

SIGNIFICANCE AND PECULIARITIES OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA

LIETUVAS RESPUBLIKAS KONSTITUCIJAS NOŽĪMĪGUMS UN RAKSTURĪGĀS ĪPAŠĪBAS

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Abstract. *The meaning of the Constitution is significant in our society life given it is the supreme law of the country, regulating the most important relations between the Human Being, the Society and the State. This can be define as an agreement of the society, coordinating different interests. Therefore, in the article, the significance of the Constitution of the Republic of Lithuania as well as its peculiarities are analysed. The peculiarities of the Constitution revealed through its mandatory nature for all the entities of the legal relationship, through its stability, the supreme legal power, consistency, consolidation of the fundamental values, etc.*

Keywords: *the Constitution of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania, the states.*

Introduction

The Constitution of the Republic of Lithuania is the supreme law of the country and the main legislative act. The Constitution came into force after 1992 with consent of 56.7 percent of the Lithuanian citizens, entered into the electoral rolls. The Constitution creates a stable State framework and has special adoption, modification and cancellation procedures. All the provisions of the Constitution shall be interpreted, considering the principle of the primacy of the Constitution, as any legislation act may not object the Constitution as well as nobody may breach it, and the Constitutional order must be protected. It governs the relationship between the powers and identifies its organization and form; therefore, it is obligatory for all the participants of the legal relationship. The significance of the Constitution is evident by the fact that the officers of the Republic of Lithuania, while declaring the oath, are holding the hand on it. Therefore, the author of the article is seeking to reveal the concept of the Constitution, the significance of the Constitution of the Republic of Lithuania in the Society life and most important features and peculiarities of the Constitution in the article.

In the article has been used the following research methods: analysis of the legislation acts, the comparative, descriptive, generalization (aggregation) methods.

Research objective is to describe the significance and peculiarities of the Constitution of the Republic of Lithuania.

Research period from 2018 to 2019 (I don't understand it, sorry)

1. Concept of the Constitution

The Constitution is a coherent and directly applicable act. Everyone may defend his rights by invoking the Constitution (*The Constitution of the Republic of Lithuania, 1992*). The Constitution is an act of legal rules, which being in force are obligatory for all State institutions, officials, natural and legal persons, given each person can defend his/her rights on the basis of the Constitution. In the scientific literature, the Lithuanian term *konstitucija* is derived from Latin words: *constitutio* (English: order; system; arrangement), *constituo* (English: to identify; to set up; to establish; to define; to consolidate) (*Birmontienė et al., 2012, p.23*). The nature of this Latin title gives a hint of the original meaning of the word. The term *constitution* itself has already been known in the ancient Roman times. However, the concept of the constitution, as a power restricting superior law, is consolidated only in the era of constitutionalism, which beginning is marked by the 17th century constitutional ideas, the constitutional movement and

the first written constitution. The first written constitution, in force until now, is the constitution of the United States of America, which was adopted in 1787. The first constitutions in Europe were issued after 4 years by the Polish and Lithuanian state as well as in France. The first written constitutions expressed their aspirations for the democratic forces of the era, consolidated the ideas of the sovereignty of the nation, the division and balance of the powers, and the protection of the citizens' rights. The democratic constitutions currently in force are based on the unquestionable principle that a civil nation is the sole sovereign in the state and the constitution is the supreme legislative act. In the preamble of the 1992 Constitution of the Republic of Lithuania, it is declared that its source is the Nation. In other provisions of the Constitution, it is stated that the Nation is creating the Lithuanian state, and sovereignty belongs to the Nation (*The Constitution of the Republic of Lithuania, 1992*). Nobody can constrain or restrict the sovereignty of the Nation, assume entire Nation sovereign powers.

