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# The Multi-Stage Adoption of the 1992 Lithuanian Constitution in Comparative Perspective and Some Constitutional Paradoxes

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This article is the first attempt to analyse the Constitution of the Republic of Lithuania of 1992 from the perspective of the comparative concept of multi-stage constitution-making. The article consists of three parts: the first two explain, why the 1992 Lithuanian Constitution is not only a result of the 1989–1992 political and legal events in the country, but also bears some conceptual similarities in the latter legal steps with those of 1918–1922. From a comparative perspective, we can see that the multi-stage constitution-making in Lithuania (as well as other Baltic states) in the late 1980s and beginning of 1990s differs from some countries in the region of Central Eastern Europe (e.g., Poland and Hungary), because it includes the concept of continuity with the inter-war republics and does not include the phenomenon of "round tables" between the Communist party and so-called new People's Front movements. The third difference is that the new constitutions were adopted in Lithuania and Estonia (and re-adopted in Latvia) at the beginning of 1990s, i.e., during the so-called "constitutional moment", while in Poland and Hungary this happened a bit later. The last chapter of the article shows some constitutional paradoxes of constitution-making, namely: the paradox concerning the legitimacy of the authority having the power to adopt a constituent act; the paradox of mutual inter-dependence between the constituent authority and the constituent act, adopted by this authority; the so-called paradox of "illegality of law" of the constituent act (including the constitution adoption process) and the paradox of retrospectivity of the constituent act.

**Keywords:** multi-stage adoption procedure, Constitution, constitution-making, restoration of independence, elections, paradox.

## Contents

## Introduction

The idea of this article is to reconsider the process of adoption of the 1992 Lithuanian Constitution in the light of its thirty-year anniversary, and to show the complex and multi-stage character of this process. It is also important that this anniversary of the 1992 Lithuanian Constitution coincides with the centennial anniversary of the 1922 Constitution as the first modern Lithuanian democratic constitution. It has to be said, that Lithuanian legal scholars have not analysed the legal and political stages of the adoption of the 1992 Lithuanian Constitution, – neither by linking them with the 1990 Act of Restoration of Independence (or with previous political events in the country), nor with the constitutional acts of interwar Lithuania (the First Lithuanian Republic). This article shows that disregarding the complexity of this constitution-making process may result in losing the proper understanding of the 1992 Lithuanian Constitution and the way of its adoption.

Thus, the current article states that the multi-stage process was used for the adoption of the 1992 Lithuanian Constitution, which was partly influenced by the events of the end of the 1980-ies, but furthermore, indirectly – by interwar political events in the country. Incidentally, the so-called "multi-stage" form of constitutional adoption is a rather widely discussed phenomenon in the comparative constitutional literature: for example, Andrew Arato in his book "Post Sovereign Constitution-Making. Learning and Legitimacy" (Oxford University Press, 2016)[1] analyses the recent constitutional amendment process in Hungary, comparing it with the earlier constitutional process in Poland. Thus, Andrew Arato distinguishes five stages of the 1989–1990 multi-stage constitution-making process in these two countries: (i) formation of the so-called roundtables and their compromises with the then communist government, (ii) adoption of an interim constitution, (iii) election of the first democratic parliament, (iv) adoption of a new constitution by this parliament; and v) ratification of this constitution by a nationwide referendum.

Considering the Baltic region, it is important to emphasize that multi-stage adoption of constitutions (as constitutional continuation of interwar republics) is reflected in the preambles to these constitutions. For example, the preamble of the 8 June 1992 Lithuanian constitutional act, which is an integral part of the Lithuanian Constitution, states that the former act is adopted on the basis of the 1918 (and of the 1990) Independence Act. The preamble to the 1992 Estonian Constitution also contains a reference to the 1918 Declaration of Estonian Independence[2]. Similarly, the 2014 amendment to the 1922 Latvian Constitution states that the Latvian state was created in 1918 and that "The people of Latvia did not recognise the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of continuity of the State"[3]. Thus, it should be noted here

[1] See also articles by the same author: Conventions, Constituent Assemblies, and Round Tables: Models, Principles, and Elements of Democratic Constitution-Making. Global Constitutionalism, Vol. 1, issue 1, 2012; Multi-Track Constitutionalism Beyond Carl Schmitt. Constellations, Vol. 18, issue 3, 2011; Post-Sovereign Constitution-Making in Hungary: After Success, Partial Failure, and Now What. South African Journal of Human Rights, Vol. 26, Part I, 2010. See also *Ginsburg, T., Elkins, Z., Blount, J.* Does the Process of Constitution-making Matter? Annual Review of Law and Social Science, 2009.

