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THE CONSTITUTIONAL MODEL OF THE LITHUANIAN STATE STRUCTURE

Egidijus Jarašiūnas

Mykolas Romeris University, Faculty of Law,
Department of Constitutional Law

Ateities 20, LT-08303 Vilnius, Lithuania

Phone (+370 5) 2714 561

E-mail e.jarasiunas@mruni.eu

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Annotation. *This article analyzes the peculiarities of the unitary state structure model entrenched in the Constitution of the Republic of Lithuania in 1992. The author first analyzes the features of the unitary state structure and the principle of state unity. The choice of unitary state structure has been determined by the historic experience of the state of Lithuania. According to the nature of territorial structure, two subtypes of the unitary state structure could be distinguished: a. Purely unitary state; and b. Unitary state with certain autonomous features. Lithuania is a pure unitary state in accordance with the Constitution. This is certified by the totality of the following features: in Lithuania, there is one Constitution, one legal system, one state authorities' scheme, one organisation of courts, one division of the territory into administrative units with equal status, one citizenship, one state language, and one state budget. These features allow identifying the form of pure unitarism. The history of late XX – early XXI centuries confirms that this Lithuania's choice is justified. The form of the unitary state structure has strengthened integration of the civil society and statehood of Lithuania. The further direction of the model's development is strengthening of decentralisation.*

Keywords: *Form of state structure, principle of unity of state, purely unitary state.*

Introduction

The constitutional model of state structure must ensure the stability of the state and effective activity of state structures. The choice of Lithuania hereto is provided in Article 10(1) of the Constitution of the Republic of Lithuania: “The territory of the State of Lithuania shall be integral and shall not be divided into any State-like formations.”

These constitutional provisions establish a unitary state structure, which conveys the idea of unified and undividable state. Important aspects of the unitary state structure are provided under other articles of the Constitution. This status of the state’s internal territorial structure, relation of the central and local authorities, and the state’s composite parts on 25 October 1992 was approved by the Nation – the real creator of the Constitution. While there have been many discussions in Lithuania about the form of state governance (whether Lithuania is a parliamentary or half-parliamentary republic), the model of Lithuania’s unitary state structure has not given rise to many scientific disputes. On the other hand, the press sometimes mentions distinguishing of separate regions or their specific representation (for instance, establishment of Samogitian party, and etc.). These referrals cannot be considered as curiosities. Therefore, the issue of foundations of the state structure requires deeper analysis, which would include not only the discussion of the state structure’s model itself, but also the discussion of consequences of this legal choice.

The objective of this article is the analysis of peculiarities of the form of state structure established in the Constitution of the Republic of Lithuania. In order to understand the foundations of the state structure established in the Constitution, it is necessary to clarify what does a unitary state structure mean, on what principle it is based, what determined the choice of this particular form of state structure in Lithuania, what are the specific features of this model of state structure, and what is the impact of the chosen model on other fields of society’s life organized at a state level.

1. The Issue of the Form of State Structure

The state structure is one of the elements of the complex institute of state form. The state form is defined by the system of state government, the state structure’s form and the political regime. The state’s form is not only a theoretic category. It has an important practical value. The importance “to establish such a state form and such a system of government that allows adopting good laws, which are respected”¹ is underlined. This is the classic explanation of the significance of choosing a state’s form. The same also applies for the state structure. The political community is concerned whether the existing state authorities, their relations’ system, established methods of implementation of

1 Esmein, A. *Konstitucinės teisės principai* (prancūzų ir palyginamieji). I t., 1 dalis. [Esmein, A. *The Constitutional Law Principles* (French and Comparative Law). I volume, 1 part]. Kaunas: Teisininkų draugijos leidinys, 1932, p. 35.

state authority impede or facilitate the progress of the society. There have been cases when a clearly outdated state structure or its institutional system provoked conflicts or particularly complicated their resolution, and an appropriate model of state organization helped to mitigate contradictions arising in the society, and concentrate the society for implementation of common goals.² The state structure's form "shows the method of the internal state's territorial organization, the legal status of the state's composite parts, and the nature of the relations of the state as such with its composite parts."³ The legal literature discusses different concepts ("state structure's form,"⁴ "state's legal form,"⁵ (where an ordinary and composite state is distinguished), "territorial state's structure"⁶). Constitutional acts provide for "state structure,"⁷ "political and administrative organization"⁸ and other categories describing state structure.

Two forms of state structure are usually distinguished: *unitary state* and *federal state*. However, many authors in the late XX century started to distinguish the third one – a *regional state* next to unitary and federal states.

D. Chagnollaund claimed that „unitary state is the state where one legal and political government applies, which disposes the entirety of authorities in its territory, and one and the same law applies.”⁹ There is one source of power in a unitary state; it has a united central authority, from which all dispositions of power derive,¹⁰ and where “one state apparatus”¹¹ functions. One national law system applies in the unitary state. The unitary state is divided into administrative territorial units, which do not possess a political or another kind of independence. The significance of the unitary state model is stressed by the global practice: most of contemporary states are unitary.