In the law science, the term *constitution* is used in a dual significance: the constitution in the formal meaning (a legal constitution) and the constitution in the substantive meaning (a factual, tangible constitution). A formal constitution is usually defined as a basic and fundamental legislative act of the state law having the supreme legal power, since the Constitution establishes the foundations of the organization and the functioning of the State power, defines the relationship between a person and a state. This act is adopted and modified by a special procedure. The Constitution in the substantive meaning is perceived as a real State government organization, the actual status of a person in a State, in other words, social relationship, formed actually, may not coincide with the formal constitution. The Constitution reflects a certain contract of the Society, i.e. a democratically assumed agreement and a commitment of all citizens of the Republic of Lithuania to comply with the regulations, specified therein. The Constitution, as an act of superior legal power and a contract of society, is based on universal values: sovereignty belonging to the Nation, democracy, recognition and respect of human rights and freedoms, respect for the law and the rule of law, the restriction of authority powers, the duty of the authorities to serve people and the responsibility for the society, citizenship, justice, the pursuit of an open, equitable, and coherent civil society and the rule of law, etc. In the Constitution, the fundamentals of the Human Being and the State relations, the formation and functioning of the public authorities, the nation's economy, local self-government, other most important public and state life relations are specified. Having adopted the Constitution, the civil people constructed a solid foundation of the common life of themselves as a State community. Since the Constitution is the supreme law, it defines the guidelines for the entire legal system as the entire legal system is established on the basis of the Constitution.

One of the most important duties of a democratic State, based on law and justice, is to respect, protect and safeguard the values, including human rights and freedoms, which are based on the Constitution itself, adopted by the Nation; which real consolidation, defense and protection is the *raison d'être* of the State itself; otherwise, the State could not be regarded as a great common society virtueu (*Konstitucinio Teismo, 22.07.1994, Nr.18/94; Konstitucinio Teismo, 25.05.2004, 24/04; Konstitucinio Teismo, 19.08.2006, 23/04*).

Examining the formal doctrine of the Constitutional Court, it is noticeable that it reflects all the most important aspects of the concept of the Constitution. Their entirety reveals the essence of the Constitution:

- 1) the Nation is the only source of the Constitution;
- 2) a referendum is a democratic method of the adoption of the Constitution by voting of the entire Nation;
- 3) the Constitution is the supreme law (any other legislation act is equivalent to it by the legal power);

- 4) the Constitution is the Society contract, the regulatory framework of the State community common life;
- 5) the Constitution is the commitment of the Civil Nation to live according to the framework regulations, enshrined in the Constitution, and to obey to them;
- 6) the Constitution is a long-term commitment, binding the present and the future generations;
- 7) the obligation to follow the Constitution and to obey it is not an end in itself given it will guarantee the legitimacy of the authority, the legitimacy of its decisions, human rights and freedoms, and harmony in the Society;
- 8) the Constitution is based on the universal unquestionable values;
- 9) the Constitution specifies the framework of the most significant relations of the Society and the State life;
- 10) the Constitution consolidates the State as a common great virtue of the entire Society;
- 11) the Constitution is the nucleus of the legal system (it directs the entire legal system, the legal framework is being developed on its basis);
- 12) one of the most important duties of a democratic state is to respect, defend and safeguard values, on which the Constitution is based.

2. Significance of the Constitution of the Republic of Lithuania

Given the Constitution is an integral and directly applicable acts (*The Constitution of the Republic of Lithuania, 1992*), and there is no law or other act in force, contrary to the Constitution (*The Constitution of the Republic of Lithuania, 1992*) it has a relatively important significance in every citizen's of the Republic of Lithuania, in every resident's of Lithuania or another person's, who has arrived in Lithuania, personal life. The supreme principle and significance of the Constitution is the fact that it is not the Government's act but the Nation's act. The Constitution is a social agreement, harmonizing the interests of various elements of the Society, of various social backgrounds and groups. In order to ensure public peace, there is a demand to set clear legal boundaries for the social political public processes. The Constitution does not mean harmony in general, but cohesion, following certain regulations, identified by the Constitution. In a democratic society, decisions are taken in accordance with a majority principle, however, seeking not to infringe the rights of the minority by the above decisions. The Constitution is also a legislation act, safeguarding from arbitrariness of the majority, ensuring the security of all Society members. The Constitution recognizes the inalienable human rights to life, liberty, property, etc. This is of greatly significance for the Society, which shall respect the above mentioned rights equally. The Constitution consolidates the State as the common good of the Society, as a procedure of coexistence.