[2] The Constitution of the Republic of Estonia. RT 1992 26, 349. The 1992 Estonian Constitution was supplemented by a preamble following the adoption of the 2007 Amendment to the Constitution. RT 2007, 33, 210. Available: https://www.riigiteataja.ee/en/eli/521052015001/consolide [last viewed 17.08.2023].

[3] The 1922 Latvian Constitution (Latvijas Republikas Satversme (15.02.1922). Valdības Vēstnesis, No. 141, 1922) was supplemented by a preamble following the adoption of the 19 June 2014 Constitutional

that the constitutions of Lithuania and other two Baltic states enshrine the provisions that the current Constitution is not only the result of political events of 1989–1992, but also of those after the First World War.

Notably, almost all the stages of the adoption of new constitutions after the fall of communism mentioned by Arato are more or less suitable for Lithuania and other two Baltic states (although Latvian case is a particular one, as it did not adopt a new document, but instead readopted the interwar 1922 Constitution). Thus, one of the main features of the multi-stage adoption of constitutions of the Baltic states is that in these countries (due to the loss of statehood during the Second World War) it was very important to show the illegality of the Soviet occupation and to demonstrate a continuity with the interwar constitutional tradition. Therefore, this article partly incorporates the practice of interwar Lithuanian constitutionalism into the contemporary constitution adoption process. In other words, it is stated here that the adoption procedure of the 1992 Lithuanian Constitution would have been different without the experience of adoption of the 1922 Lithuanian Constitution[4].

## 1. The multi-stage adoption of the 1922 Lithuanian Constitution

(1) The Lithuanian national revival at the end of the 19th century and the early 20th century led to the election of the Council of Lithuania (*Lietuvos Taryba*) in September 1917 and its Independence Act on 16 February 1918[5]. However, this Council was not a body formed on the basis of democratic elections (in the modern sense), therefore, it was necessary that the restoration of independence of 1918 be approved by the democratically elected representation of the nation. This is exactly what happened when democratically elected Constituent *Seimas* (Assembly) adopted the resolution of the 15 May, 1920 at its first sitting, not only reaffirming Lithuania's independence, but also providing Lithuania's form of government as a democratic republic[6], which was already determined in the aforementioned Independence Act of 16 February 1918.

Hence, the Council of Lithuania, which functioned during 1917–1920, considered itself a transitional institution, having the power not only to declare independence, but also to hold democratic elections of the Constituent *Seimas*, which had to adopt the Constitution. Therefore, before the adoption of the Constitution, the Council had

Amendment. See the consolidated text of the Constitution at: https://likumi.lv/ta/en/en/id/57980 [last viewed 17.08.2023].

[4] During the interwar period (besides the 1922 Constitution), the 1928 and the 1938 Lithuanian constitutions have also been adopted in Lithuania, but these constitutions are not included in this analysis of democratic processes, because the last two have been adopted after the *coup* in the end of 1926.

[5] Lietuvos Aidas, m. vasario 19 d. No. 22(70), 1918. Available: https://web.archive.org/web/20071113213946/http://viduramziu.istorija.net/etno/vasario16-en.htm [last viewed 17.08.2023]. It is widely accepted that this independence act is not only a political, but also a constitutional act, which was re-affirmed by the 11 March 1990 Independence Act "On the Restoration of the Independence of the State of Lithuania" adopted more than 70 years later. More thereof: *Paužaitė-Kulvinskienė, J., Vaičaitis, V*. 1918 m. vasario 16-osios akto konstitucinė samprata. Teisė, 2015, T. 94, pp. 176–188; *Sinkevičius, V*. 1990, m. kovo 11-osios aktas "Dėl Lietuvos valstybės nepriklausomybės atstatymo. In Lietuvos konstitucionalizmas. Ištakos, raida, dabartis. LR Konstitucinis Teismas, 2018, pp. 140–146.

