamą ir efektyvą vykdomosios valdžios įgyvendinimą.*

Seimo vykdoma parlamentinės kontrolės funkcija yra būtina veikla, siekiant užtikrinti nuolatinę ir efektyvią vykdomosios valdžios funkcijų įgyvendinimo priežiūrą. Straipsnyje remiantis tautos suvereniteto doktrina pripažįstama, kad Seimas vienintelis subjektas, vykdamas parlamentinę kontrolę, todėl ši funkcija labai reikšminga.

Seimas kurdamas vidinius darinius yra savarankiškas, tačiau Seimo struktūra turi užtikrinti šios institucijos darbingumą, efektyvų jos funkcionavimą, t. y. turi sukurti reikiamą

mas sąlygas bei prielaidas Seimui nepertraukiamai įgyvendinti Konstitucijoje apibrėžtas jo funkcijas. Ši konstitucinė nuostata reiškia, kad tik Seimas turi įgaliojimus nustatyti savo struktūrą ir darbo tvarką, jog jokia kita valstybės valdžią įgyvendinanti institucija negali dalyvauti nustatant Seimo struktūrą bei darbo tvarką. Ypač svarbus aspektas, kad Seimo struktūra ir demokratiniiais principais pagrįsta darbo tvarka užtikrintų, jog šalyje esant bet kokiai situacijai Tautos atstovybė galėtų konstruktyviai, efektyviai, taip pat nepertraukiamai įgyvendinti aukščiausių suverenių šalies žmonių valią bei sudarytų sąlygas kiekvienam Seimo nariui vykdyti Tautos atstovo įgaliojimus.

Straipsnyje analizuojama Seimo vykdoma parlamentinės kontrolės funkcija ir jo nuolatinųjų komitetų teisinės bei praktinės prielaidos efektyviai ir nuolatos vykdyti šią funkciją. Analizuojant Seimo nuolatinųjų komitetų veiklą pastebima, kad nėra pakankamai išplėta materialinių ir procesinių teisės normų sistema, kuri sudarytų teisinės prielaidas efektyviai bei nuolatos šiems komitetams ir komisijoms vykdyti parlamentinę kontrolę. Iki šiol išlieka aktualus informacijos ir dokumentų teikimo Seimo nuolatiniam komitetui bei jų naudojimo parlamentiniuose tyrimuose klausimas, ypač tais atvejais, kai informacija susijusi su ikiteisminiu ar operatyviniu tyrimais arba sudaro valstybės ar tarnybos paslaptį.

Reikšminiai žodžiai: parlamentinė kontrolė, kontrolės funkcija, parlamentinės kontrolės subjektai.

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