In the Constitution of the Republic of Lithuania there are fourteen chapters, the first of which do regulate the relationship between the people and the State, interrelations ("The Human Being and the State", "Society and the State", "The National Economy and Labor"), rights and freedoms. The above regulations are extremely necessary, willing to become honest and civilized citizens as well as protecting human rights, specifying the boundaries of the private and public life, aliens' stay in Lithuania, protecting rights of the national minorities.

This Constitution came into force after the referendum, held in 1992, with the consent of 56.7 percent of the Lithuanian citizens, entered into the electoral rolls. The Constitution, adopted by the referendum is the act of the supreme legal power, by means of which the Lithuanian Nation has established own normative foundation of common life as a State community and a civil Nation and has consolidated the state as a common good for society as a whole. The principle of integrity of the Constitution assumes the fact that at the junction of the values, protected by the Constitution, solutions shall be found, ensuring that none of these values will be denied or restricted in an unjustified way (*Konstitucinio Teismo, 16.03.1999*,

Nr.7/98). The Constitution has a key role to play in a democratic rule of law; therefore, the first objective of all legal entities is to follow the constitutional rules and principles. Judicial protection is established to ensure constitutional rights. Paragraph 2 of Article 6 of the Constitution of the Republic of Lithuania stipulates that everyone shall defend the rights with reference to the Constitution. This provision implies that any legal entity, entitled to the constitutional rights, defending them, shall directly refer to the Constitution, given the defense of the above rights shall not be restricted by any additional legal regulation (*Birmontienė et al., 2012, p.255*).

The fact that the Constitution is essential also means that officials of the Republic of Lithuania, before taking up their duties, take an oath, placing their hand on the Constitution.

3. Peculiarities of the Constitution

The most significant legal peculiarities of the Republic of Lithuania are as follows:

- 1) the Constitution as the normative framework of the State community's common life and the most important source of national law;
- 2) primacy of the Constitution;
- 3) the Constitution - gap-free law;
- 4) stability of the Constitution;
- 5) integrity and direct application of the Constitution.

The Constitution legitimizes the basic provisions of legal regulation and forms the basis for legislation (*Konstitucinio Teismo, 29.05.1997, Nr.3/97*). The Constitution for the legal system of Lithuania serves as a nucleus, in which the aims and subject matters of the most important legal regulation areas are specified; all the above areas are influenced by the effects of the Constitution. Another important peculiarity of the Constitution is its primacy, the supreme legal power of the constitutional rules. The primacy of the Constitution of the Republic of Lithuania determines a special place in the legal system. It has a significant impact on all areas of legal regulation, on legal regulation methods and the application of law. The fundamental requirement of a democratic rule of law is the principle of the Constitution primacy, which is enshrined in Paragraph 1 of Article 7 of the Constitution, which stipulates that “any law or other act that contradicts the Constitution shall be invalid” (*The Constitution of the Republic of Lithuania, 1992*). This principle is also enshrined in Paragraph 2 of Article 5 of the Constitution, which stipulates that “the scope of power shall be limited by the Constitution” (*The Constitution of the Republic of Lithuania, 1992*) and Article 6 provides that “the Constitution is an integral and directly applicable act” and that “every human being shall defend his/her rights with the reference to the Constitution” (*The Constitution of the Republic of Lithuania, 1992*). All provisions of the Constitution should be interpreted, referring to the principle of the primacy of the Constitution. According to the Lithuanian Constitutional Court, “the rules and principles of the Constitution cannot be interpreted in accordance with acts, adopted by the legislator and other legislative entities, as this would deny the primacy of the Constitution in the legal system” (*Konstitucinio Teismo, 12.07.2001, Nr. 13/2000-14/2000-20/2000-21/2000-22/2000-25/2000-31/2000-35/2000-39/2000-8/01-31/01; Konstitucinio Teismo, 01.07.2004, Nr.04/04; Konstitucinio Teismo, 10.02.2005, Nr.04/04*).