According to the nature of territorial structure, two subtypes of the unitary state structure's model could be distinguished:

- a. *purely unitary state*;
- b. *unitary state with certain autonomous features*.

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- 2 Jarašiūnas, E.; Maksimaitis, M. Naujam M. Romerio darbų ciklo „Valstybė ir jos konstitucinė teisė“ tomui pasirodžius. [Jarasiunas, E.; Maksimaitis, M. After Appearance of the New Work Cycle of M. Romeris “State and its Constitutional Law“]. *Justitia*. 2008, 2 (68): 72.
 - 3 Birmontienė, T., et. al. *Lietuvos konstitucinė teisė*. 2 leidimas. [Birmontiene, T., et al. The Constitutional Law of Lithuania. 2nd edition]. Vilnius: LTU, 2002, p. 543.
 - 4 Junevičius, A.; Matakas, J. *Valstybės pagrindai*. Pirmoji dalis. [Junevicius, A.; Matakas, J. Foundations of the State]. Kaunas: Technologija, 1996, p. 41.
 - 5 Giquel, J.; Giquel, J.-E. *Droit constitutionnel et institutions politiques*. 21e édition. Paris: Montchrestien, 2007, p. 65.
 - 6 Banaszak, B. *Prawo konstytucyjne*. 3 wydanie. Warszawa: Wydawnictwo C. H. Beck, 2004, p. 16.
 - 7 See the title of Chapter 4 of the Constitution of the Federal Democratic Republic of Ethiopia. Adopted on 9 December 1994.
 - 8 See Title III, Chapter I, Article 18 of the Constitution of Brazil. Promulgated on 5 October 1988.
 - 9 Chagnollaund, D. *Droit constitutionnel contemporain*. Tome 1. Théorie générale. Les régimes étrangers, 5e édition. Paris: Dalloz, 2007, p. 179.
 - 10 Römeris, M. *Unitarinė valstybė ir valstybiniai junginiai*. [Romeris, M. Unitary State and Governmental Connections]. Vilnius: Mykolo Romerio universitetas, 2008, p. 6.
 - 11 Pactet, P.; Mélin-Soucramanien, F. *Droit constitutionnel*. 27 édition. Paris: Dalloz, 2008, p.41.

The first one is composed of administrative territorial units. The second one is a more complicated unitary state's structure, where autonomous formations co-exist; three types of special autonomous units are being distinguished: administrative territorial autonomy, national territorial autonomy, and national cultural autonomy; they have to be established in the Constitution. In a wide sense, the autonomy means conferring independence in an administrative field to a certain part of the state; in a narrow sense, it is understood as a special type of self-government of a part of the state, where locally elected institutions are ensured with the right to adopt local laws. The legal conditions of these autonomous units differ from these of the administrative-territorial units at equal level. Sometimes they have certain state-like features: the right to adopt local laws, own "autonomy parliament," and own "autonomy government". The independence of such formations is limited.

Some authors describing unitary structure of a specific country consider this binary classification insufficient and try to use additional terms. For instance, Macedonia is called a multinational state of a unitary form and described as "communities' state" or "state of collectives."¹²

The other form of state structure is a federation. It is understood as a confederate state composed of federation members – the units of governmental nature. Alongside confederate state authorities functioning at the level of the federation, in this form of state also function legislative, executive, and judicial institutions of the subjects of the federation. Both federal and federation subjects' law applies in such state. Subjects of federation, differently from the unitary state administrative units, can take use of political independence to a larger or smaller extent. "Member states of a federation retain features of a state, but they lose an essential state's feature – sovereignty."¹³

In the second half of the XX century, discussions started on a borderline model of state structure – i. e. a regional state, which is composed of units having an autonomous status (Spain, Italy). "The extensive process of regionalization in western Europe in 1990s shows that a regional authority in unitary states retains certain legislative powers, including financial powers."¹⁴

The significance of a state structure in the Middle and Eastern Europe came into light after the collapse of the communist system. Collapse of the former federations – Yugoslavia, which later became a Union of Serbia and Montenegro, velvet divorce of Czech Republic and Slovakia, problems of state structure of Ukraine, Moldova (the list could be longer) – confirm the importance of proper implementation of the territorial authority model.

12 Skaric, S. De l'État-démos à l'État pluriethnique et vice versa. *Mélanges en l'honneur de Slobodan Milacic. Démocratie et liberté: Tension, dialogue, confrontation*. Bruxelles: Bruylant, 2008, p. 690.

13 Malinverni, G. Les notions classiques de confédération et d'État fédéral. *Le concept contemporain de confédération*. Actes du séminaire UniDem, organisé à Santorin du 22 au 25 septembre 1994 en coopération avec le ministère des Affaires étrangères de la Grèce, Strasbourg: Éditions du Conseil de l'Europe, 1995, p. 42.

14 Lane, J. E. *Konstitucija ir politikos teorija*. [Lane, J. E. Constitution and Political Theory]. Translated from English by E. Kūris. Kaunas: Naujasis lankas, 2003, p. 114.