[6] "The Constituent *Seimas* (Assembly) of Lithuania, expressing the will of the people of Lithuania, proclaims the existence of a restored Independent State of Lithuania as a democratic republic, with ethnological borders and free from all state relations that have existed with other states". Available: https://www.lrs.lt/sip/portal.show?p_r=38020&p_k=1 [last viewed 17.08.2023].

to adopt not only the provisional Constitution[7], but also the Law on Elections to the Constituent *Seimas* (Assembly)[8]. Thus, prior to the election of the Constituent *Seimas* in 1920, the Council adopted the following constitutional decisions (including the act of independence itself):

1) Act of Independence of 16 February 1918 → 2) 2 November 1918 Fundamental Laws of the Provisional Constitution (amended on 4 April 1919) → 3) 30 October 1919 Law on Elections to the Constituent *Seimas*.

(2) Thus, the Constituent *Seimas* elected in 1920 was unable to adopt the Constitution in a short time, first of all, because the Constituent *Seimas* as a "sovereign power" could not base its decisions on the legislation adopted by the transitional body – the Council of Lithuania (*Lietuvos Taryba*). Besides, before drafting the permanent Constitution it was necessary to adopt the Rules of Procedure of the Constituent *Seimas* and, finally, to adopt the Provisional Constitution (1920). Thus, the Constituent *Seimas*, continuing the constitutional processes of the Council of Lithuania, used the following four steps for the adoption of the 1922 Constitution by adopting 1) the Resolution of the Constituent *Seimas* of 15 May, 1920, re-affirming the independence and determining the republican form of government → 2) Rules of Procedure of the Constituent *Seimas* of 18 May 1920 → 3) Provisional Constitution of 10 June 1920 → 4) the 1922 Lithuanian Constitution.

The adoption of the 1922 Constitution was clearly a multi-stage process, as for its proclamation an adoption of previous seven constitutional acts were needed: 1) 1918 independence act; 2) 1918–1919 Fundamental Laws of the Provisional Constitution; 3) Law on Elections to the Constituent *Seimas* (30 October 1919 ); → 4) Resolution of the Constituent *Seimas* of 15 May 1920; → 5) Rules of Procedure of the Constituent *Seimas* (18 May 1920); → 6) Provisional Constitution (10 June 1920); → 7) 1922 Lithuanian Constitution.

## 2. The multi-stage adoption of the 1992 Lithuanian Constitution

Before commencing the analysis of the multi-stage 1992 Constitution-making, it has to be said that the 1992 Lithuanian Constitution is a compromise between two main draft Constitutions: the parliamentary one and the presidential one. Therefore, the form of government defined in the 1992 Constitution, according to the 10 January 1998 decision of the Lithuanian Constitutional Court, is parliamentary republic with certain peculiarities of semi-presidential form of government[9].

After the occupation and annexation of Lithuania by the Soviet Union in June 1940, the latter introduced the 1936 Stalin Constitution, and during the second soviet occupation (1944–1990), after "reaching the historical stage of mature socialism", the so-called 1977 Brezhnev Constitution was introduced in the territory of Lithuania (together with the 1978 Constitution of the Lithuanian Soviet Socialist Republic[10]). Thus, in 1990, when Lithuania's independence was restored, it was necessary to distance the state from these pseudo-constitutional acts of the occupying power, showing their illegality and emphasizing the continuity of the restored Lithuanian state with the interwar Lithuanian Republic.

[7] 2 November 1918 Fundamental Laws of the Provisional Constitution of the State of Lithuania. Lietuvos aidas, No. 130, 13.11.1918.

[8] Laikinosios Vyriausybės žinios, No. 16, 02.12.1919.

[9] Valstybės žinios, No. 5-99, 1998.

[10] Vyriausybės žinios, No. 11-130, 1978.

There is a general consensus that the creation or restoration of a democratic order can only be achieved through democratic means, in accordance with the principle that democracy can be born of democracy. In other words, only a democratically elected parliament or a constituent assembly could restore an independent and democratic state. However, the paradox here lies in the fact that, in general, the peaceful transition from an undemocratic regime to democracy sometimes requires a reference to previous undemocratic legal acts.