The Constitutional Court resolutions, dated 24 December 2002, 29 October 2003, 5 March 2004, 20 March 2007, and the judgment of 20 November 2009 reveal that the principle of primacy of the Constitution means the following:

- 1) the Constitution takes an exceptional, i.e. the highest position in the hierarchy of the legislation;
- 2) no legislative act shall object the Constitution;
- 3) nobody is allowed to breach the Constitution;
- 4) the Constitutional order must be protected;

- 5) the Constitution itself establishes a mechanism, empowering the identification, whether the legislation acts (parts thereof) are in conformity with the Constitution;
- 6) the principle of the primacy of the Constitution, enshrined in the Constitution, is inseparably linked with the constitutional principle of the rule of law, under which the entire Lithuanian legal system and the Constitution itself are based on;
- 7) a breach of the primacy principle of the Constitution would mean violation of the constitutional principle of the rule of law.

The principle of the primacy of the Constitution, enshrined in the Constitution, is inseparably linked with the constitutional principle of the rule of law as a universal constitutional principle, on which the whole Lithuanian legal system and the Constitution itself are based on. The principle of the primacy of the Constitution implies the duty of the legislator, other legislative entities to carry out a review of legislative acts, issued before the entry into force of the Constitution in accordance with the rules and principles of the Constitution, to ensure the review of legislative acts considering the same relationship (*Birmontienė et al., 2012, p.251*).

One of the most important features of the Constitution is its stability, which is very valuable. The Constitution must not be altered if it is not legally required. This is certified by more complex and more difficult procedure for making amendments of the Constitution compared with constitutional and ordinary laws. "The stability of the Constitution is one of the preconditions to ensure the implementation of the state continuity, respect for the constitutional order and the law, in the Constitution declared nation's aspirations, by which the Constitution itself is grounded" (*Birmontienė et al., 2012, p.252*).

One of the conditions that ensures the stability of the Constitution is the stability of its text. The nature of the Constitution and the idea of the constitutionality presuppose that no gaps might occur and there are no gaps, neither internal contradictions in the Constitution (*Birmontienė et al., 2012, p.252*). The meaning of the Constitution as the most stable legislative act would also be ignored if the intervention in its legislation act was executed every time when any legally regulated public relations (e.g., when technological potential of some certain kind activity is being developed in the way that could and could not be predicted at a time, when the text of the Constitution was still under the establishment process) had been modified. Undoubtedly, the stability of the Constitution does not deny the dynamism of the legal regulation. It is optimal when the stability of the Constitution is combined with the dynamism of Constitutional Law.

Among the constitutional regulation features, the integrity and direct applicability of the Constitution are present. In this article it has already been mentioned that, "The Constitution shall be an integral and directly applicable act. Everyone may defend his rights by invoking the Constitution" (*The Constitution of the Republic of Lithuania, 1992*). The integrity of the Constitution is an essential feature of the constitutional regulation. The Constitutional Court has ruled several times that:

- 1) all provisions of the Constitution are interrelated and compose one coherent framework;
- 2) there is a balance among the values, enshrined in the Constitution;
- 3) none of the provisions of the Constitution can be interpreted in a way to distort or deny the content of any other provision of the Constitution, as this would distort the essence of the entire constitutional legal regulation, the balance of the constitutional values would be violated (*Konstitucinio Teismo, 15.04.2004, Nr. 17/04*).