2. Principle of Unity, Conveying the Essence of the Unitary State Structure

The principle of unity conveys the essence of the unitary state structure. A federation – another form of state structure – is based on “dialectic combination of three principles – overlapping, autonomy, and participation.”¹⁵ The first principle reflects a federal state, which is above federal subjects; the second one defines federal subjects; and the third principle means cooperation of a federation and its subjects.

The scholar of Lithuanian constitutionalism, M. Römeris, has defined the *essence of the unity principle*, inherent to a unitary state, by using this formula: in a unitary state, “there is one authority, one territory, one nation (populus).”¹⁶ Therefore, the principle of unity must be analyzed in three aspects: a. unity of the nation; b. unity of the state’s authority; c. unity of the state’s territory.

In a unitary state, the source of authority is one civil nation. While analyzing the case of France (a typical unitary state structure), M. Duverger observes that the democracy in France has always been based on „the unity of the people or the nation.”¹⁷ Only the citizens of a state, i. e. a society organized at a state level – the civil nation, has a right to create their state (i. e. only citizens have the right to decide what the state should be like, to determine its constitutional structure, system of state authorities, the foundations of legal relations between the person and the state, the system of state economy, and etc). The institute of citizenship conveys legal participation in the state, the person’s legal belonging to the civil nation – state community.

The principle of unity means that the sovereignty belongs to the nation. Nobody can impede or limit the nation’s sovereignty, or appropriate the powers that belong to the whole nation. The civil nation implements these powers directly or through democratically elected representatives. The nation implements its constituent powers by adopting the Constitution. The unitary state structure’s source of authority is one civil nation, common to all citizens. Ethnic, racial, and other differences of the members of this community cannot be the basis to for sovereignty of separate parts of the nation. The unity principle of the nation of a unitary state means its indivisibility. Therefore, only the nation or its elected representatives may resolve the common issues relevant for the whole nation, and separate groups or members of the nation, if these issues exceed local limits.

The Constitution of a unitary state implements a unanimous system of national state authorities. Differently from federal states, where both federal and federal subjects’ power structures co-exist, in unitary states, the head of state, the parliament, the government and the system of national courts (systems) are the only state power institutions in the country. They exercise their authority without any limitations from the territorial

15 Giquel, J.; Giquel, J. E., p. 75.

16 Römeris, M., p. 6.

17 Duverger, M. *Le système français*. 20e édition, mise à jour et augmentée. Paris: Presses universitaires de France, 1990, p. 197.

point of view and in respect of state institutions of lower levels. National state institutions receive their authority from the nation (through the Constitution adopted by the nation and democratic establishment of institutions exercising state authority).

In unitary states the whole territory of the state is understood as one unit, which does not comprise of any other formations of governmental nature. It could be divided into administrative units only from the point of view of rational implementation of authority.

3. Unitary State Structure in Constitutions of Different Countries

State structure is a common object of constitutional regulation.¹⁸ Therefore, to determine the form of the federal or unitary state structure, we should first look at the text of the Constitution of a specific country and its interpreting constitutional jurisprudence.

Constitutional texts provide different formulations in defining the form of the unitary state structure. Sometimes the model of state territorial organization is not indicated at all and must be derived from various constitutional provisions. It is determined both by the internal context of the country (historic tradition, scientific thought, political situation of the period at the time of the adoption of a constitution, views of different political powers, and etc.), and by the external influence of that time (i.e. theories and practical experiences of other countries).

Constitutions of some countries use the category “unitary state” directly. For instance, Article 3 of the Constitution of Poland (1997) establishes: “The Republic of Poland is a unitary state.” Formulation of Article 2(2) of the Constitution of Ukraine (1996) is very similar: “Ukraine is a unitary state.” Sometimes the description of the unitary state structure is supplemented by elements that underline pure unitarism, e.g. Article 2 of the Constitution of Bulgaria provides that the Republic of Bulgaria is a unitary state with local self-government, where no territorial autonomous formations are allowed, and the territorial integrity of Bulgaria is inviolable.

In constitutions of other countries, the unitary state structure is established by stressing the indivisibility of the country, or its integrity. For instance, Article 1 of the Constitution of the Republic of France (1958) establishes that France is indivisible, secular, democratic and social republic, that it has a decentralized structure, and Article 4 of the Constitution of Finland (1999) provides that the territory of Finland is indivisible. Article 3(1) of the Constitution of Macedonia (1991) establishes that the territory of the Republic is indivisible and inviolable. Article 3(1) of the Constitution of Slovakia (1992) provides that the territory of Slovakia is united and indivisible. Article 4 of the Constitution of Slovenia establishes: “Slovenia is territorially unified and indivisible state.” Article 1 of the Constitution of Czech Republic (1992), besides other state cha-

18 *Konstitucinio reguliavimo įvairovė*. [The Diversity of Constitutional Regulation]. Kolektyvinė monografija. Vilnius: Mykolo Romerio universitetas, 2006, p. 20.

racteristics, establishes that the Czech Republic is a sovereign and unified state. Article 2 (2) of the Constitution of Estonia (1992) provides that Estonia is a unitary state wherein the division of its territory into administrative units is determined by law. Formulation of provisions on state indivisibility, unity, and territorial integrity shows the interest of states to protect themselves by legal means from arbitrary change of status of a territorial unit.