As noted above, the most important legal acts that were in force in occupied Lithuania until the restoration of independence were the 1978 Constitution of the Lithuanian Soviet Socialist Republic (Lithuanian SSR) together with 1989 Law on Elections to the Supreme Council of the Lithuanian SSR, and Rules of Procedure of the Supreme Council of Lithuanian SSR. Therefore, the Supreme Council of the Lithuanian SSR elected in the February 1990 elections convened its first meeting and adopted the first legal acts relying on the soviet legal acts, while these elections were organised and approved by the Electoral Commission of the Lithuanian Soviet Socialistic Republic. Admittedly, the electoral laws of the Lithuanian SSR were already partially democratized in 1989–1990[11]. Thus, for the first time since the first soviet occupation in 1940, the elections provided not one, but two candidates for one seat[12].

The first meeting of the newly elected Supreme Council took place on March 10, 1990. In the elections held on 23 February–10 March 1990, 133 deputies out of 141 were elected to the Supreme Council. Therefore, the quorum of 3/5 members of parliament to start the parliamentary session was pronounced by the then Chairman of Electoral Commission according to the (amended) 1978 Constitution of the Lithuanian SSR[13] and the Rules of Procedure of the Supreme Council of the Lithuanian SSR. In the same way, on 11 March 1990, the Speaker of the Supreme Council of the Lithuanian SSR and his deputies were elected on the basis of the soviet legal acts[14]. Therefore, paradoxically, not only the organization of the 1990 parliamentary elections, but also the democratically elected parliament had to start and organize its activities with the reference to the laws of the undemocratic regime. Only after that, on the same day – 11 March 1990 – the Supreme Council adopted the Act "On

[11] In the Soviet Union (and thus, in the occupied territory of Lithuania) the "elections" to the so-called Soviets (and thus to the Supreme Council – the pseudo-parliament) were conducted according to the list of candidates prepared in advance by the Communist Party in which there were only as many candidates as needed to fill the seats. According to official soviet data, in 1985 – 99.99% of voters participated in the elections to the Supreme Council of the Lithuanian SSR and 99.99%, in turn, voted for the candidates of the "inseparable communist bloc". Of 350 deputies: 67.1% were members of the Communist Party, 15.1% – members of communist youth organisation Komsomol and 17% did not belong to the Communist party. See: *Truska, L.* Paskutinioji (1985–1990 m.) Lietuvos TSR Aukščiausioji Taryba: evoliucija iš valdžios fikcijos į parlamentą. Vilniaus Pedagoginis Universitetas, Mokslo darbai „Istorija", 75 tomas, 2009/3.

[12] On 24 February 1990, the elections to the Supreme Council of the Lithuanian SSR were held in 141 single-member constituencies, where 133 deputies were elected from 472 candidates, 96 of whom were supported by the *Sąjūdis*. The remaining deputies were elected up to 10 March 1990. See the transcript of the first meeting of the Supreme Council on 10 March 1990. Available: https://www.lrs.lt/datos/kovo11/st_01.htm [last viewed 17.08.2023].

[13] The last (29 September 1989) Amendments to this Constitution, see: Žinios, No. 29-378, 1989.

[14] See the 11 March 1990 Resolution of the Supreme Council of the Soviet Socialist Republic of Lithuania "On the Election of the Speaker of the Supreme Council of the Soviet Socialist Republic of Lithuania" (Valstybės žinios, No. 9-215, 1990) and the March 11 1990 Resolution of the Supreme Council of the Soviet Socialist Republic of Lithuania "On the Election of the Deputy Speaker of the Supreme Council of the Soviet Socialist Republic of Lithuania" (Valstybės žinios, No. 9-216, 1990).

the Restoration of the Independent State of Lithuania"[15], and two accompanying acts: the Law on the Restoration of the 1938 Lithuanian Constitution (the last one in force before the Soviet occupation in 1940)[16] and the 1990 Provisional Fundamental Law of the Republic of Lithuania[17].

It should be recalled here that a year later, i. e., on 9 February 1991, it was decided to organize a plebiscite (consultative referendum), during which more than three quarters of Lithuanian voters supported the statement that the Lithuanian state is an independent democratic republic. On 11 February 1991, the Constitutional Act of the Republic of Lithuania "On the State of Lithuania" was adopted[18], which later became an integral part of the 1992 Constitution.

Thus, here emerge some historical legal parallels (or at least – similarities) with the restoration of interwar independence by the Constituent *Seimas*, which passed the 15 May 1920 resolution constitutionalizing the 1918 Independence Act, and later adopted the 1922 Constitution. In similar way, the Supreme Council, by adopting the 1991 Constitutional Act, re-affirmed the 1990 Act of Independence, and subsequently approved the draft of the 1992 Constitution. Therefore, it can be noted that the Supreme Council in 1990–1992 did not consider itself as being an ordinary parliament, but compared itself to the status of the 1920–1922 Constituent *Seimas*.