First of all, the integrity of the Constitution means that constitutional provisions are interrelated not only formally, according to the layout order of the rules of the Constitution, but also according to their contents. Both the preamble of the Constitution and its sections together with the articles constitute a meaningful whole of the Constitution. In particular, the significance of the Constitution, as a coherent and directly applicable act, meaning is evident

when the constitutional provisions on human rights and freedoms are evaluated. In its acts, the Constitutional Court has stated that it is namely given the Constitution is an integral and directly applicable act, consisting various provisions - both constitutional rules and constitutional principles, among which there can be no and there is no opposition and which form a harmonious system, because the constitutional principles are derived from a whole of the constitutional legal regulation, expressing the spirit of the Constitution; from the significance of Constitution as an act, consolidating and protecting a system of values of the most important state community - civil Nation, as well as influencing the entire legal system; as well as the fact that the letter of the Constitution cannot be interpreted or applied in such a way as to deny the spirit of the Constitution; the Constitution cannot be interpreted only literally, using only the linguistic (verbal) method; interpreting the Constitution, it is necessary to apply various methods of interpretation of the law: systemic, general principles of law, logical, teleological, intentions of the legislator, precedents, historical comparative, etc.; only to realize its purpose as a Society contract and an act of the highest legal power, to ensure that there will be no deviation from the meaning of the Constitution, that the spirit of the Constitution will not be denied and that the values by which the Nation grounds own adopted Constitution will be enshrined in life; its own constitution; the interpretation of all the provisions of the Constitution in the context of the constitutional principle of the rule of law is a prerequisite for the comprehensive interpretation of the Constitution (Constitutional Court resolutions of 25 May 2004, 13 December, 2004), (*Konstitucinio Teismo*, 24.09.2009, Nr. 16/2009).

The principle of integrity of the Constitution implies also that under the lever of the values, protected by the Constitution, judgements, ensuring that none of these values will be denied or restricted unreasonably, must be found (*Konstitucinio Teismo*, 16.03.1999, Nr. 7/98).

The principle of direct application of the Constitution implies that the Constitution of the Republic of Lithuania is not a political declaration, but an act of rules of law, the rules of which are valid and binding:

- 1) for all the state institutions;
- 2) for officials;
- 3) for natural and legal persons.

Under constitutional provisions, it is possible to protect own rights that constitutional requirements must be respected in all cases. Otherwise, the Constitution would not be able to fulfil its own role as the supreme State law, as the most important source of national law. The direct application of the Constitution is a feature of modern constitutional democracy, its recognition as a fundamental source of law regarding its normality.

The Constitutional Court, interpreting the principle of integrity and direct application of the Constitution, stated that: "The legislator's discretion to legislate, including those regulating the procedure for the application of the provisions of the Constitution, restricts Constitution; the legislator must respect the rules and principles of the Constitution. Thus, under the Constitution, the legislator does not have the right to establish any legal regulation, restricting or denying the possibility of direct application of the Constitution" (*Konstitucinio Teismo*, 24.12.2002, Nr.49/2000).

The direct application of the Constitution is one of the methods of influence of the Constitution by consolidating specific legal relations, by safeguarding constitutional rights and freedoms. It should also be noted that the direct application of the Constitution does not deny the legal regulation of the majority of social relations by laws and other legislative acts.

The Constitution, as an act of superior legal power and a society contract, is based on the following universal, unquestionable values:

- 1) dependence of the sovereignty to the Nation;
- 2) democracy;
- 3) recognition of human rights and freedoms as well as their respect;

- 4) respect for law and the rule of law, restriction of the authority powers;
- 5) duty of governmental institutions;
- 6) to serve for people and the responsibility for the Society;
- 7) citizenship;
- 8) justice;
- 9) by aspiration of the open, just and cohesive civil Society and the rule of law.

Conclusions

1. The Constitution is understood as a legislative act, possessing the supreme power, establishing the most important regulations of life in the State. In a democratic rule of law, the Constitution plays an essential role; therefore, the first objective of all legal entities is to comply with the constitutional rules and principles.
2. The significance of the Constitution of the Republic of Lithuania may be disclosed through its importance as a major public agreement, where the interests of the different groups are coordinated. The Constitution regulates the fundamental interrelations between the Human Being, the Society and the State.
3. The peculiarities of the Constitution are revealed through its binding nature to all entities of the legal relations, through its stability, the supreme legal power, integrity, the consolidation of fundamental values, etc.

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Kopsavilkums

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