Sometimes the unitary form of state structure is not directly indicated in the text of a constitution. In that case, the system of constitutional regulation must be analyzed. Actually, it must be analyzed in other cases as well, because every constitutional institute is always interpreted in a context of a unified constitutional system. In other cases, unitarism is implied by providing special elements allowing to identify modification of its model. For instance, Article 6 of the Constitution of Portugal (1976) provides that the state is a unitary one organized to respect the principles of the autonomy of local authorities and democratic decentralization of the administration.

4. Unitary State Structure under the Constitution of the Republic of Lithuania

Article 10 of the Constitution of the Republic of Lithuania, proclaiming the integrity of the territory of Lithuanian state and its indivisibility into any State-like formations, entrenches the principle of unitary state structure. E. Šileikis claims that these provisions allow to consider „indivisible republic“ as a single integral territorial corporation.¹⁹

The official interpreter of the Constitution, the Constitutional Court, proclaimed that “Article 10 of the Constitution provides that the territory of the State of Lithuania shall be integral and shall not be divided into any state derivatives. It is this provision that contains the constitutional consolidation of the unitary state system and expresses the idea of a united and indivisible state.”²⁰

The provisions of Article 10 of the Constitution (just like any other constitutional provisions) must not be interpreted separately from other norms and principles of the Constitution. While analyzing the foundations of the unitary state structure established in the Constitution, it is necessary to pay attention to the constitutional provisions that establish that the state of Lithuania is created by the Nation, that sovereignty belongs to the Nation. (Article 2), that no one can restrict or limit the sovereignty of the Nation or make claims to the sovereign powers belonging to the entire Nation, that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force (Article 3), that the Nation executes its supreme sovereign power either directly or through its democratically elected representatives (Article 4), that in Lithuania, state powers are

19 Šileikis, E. *Alternatyvi konstitucinė teisė*. [Šileikis, A. *Alternative Constitutional Law*]. Vilnius: Teisinės informacijos centras, 2003, p. 189.

20 Ruling of the Constitutional Court of the Republic of Lithuania on subjects of administrative supervision of local government activities. 18 February 1998. *Valstybės žinios* [Official Gazette]. 1998, No. 18-435.

executed by the Seimas, the President of the Republic and the Government, and the Judiciary (Article 5(1)), that any law or other act, which is contrary to the Constitution, is invalid (Article 7(1)), that administrative units of the territory of the State of Lithuania and their boundaries are established by law (Article 11); Article 67(17) directly relates to the latter, according to which the Seimas establishes administrative division of the Republic, that Lithuanian is the State language (Article 14) and etc. In order to understand the form of unitary state structure, provisions of the Constitution's Chapter X "Local Self-Government and Governance" are not less important; these provisions define in short the foundations of governance of the country's administrative units, the principles of local self-government, and the system of local institutions. This Chapter establishes that the right to self-government is guaranteed to administrative units of the territory of the State, which are provided for by law, that it is implemented through corresponding municipal councils, that the procedure for the organization and activities of self-government institutions is established by law (Article 119), that the state supports municipalities, which act freely and independently within their competence defined by the Constitution and laws (Article 120), that at higher level administrative units, the governance is organized by the Government according to the procedure established by law, that the observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities is supervised by the representatives appointed by the Government, that in cases and according to the procedure provided for by law, the Seimas may temporarily introduce direct rule in the territory of a municipality (Article 123), and etc. The unitary Lithuania's state structure is based by indivisibility of the civil Lithuanian nation and the nation's sovereignty. According to the Constitution, the Nation is the creator of the State of Lithuania. From the constitutional point of view, the Nation is a community of Lithuanian citizens, formed on the basis of their common history, culture, state language, territory and economic life. The core of the civil Nation is the ethnic Lithuanian nation. The civil Nation is unanimous, all citizens of the Republic of Lithuania have an equal status, and they are all connected by a constant legal-political link with their state – Lithuania. Thus the unity of the civil nation determines the unity of the state's territorial structure. Sovereignty belongs to the civil Nation – it is the entirety of the highest rights, sovereign powers, which cannot be divided. The Nation cannot share it with any residents group or community of any part of the Lithuanian territory.

It should be noted that provisions of Article 10(1) of the Constitution mean that there cannot be internal borders, parts of territory with special autonomous status in Lithuania. This is yet another important consequence of the unitary model.

The integrity of the Lithuanian state is the constitutional principle of organization of the state of Lithuania. It is not an accident that Article 3 (2) of the Constitution provides that the Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and constitutional order of the State of Lithuania by force. Thus any such attempts to change the country's territorial structure by force are considered criminal and unconstitutional.