Thus, based on the above, in the process of adopting the 1992 Constitution of the Republic of Lithuania, the following main legal steps can be singled out:

1) In 1989, the Supreme Council of the Lithuanian SSR made some democratic changes in the text of the 1978 Lithuanian SSR Constitution[19] and in the Law on Elections to the Supreme Council of the Lithuanian SSR →
2) Organization of the 1990 elections to the Supreme Council of the Lithuanian SSR, which due to the wide participation of voters and the possibility for the Lithuanian Reform Movement (*Sąjūdis*) to nominate alternative candidates (to the Communist Party) can be considered at least partly as democratic elections →
3) On 11 March 1990 the Supreme Council adopted the Act on the Restoration of the Independent State of Lithuania, and on the same day approved the provisional constitution – the Provisional Fundamental Law →
4) In 1991–1992, the preparation of various drafts of the Constitution took place →
5) Approval of the draft Constitution on 13 October 1992 by the Supreme Council →
6) Adoption of the new Constitution by popular referendum on 25 October 1992.

## 3. Four constitutional paradoxes

First of all, the constitutional law is not an ordinary law, but a fundamental or basic law, and this fundamental nature of Constitution also includes certain paradoxes: on the one hand, the Constitution is a part of national legal system, but on the other hand, it is a foundation of this legal system. Therefore, not only the nature of the 1992 Lithuanian Constitution, but also its multi-stage adoption procedure can be seen as a set of certain paradoxical events.

[15] Lietuvos aidas, No. 11-0, 16.03.1990.
[16] Valstybės žinios, No. 9-223. 1990.
[17] Valstybės žinios, No. 9-224, 1990.
[18] Valstybės žinios, No. 6-166, 1991.
[19] E.g., the provision on the ruling role of the Communist Party was repealed.

(1) First of all, the paradox of a subject (body) having the power to declare independence, which is, as a rule, a necessary step for later adoption of the Constitution. According to modern democratic tradition, such a decision on independence could normally be proclaimed only by an institution with the nationwide mandate[20], but the legal problem here is that until the declaration of independence is adopted, public institutions, functioning in the state to be seceded from, usually oppose any separatist movements. Meanwhile, neither societal organizations (such as the People's Front), nor semi-social and semi-political formations such as "roundtables" are suitable for the adoption of constitutional acts, including declarations of independence. Therefore, there is some universal practice of changing the status and title of a particular institution by its own decision in order to adopt independence or constituent acts. For example, the Third Estate Assembly in Paris in 1789, as part of the *Assemblée des notables*, changed its name to the National Constituent Assembly (*Assemblée Nationale Constituante*), asserting its power to represent the whole nation and claiming authority to adopt a nationwide constitution. An analogy can also be observed in the Council of Lithuania (*Lietuvos Taryba*), elected in German-occupied Vilnius during the First World War (1917), which by German occupying authority was called *Litauische Landesrat* and was understood as body under the system of German rule in occupied territories. On the other hand, members of this Council, unlike the German occupation authorities, considered itself as representatives of the entire Lithuanian nation, therefore, it called itself a Council of Lithuania (*Lietuvos Taryba*)[21] having a mandate to adopt the 1918 Independence Act. Similarly, in February 1990, according to the reformed and partially democratized Soviet Constitution and electoral laws, the elected deputies of the Supreme Council of the Lithuanian Soviet Socialist Republic considered themselves democratically elected representatives of the entire Lithuanian nation and not members of the puppet soviet quasi-parliament. Therefore, by adoption of the 11 March 1990 Act of the Restoration of Independence, the Supreme Council of the Lithuanian SSR renamed itself as the "Supreme Council of the Republic of Lithuania". It is important to mention this paradox in the context of this article, because the 1992 Lithuanian Constitution was drafted and put to the popular referendum by the same Supreme Council.