The Constitutional Court has observed, while interpreting constitutional provisions related with the state's territorial structure, that for reasons of rational organization of

administration, the territories of all states, including those of unitary states, have their own internal structure, i. e. they are divided into certain administrative units where corresponding state institutions are formed. According to Article 11 (2) of the Constitution the administrative units of the territory of the State of Lithuania and their boundaries are established by law. Thus an obligation of the legislator is established to observe the foundations of regulation provided in Chapter X “Local self-government and governance.” Two things are important: “First, the said chapter establishes no less than two levels (links) of administrative units. Second, different administration systems are established for administrative units of different levels (links): the Constitution ensures the right to self-government for lower (i. e. first level) units, while in the higher (i. e. second unit) administrative units administration is organized by the Government.”²¹

5. Choosing the Model of Pure Unitary State Structure

Unitarism plays an important role in the historic experience of Lithuania.²² The restored state of Lithuania in 1918 was unitary. While drafting the Constitution of 1922, the Constituent Assembly (*Seimas*) decided to include autonomous units in the unitary system. It was expected that this will help to integrate ethnic minorities into the common life of the country. The constitutional commission of the Constituent Assembly, while submitting the draft Constitution of 1922, suggested that “the Republic of Lithuania must be “one folded,” i. e. a unitary state according to its form of state structure; however, without disrupting the state’s integrity, separate parts of the state may retain their autonomy.”²³

The Constitution of the Republic of Lithuania of 1922 established the principle of unified state, even though the form of the state structure was not directly indicated as unitary. However, the entrenched unitarism was not the one of a pure form, but unitarism with autonomous elements. In order to understand the model of the unitary state structure, it is important to pay attention to the provisions of Article 5 of the Constitution of 1922, which provided that the administrative division of the Lithuanian territory is established by laws and that due to the particularities of the matters of local population of separate parts of Lithuania, autonomous units could be formed, with borders and rights protected by the law. The Constitution provided districts and cities with the right to self-government within the limits of law.

This principle remained unchanged in the Constitution of 1928. This Constitution provided that separate regions of Lithuania by a certain law may be granted the right to

21 Ruling of the Constitutional Court of the Republic of Lithuania on subjects of administrative supervision of local government activities.

22 “Lithuania has no tradition of federalization, or even decentralization.” (q. v. Vaičaitis, V. *Introduction to Lithuanian Constitutional Law*. Vilnius: Vilniaus universiteto leidykla, 2007, p. 35).

23 Maksimaitis, M. *Lietuvos valstybės konstitucijų istorija (XX a. pirmoji pusė)*. [Maksimaitis, M. The History of Constitutions of the Lithuanian State (First Part of XX c.)]. Vilnius: Justitia, 2005, p. 115.

autonomous governance (Article 6). The Constitution of the Republic of Lithuania of 1938 did not provide for changes in this regard either.

In practice, the region of Klaipėda took use of the autonomy (1924-1939). It was established by the Convention on transfer of Klaipėda region to Lithuania with annexes, signed by representatives of Lithuania, Great Britain, France, Italy and Japan on 8 May 1924. The legal construction of Klaipėda situation was clear: “Klaipėda county in Lithuanian state constitutes an autonomous province; it is within Lithuania’s sovereignty, thus it does not have an original source of power and only has as much authority, as Lithuania grants it by the statute.”²⁴

Researchers of the interwar Lithuania’s state life observe that even though Klaipėda county became a part of Lithuania, the central authority retained limited rights in the county. The questions of the legal position of this county were regulated by Klaipėda county statute. The autonomy of the county included legislation, administration, courts and finances.

This autonomy was not justified from the historic point of view; it was only an exclusion of part of Lithuania, which was imposed by foreign countries and impeded integration of the state lands. It should be noted that this autonomy was very helpful to Nazis in temporary taking the county from Lithuania. Thus the Nation – the creator of the revived Lithuanian Constitution – has come to realization of the rough interwar experience in the end of XX century.

Only with restoration of the Independence on 11 March 1990, Article 4 of the Provisional Basic Law established that the territory of the Republic of Lithuania is integral and indivisible; its borders may be changed only on the basis of international agreement upon ratification by four fifths of all deputies of the Supreme Council of Lithuania. Chapter 12f the Provisional Basic Law established administrative territorial division, and Chapter 13 specified executive institutions of local government. Thus Lithuania was reborn as unitary state with no “inclusions.”

Restored after the soviet occupation and annexation, the state of Lithuania faced many challenges during the period of 1990–1991. One of these challenges – the actions of soviet structures when forces against the independent Lithuanian state were being summoned, based on the idea of autonomous regions of Vilnius and Šalčininkai. However, the organizers of this “autonomy” did not manage to impede Lithuania’s path of independence nor take over any part of the Lithuanian territory. Although some people were misled by this demagogic politics, the arguers for the communist authority (“autonomists”) did not manage to acquire the support of the local residents.

While drafting the Constitution of the Republic of Lithuania in 1992, it was decided to entrench the idea of unified state at the highest legal level. This idea was approved by the Nation in the referendum of 25 October 1992; the Nation voted for the Constitution that establishes that territory of the State of Lithuania is integral and shall not be divided

24 Rōmeris, M. *Lietuvos konstitucinės teisės paskaitos*. [Romeris, M. Lectures on Lithuania’s Constitutional Law]. Vilnius: Mintis, 1990, p.178.

into any State-like formations. Thus, the Nation expressed very clearly its wish to create a unified state where no territorial units with a special autonomous status can exist.

As we can see, the development of constitutional regulation of Lithuania's state structure in XX century featured movement from unitarism with inclusions to the pure unitary state structure's form, as the best way to ensure the integration of the civil Nation. Administrative territorial units are not permitted in Lithuania, if their legal regulation is distinguished from other Lithuanian territorial units of the same level. The state structure from of Lithuania established in the Constitution must be considered as typical example of the pure unitary state structure form.

6. The Test of the Model of Pure Unitary State Structure

What are the criteria for identification of the model of pure unitary state structure? Let us verify whether Lithuania can be unconditionally considered as pure unitary state with all legal consequences attached hereto. Therefore, these questions must be answered: whether there is one constitutional system in the country, whether the national legal system is unanimous, whether there is only one system of state authorities, whether only courts of national judicial authority are active in the country, whether there is only one citizenship and one state language, and whether there is only one state budget? Positive answers to these questions confirm the existence of pure unitarism.

One constitutional system in the country. The Constitution of the Republic of Lithuania, adopted on 25 October 1992 by a referendum, is enforced in Lithuania. This legal act is distinguished in the national legal system by its significance, content and highest authority. The Constitution applies in all territory of the country; territorial units do not have and cannot have their own constitutions, constitutional charters, or acts of similar nature. The Lithuanian legal system is grounded on the principle of superiority of the Constitution. No legal act can contradict the Constitution. Therefore, the state structure established in the Constitution also constitutes a compulsory imperative.

Unanimous national legal system. Unitary states feature unanimous legal systems. They do not include autonomous systems of certain parts of state, even if these were subordinate to the highest state law. The unanimous legal system in Lithuania is constituted by three main levels of the legal regulation: Constitution-law-regulation. The national legal system is grounded on the principle of superiority of the Constitution. It is created in accordance with the foundations of legal regulation provided for under the Constitution. In all territory of the Republic of Lithuania, in all administrative units of our country, it is necessary to apply the legal norms of the Republic of Lithuania. All subjects without exceptions have a duty to follow the requirements of Lithuanian law. The legal norms of laws must comply with the Constitution, and regulation norms must comply with the Constitution and laws. Lower rank law cannot contain legal norms that establish a different legal regulation from the one established in the higher rank law, or provide legal norms that compete with the norms of higher legal level.

One system of state authorities. According to Article 5 of the Constitution of the Republic of Lithuania, the state authority in Lithuania is exercised by the Seimas, the President of Lithuania and the Government and courts. The Constitution directly establishes that state powers are limited by the Constitution and that state institutions serve the people. These constitutional provisions form the foundations of organization and functioning of state institutions of the Lithuanian state. The constitutional jurisprudence has established that the democratic organization and activities of the legal state is based by the constitutional principle on separation of powers. All aforementioned institutions are the only ones of the kind in Lithuania; they implement their authorities in all territory of the country. The Constitution of the Republic of Lithuania does not provide for any restrictions of their authorities on a territorial basis or in respect of any state institutions of a lower rank. Elaborating on the aforementioned statement of E. Šileikis, it could be claimed that implementation of authorities inherent to these institutions through the Constitution and laws, as an element of legal statehood, includes the protection of “indivisible republic” and its defense against criminal separatism.²⁵

Only the courts of national judicial authority are active in the country. Lithuanian justice courts belong to the national judicial authority. There are no local or regional courts in Lithuania. According to the Constitution, courts of justice in Lithuania are attributed not to one but two or (provided that this is established in adequate laws according to the Constitution) more court systems. The Constitution and laws provide that the Lithuanian national court organization is formed by three court systems:²⁶ 1. The Constitutional Court, implementing the constitutional judicial control; 2. Court system of general competence, which includes the Supreme Court of Lithuania, the Appeal Court of Lithuania, regional courts and courts of districts; 3. System of administrative courts, which includes the Supreme administrative court of Lithuania and regional administrative courts.

Division of state territory into administrative territorial units with equal status. Territories of purely unitary states are divided into certain administrative units. This form of state structure rejects the possibility of any autonomous formations of territorial organization. The Constitution of the Republic of Lithuania establishes not less than two levels (links) of administrative units. Moreover, different control system applies for administrative units of different levels: a. For lower level units (municipalities) the Constitution guarantees the right to self-governance; b. The government organizes the administration in higher level administrative units (counties). The main principles of local self government and organization of local governance and activities are established in the Constitution. They are implemented by adopting ordinary laws.

Unanimous citizenship. Citizenship shows belonging of a person to a certain state community – the civil Nation. Citizens of a unitary state have a unanimous citizenship. Administrative territorial units do not have their own citizenship and cannot have it. The institute of citizenship established in the Constitution is indivisible from the state of

25 Šileikis, E., p. 89.

26 See the rulings of the Constitutional Court of Lithuania, adopted on 13 December 2004, 16 January 2006, 28 March 2006, 9 May 2006.