(2) The second paradox lies in the dialectic between the constituent body (entity) and the constituent act adopted by this body (entity). For example, the 1918 Independence Act was adopted by the Council of Lithuania, while on the other hand, this Independence Act itself legitimized the Council of Lithuania, because this Council, without the adoption of the Act of Independence (i.e., without restoration of Lithuania's independence), would have remained *de jure* a *Litauische Landesrat*. Thus, the so-called chicken and egg paradox appears here, and it can be schematized, as follows: Council of Lithuania → Act of Independence → Council of Lithuania (or Act of Independence → Council of Lithuania → Act of Independence). A similar paradox can be noted between the Supreme Council and the 1990 Independence Act: the latter act was adopted by the said Supreme Council, but at the same time, the Independence Act (legally) created the Supreme Council of the Republic of

[20] As the 2014 Scottish example shows, an independence decision could also be proclaimed by the popular referendum, but the 2014 Scottish independence referendum is more an exception than the rule. See, e.g., *Hassan, G*. Scotland the Bold: How our nation has changed and why there is no going back. Freight Publishing, 2016.

[21] And from 11 July 1918 it changed its name to the Council of State of Lithuania (Lith. *Lietuvos Valstybės Taryba*).

Lithuania, instead of the "Supreme Council of the Lithuanian SSR". Therefore, the latter paradox can be illustrated, as follows: the Supreme Council of the Republic of Lithuania → the 1990 Act of Restoration of Independence → the Supreme Council of the Republic of Lithuania (or the 1990 Act of Restoration of Independence → the Supreme Council of the Republic of Lithuania → the 1990 Act of Restoration of Independence). This paradox is important in the context of adoption of the 1992 Lithuanian Constitution not only because this Constitution was drafted by the same Council (actually, by its special Commission), but also because the 1990 Act on the Restoration of Independence is considered by Lithuanian constitutional scholars as being a constitutional act itself.[22]

(3) The third paradox (the so-called paradox of "illegality of the law") lies, first of all, in the fact that, since the Independence Act is not only constitutional, but also a primary constituent act, therefore, there can be no pre-existing rules governing the procedure for adopting the Independence Act. A very similar consideration can be expressed regarding the adoption of Constitution: on the one hand, the adoption procedure of Constitution might be regulated by previous (sometimes provisional) Constitution, on the other hand, the principle of supremacy of Constitution does not tolerate any subordination of the latter to other previous legal documents. For example, the 1992 Lithuanian Constitution was adopted in popular referendum on 25 October 1992 and entered into force on the day after the official announcement of the results of the referendum (2 November 1992). However, the paradox is that this rule of adoption of the Constitution by referendum and the procedure of its entry into force were provided by the 1992 Constitution itself, or more precisely – by the draft of this Constitution, which had not yet been adopted by the electorate during the voting process[23]. Clearly, the latter paradox is not a Lithuanian invention, for example, the 1787 US Constitution was adopted on the basis of its Article 7, which had not yet entered into force during the ratification process, and it was also formally in breach of the 1777 Articles of Confederation, which provided for any alteration of this document only by unanimous vote of the Thirteen states (Art. 13). Therefore, this case recalls the idea, mentioned in hermeneutic philosophy of Derrida and Vattimo[24], stating that in certain exceptional cases the law must be violated in order to exercise the law.

(4) The fourth paradox manifests itself in the adoption of constitutional acts (including independence acts), as "the paradox of retrospectivity",[25] which is revealed in two aspects: first, the Constitution or other constituent act is always adopted retrospectively, i.e., as if looking back from a future perspective, when the moment of its entry into force cannot be clearly grasped; and, secondly, the Constitution is usually adopted and enters into force according to those rules which are not yet in force, i.e., in accordance with those provided for in the draft Constitution, which is still being voted on. Again, here an apt example is that of the preamble of the 1992

[22] E. g., see *Vaičaitis, V. A*. (ed.). Lietuvos konstitucionalizmo istorija. Vilniaus Universiteto Leidykla, 2016, p. 224.

[23] The fact that this Constitution must be adopted by referendum is provided for in Articles 151–154 of the Constitution itself, and Article 151 of the Constitution states that "this Constitution of the Republic of Lithuania comes into force on the day following the official publication of the results of the referendum, provided that more than half of all citizens of the Republic of Lithuania with voting rights approve this Constitution in the referendum". Lietuvos Respublikos Konstitucija. Valstybės žinios, No. 33-1014, 1992.

[24] See, e.g., *Vaičaitis, V. A*. Hermeneutinė teisės samprata ir konstitucija. Justitia, Vilnius, 2009, p. 30.