Lithuania and from the civil Nation – the constitutional conception of state community. The state of Lithuania was created on the basis of an ethnic nation – Lithuanian nation, which is the core of the civil nation. In accordance with the Constitution, there are no contradictions and cannot be any contradictions between the conceptions of “ethnic” and “civil” Lithuanian nation. Precisely the citizens of the Republic of Lithuania must determine what the Lithuanian state should be like, to establish the constitutional structure of the Lithuanian state, the system of the institutions implementing state authority, and the foundations of legal relations between a person and the state.²⁷

One state language. According to Article 14 of the Constitution, Lithuanian is the state language of Lithuania. Entrenchment of constitutional status of the state language means that Lithuanian language is a constitutional value. State language protects the nation’s identity, integrates the civil nation, ensures the expression of nation’s sovereignty, integrity and indivisibility of the state, and normal functioning of state and municipalities’ institutions. State language is an important guarantee of civil equality because it allows all citizens to communicate with the state and municipalities’ institutions on equal grounds, and facilitates implementation of their rights and legal interests. The constitutional jurisprudence stresses that “integration into the society of Lithuania, becoming a full-fledged member of the state community – the civil Nation – is related to respective efforts, including learning the state language.”²⁸ The legislator must establish by laws the use of this language in public laws.

One state budget and other indications. Article 127 (1) of the Constitution provides that the budgetary system of the Republic of Lithuania consists of the independent State Budget of the Republic of Lithuania as well as independent municipal budgets. Thus, the Constitution establishes the conception of unanimous state budget, and clearly defines the functions of two state institutions, the parliament (Seimas) and the government, in the field of budget formation and implementation. Sometimes unitarism is additionally confirmed by such features like unanimous civil service, unanimous power structures and etc. The Lithuanian constitutional system also shows positive results in this regard.

Therefore, all Lithuanian responses to the *pure unitarism test* are positive. They confirm the presumption on the pure form of unitary structure in the Constitution of our country.

The principle of superiority of the Constitution presupposes the duty of the legislator to comply with the norms and principles of the Constitution, which also establish pure unitary state. This means that implementation of this model requires the Seimas to adopt certain legal provisions and at the same time comply with the constitutional prohibitions. While implementing the administrative territorial structure of the state and the authorities of local institutions, the Seimas must ensure that the same legal regulation applies in all territory of Lithuania, the state language is equally protected and the equality of citizens is preserved. Not only the Seimas, but also all institutions of public authority (both

27 See the rulings of the Constitutional Court of the Republic of Lithuania, adopted on 30 December 2003, 10 May 2006.

28 Ruling of the Constitutional Court of the Republic of Lithuania, adopted on 10 May 2006. *Valstybės žinios* [Official Gazette]. 2006, No. 52-1917.

central and local) must ensure proper implementation of the constitutional model of state structure.

7. The Constitutional Model of State Structure and Relative Decentralization in Lithuania

It is sometimes claimed that the unitary state structure is related to central authority, and the federal system features decentralization. This view is somehow one-sided and the practice of contemporary unitary states is completely different. “The governance of a unitary state can be organized in two ways: a unitary state can be more or less decentralized.”²⁹ In a centralized unitary state, the local institutions that organize the matters of the state’s composite parts form the central institutions. There is a small number of such states. A unitary state can be decentralized (decentralization should not be confused with de-concentration, i. e. one of the methods of administrative organization of a unitary state, according to which the central authority entrusts implementation of some of its authorities to authorized persons in administrative territorial units). In a decentralized state, institutions of administrative territorial units are elected by the local residents. These institutions have a significant degree of authority in handling local matters.

Many authors tend to supplement the aforementioned binary classification with a new element. This is the so-called trinomial system, where next to centralized and decentralized unitary states, the third category is mentioned: i. e. the category of relatively decentralized state where the system of administrative-territorial division is composed of few levels. Some of them (usually higher levels) establish local governance, and others – self-government. This model combines both centralization and decentralization, at the same time granting the priority to local governance. The meaningfulness of this relatively decentralized state organization model is based on the fact that decentralization does not only involve advantages and to find a solution of certain questions, a wider consolidation of powers is needed.

Lithuania should be attributed to this third model of governance organization, as its constitutional system establishes at least two levels of administrative units and different systems of governance applies for administrative units of different levels: the Constitution ensures the right to self-governance for the lower units, and the Government organizes the control in the higher administrative units. This model of decentralization of control functions is common to many constitutional systems of the European continent, thus the Lithuanian choice is not somehow exceptional in this regard.

It is likely that the further functioning of this model will be influenced by the tendency of Europe – increasing of decentralization. In this regard it is important to strengthen local representation also in higher administrative units (if necessary, modifying the constitutional regulation).