[25] Ibid.

Lithuanian Constitution, which states that "the Lithuanian nation […] adopts and promulgates this Constitution by the will of the citizens of the State of Lithuania". Thus, by casting the bulletin in 25 October 1992, Lithuanian voters understood the words of present tense ("Lithuanian nation […] adopts and proclaims") from a future perspective ("if adopted"). Meanwhile, upon learning the results of the constitutional referendum, the citizens read the same words of the Constitution ("adopts and proclaims") in the past sense – as an act that has been already adopted, i.e., retrospectively. Secondly, it has already been mentioned that the retrospective nature of the adoption of the Constitution is also manifested in the fact that the rules according to which the Constitution is adopted and enters into force are provided in the text of the Constitution itself (e.g., Article 151 of the Lithuanian Constitution states: "This Constitution of the Republic of Lithuania comes into force if more than half of all citizens of the Republic of Lithuania with the right to vote will approve it in a referendum"). In other words, citizens voted for the Constitution in a referendum, as if this Article of the Constitution was already in force. Incidentally, after adoption of the Constitution there was a political debate in Lithuania to determine the exact date of entry into force of the Constitution, which was resolved by the 1994 ruling of the Constitutional Court.[26]

## Summary

The adoption of the 1992 Lithuanian Constitution was a complex and multi-stage process: it was primarily necessary to restore independence in 1990 and then to adopt an interim provisional constitution. The 1990 Independence Act simultaneously constitutionalized the body of its adoption and legalized the change of its title – the Supreme Council of the Republic of Lithuania (from the Supreme Council of Lithuanian SSR). The process of adopting the Lithuanian Constitution in 1990–1992 after the collapse of the Soviet Union was largely similar to the constitutional procedures in the region, but it had its own peculiarities. Firstly, in Lithuania (the same as in other two Baltic states) the so-called "roundtable" format between the People's Front and the Communist authorities was practically non-existent, while it played a certain role during the political transition in Hungary and Poland. Secondly, in Lithuania the new 1992 Constitution was adopted during the so-called "constitutional (founding) moment" between 1990 and 1992, while in Poland the new Constitution was adopted in 1997 and in Hungary – only in 2011. Thirdly, before adopting its Constitution, Lithuania (just like other Baltic states), first of all, had to restore their independence after half a century of the soviet occupation.

It is not possible to fully understand the process of multi-stage adoption of the 1992 Lithuanian Constitution without including into this process the adoption procedure of the 1922 Constitution. Therefore, a reconstruction of this constitution adoption process may include the following eight constitutional acts:

1) the 1918 Independence Act →
2) the 1918 Fundamental Laws of the Provisional Constitution →
3) the 15 May 1920 Resolution of the Constituent *Seimas* on independent republic →
4) the May 18, 1920 Provisional Constitution →
5) the 1922 Constitution →

[26] Judgement of the Constitutional Court of the Republic of Lithuania of 21 April 1994. Valstybės žinios, No. 31-562, 1994.

6) the 11 March 1990 Act on the Restoration of the Independent State of Lithuania (adopted by the Supreme Council of the Republic of Lithuania) →
7) the 11 March 1990 Provisional Fundamental Law (adopted by the Supreme Council of the Republic of Lithuania) →
8) the 1992 Lithuanian Constitution adopted on 25 October 1992 referendum.

In the process of multi-stage adoption of the 1992 Lithuanian Constitution, four constitutional paradoxes can be revealed: (1) the paradox of the constitutional moment and the constituent power, which manifests itself in the fact that democratically elected Supreme Council of the Lithuanian Soviet Socialist Republic on 11 March 1990 renamed itself into the Supreme Council of the Republic of Lithuania in order to restore Lithuania's independence and be able to draft the Constitution; (2) the paradox of the relationship between the constituent body and the constituent act, which manifested itself in the fact that, on the one hand, the Supreme Council of the Republic of Lithuania adopted the 1990 Act of Independence, but, on the other hand, it was the same Act of Independence that legitimised the Supreme Council; (3) the so-called paradox of "illegality of law", which is revealed in the fact that adoption procedure of the 1992 Lithuanian Constitution and the rules of its entry into force were provided for in the text of the 1992 Constitution itself, which was not yet in force during the voting process; (4) therefore, the Constitution is always adopted retrospectively, i.e., as if looking back at it from future perspective.

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