29 Chantebout, B. *Droit constitutionnel et science politique*. 10e édition, Paris: Armand Colin, 1991, p. 65.

Conclusions

1. The integrity of the Lithuanian state is the constitutional principle of organization of the state of Lithuania.

2. The Constitution of the Republic of Lithuania of 1992 establishes the model of pure unitary state structure. This is confirmed by the following entirety of features: In Lithuania, there is one constitution, one legal system, one system of institutions implementing state authority, one organization of courts, the territory is divided into administrative units of equal status, unified citizenship, one state language, and one state budget. The Constitutional Court, the official interpreter of the Constitution, confirms this model of Lithuania's unitary structure. The state structure model established in the Constitution means that there cannot be internal borders in Lithuania; parts of territory with special autonomous status, and residents or representatives of any territory cannot be distinguished. Local governance should ensure quality of all citizens.

2. The history of late XX–early XXI centuries confirms that Lithuania made a correct choice by establishing the model of pure unitary state structure. The chosen model of unitary state structure has strengthened the integration and statehood of the Lithuanian civil community. This shows the meaningfulness of the model of pure unitary state structure, established in the Constitution.

3. While adopting the laws on local governance and legal regulation on self-governance, the legislator faces the duty to comply with requirements arising from the model of pure unitary state structure established in the Constitution. Both state and municipal institutions have an obligation to ensure a proper implementation of requirements arising from the model of the constitutional state structure.

4. Further development of the local organization of matters in Lithuania is connected with strengthening of decentralization. This corresponds with general tendencies of development of local organization of matters in many constitutional systems of Europe.

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LIETUVOS VALSTYBĖS SANDAROS KONSTITUCINIS MODELIS

Egidijus Jarašiūnas

Mykolo Romerio universitetas, Lietuva

Santrauka. Straipsnyje nagrinėjami 1992 m. Lietuvos Respublikos Konstitucijoje įtvirtinto valstybės unitarinio sandaros modelio ypatumai. Pirmiausia autorius analizuoja unitarinės valstybės sandaros bruožus bei valstybės vieningumo principą. Unitarinę valstybės sandaros formos pasirinkimą lėmė istorinė Lietuvos valstybės patirtis. Pagal teritorinės struktūros pobūdį galima skirti dvi unitarinės valstybės sandaros porūšius: a) grynąją unitarinę valstybę ir b) unitarinę valstybę, turinčią autonominių intarpų.

Pagal Lietuvos Respublikos Konstituciją Lietuva yra grynoji unitarinė valstybė. Tai patvirtina tokių požymių visuma: Lietuvai būdinga viena konstitucija, viena teisės sistema, viena valstybės valdžios institucijų sistema, viena teismų organizacija, teritorijos suskirstymas į vienodą statusą turinčius administracinius vienetus, vieninga pilietybė, viena valstybinė kalba, vienas valstybės biudžetas. Šie požymiai leidžia identifikuoti grynąjį unitarizmą.

Grynosios unitarinės valstybės sandaros modelio konstitucinis įtvirtinimas suponuoja pareigą įstatymų leidėjui, priėmiant įstatymus, susijusius su vietos valdymo ir savivaldos teisiniu reguliavimu, nuosekliai laikytis iš Konstitucijos kylančių reikalavimų. Konstitucijoje įtvirtintas valstybės sandaros modelis reiškia, kad Lietuvoje negali būti vidaus sienų, ypatingą autonominių statusą turinčių teritorijos dalių, kokios nors teritorijos gyventojų ar jų atstovų išskyrimo. Įstatymuose nustatydamas valstybės administracinę teritorinę struktūrą, vietos valdymo ir savivaldos organizavimą, vietos institucijų teises ir pareigas Seimas privalo užtikrinti, kad visoje Lietuvos teritorijoje galiotų toks pat teisinis reguliavimas, kad visur vienodai būtų gerbiama valstybinė kalba, kuri leidžia visiems piliečiams vienodomis sąlygomis bendrauti su valstybės ir savivaldybių įstaigomis, įgyvendinti savo teises ir teisėtus interesus, kad nebūtų pažeistas piliečių lygiateisiškumo principas. Konstitucinio valstybės sandaros modelio tinkamą įgyvendinimą turi laiduoti visos viešosios valdžios institucijos (tiek valstybės, tiek savivaldos).

XX a. pabaigos–XXI a. pradžios istorija patvirtina tokio Lietuvos pasirinkimo teisingumą. Grynoji unitarinė valstybės sandaros forma stiprina Lietuvos pilietinės bendruomenės integraciją ir valstybingumą. Tolesnė modelio raidos kryptis turėtų būti sietina su decentralizacijos stiprinimu. Tai atitiktų daugelio Europos Sąjungos šalių vietos reikalų tvarkymo raidos bendrą kryptį.

Reikšminiai žodžiai: valstybės sandaros forma, valstybės vieningumo principas, grynoji unitarinė valstybė.

Egidijus Jarašiūnas, Mykolo Romerio universiteto teisės fakulteto Konstitucinės teisės katedros profesorius. Mokslinių tyrimų kryptys: konstitucinė justicija, valdžios institucijų santykiai, konstitucijos teorija.

Egidijus Jarašiūnas, Mykolas Romeris University, Faculty of Law, Department of Constitutional Law, professor, the Dean of the Faculty of Law. Research interests: constitutional justice, relations between state authorities, constitutional theory.