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FEW REMARKS THE MODEL OF EXECUTIVE AUTHORITIES OF THE REPUBLIC OF LITHUANIA

Annotation

In the legal acts of the Republic of Lithuania, there is no direct regulation of the system of executive authorities. Such a lack of clear legal framework and definition of the latter branch of government presupposes discussions on its structure. Therefore, the authors of the present article analyse legal acts on the basis of which the abovementioned system may be determined as well as present a conception of the model of the system of Lithuanian executive authorities.

From the legal point of view, the normative ground for the determination and organisation of the system of Lithuanian executive authorities is the Constitution of the Republic of Lithuania, however, does not provide for an explicit framework and definition of this system. As the Constitution is an integral and directly applicable act, proper understanding of the meaning of a particular constitutional norm is possible only when interpreting it jointly with other norms of the same Constitution. Consequently, the search for the model of the system of Lithuanian executive authorities should, first of all, begin with a systemic analysis of the provisions of the law of supreme power (i.e. Constitution).

The Constitution voted at the referendum and then adopted (25 October 1992) by the Seimas (parliament) of the Republic of Lithuania established a new system of state power. Article 5 Paragraph 1 of the Constitution provides for a traditional doctrine of the separation of powers: «In Lithuania, State power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary»[1]. As pointed out by G. Mesonis, «the structure of this legal norm allows stating that under the Constitution, three powers are distinguished – the legislative (the Seimas), the executive (the President of the Republic and the Government) and judiciary (the Court). Such a separation of three branches of government repeats the classical principle of the separation of powers formed by Montesquieu»[2]. Similar ideas are shared by S. Stačiokas: «The Constitution of the Republic of Lithuania established the principle of the separation of powers as one of the fundamental means for the implementation of democratic governing»[3].

However, attention should be paid to the fact that in the Constitution of the Republic of Lithuania neither institutions that implement particular types of state power nor the system of executive authorities are directly identified; instead, only the grounds for the legal status of the supreme institutions (bodies) of state power – the Seimas (Chapter V of the Constitution), the President of the Republic (Chapter VI of the Constitution), courts (Chapters VIII and IX of the Constitution) as well as local self-government bodies (Chapter X of the Constitution) – are established. Therefore, one may state that in the Constitution of the Republic of Lithuania, a sufficiently clear and explicit systemic–structural definition of executive authorities is not provided.

Following the abovementioned opinion of G. Mesonis as well as the linguistic and logical methods of the interpretation of legal norms, the analysis of Article 5 Paragraph 1 of the Constitution allows claiming that namely the President of the Republic and the Government are associated with the executive power. The latter view is probably grounded on the Ruling of 10 January 1998 of the Constitutional Court of the Republic of Lithuania. The declarative part of this Ruling reads as follows: «[…] the President of the Republic, as a part of the executive power […]» and «[…] in the Lithuanian system of institutions of the executive power, the Government […] is exceptionally important»[4]. There are no doubts about the attribution of the Government to the system of executive authorities; however, the status of the President of the Republic with regard to the executive power and particularly the system of its institutions remains unclear.

This ambiguity has to be analysed taking into consideration the status of the President of the Republic. In the Commentary on the Constitution of the Republic of Lithuania, for instance, it is stated that «the President of the Republic, under Article 77 of the Constitution, is the head of state but that does not mean being also the head of the

executive power as, for example, in the United States the President, as the analysis of his/her functions and authorities suggests, is the guarantee of the stability of the country and ensures a harmonious functioning and interaction of state government institutions […]»[5]. As L. Talat-Kelpša claims, «from the legal point of view, the President is the head of state and does not perform the functions of the head of Government»[6]. Thus the President is not its formal head but actually implements it and directly and indirectly (via the Members of the Government) makes an active impact on the activity of executive authorities.

Finally, the analysis of Article 84 of the Constitution of the Republic of Lithuania removes all doubts regarding the position of the President of the Republic in the system of executive authorities. It shows that the President of the Republic performs functions related to the legislative as well as the executive and the judicial powers. This allows presuming that the President of the Republic implements state government as the head of state as if, in a way, rising above the legislative, the executive and the judicial powers (even though it is not directly provided for in the Constitution), because he/she has in his/her disposition sufficiently significant authority in all spheres of activity of the abovementioned powers, and, as well, that «the President is rather a moderator that by his/her standing may reduce conflict situations between the legislative and the executive powers»[7]. On the other hand, the President of the Republic not only plays the role of a moderator or coordinator but also as the top State officer performs significant functions in the spheres ascribed to each of the powers of state government, thus ensuring effective functioning and interaction of each of the powers of state government as well as the whole state government system. In other words, the President of the Republic is a certain guarantee of the organisation and functioning of the system of state government as well as a harmonious interaction among its elements.

As regards the place of the President of the Republic in the system of state power authorities in the juridical sense, noteworthy is the fact that, similarly to other state powers, a separate Chapter VI of the Constitution is dedicated to the institute of the President of the Republic. This is another argument in support of the position that the President of the Republic should not be identified with any of the branches of state power. Undoubtedly, it is possible to raise the question regarding the scope of his/her authority with regard to each of the type of state power; however, this also would not be able to serve as sufficient grounds for the attribution of the President of the Republic to one of the branches of state power. The significance and the threefold nature of the authority of the President of the Republic allows treating the President of the Republic as an exceptional subject that can, in one form or another, make an impact on the organisation, functioning and interaction of all state powers but is «separated» from institutions implementing a particular type of state power and comprises an independent institute. This means that even though interacting, in one way or another, with all of the branches of state power, the President of the Republic is not the head of any of them.

Interesting insights regarding the position of the President of the Republic in the aspect of the doctrine of the separation of powers are provided by E. Šileikis: «the President of the Republic, being related to the legislative, the executive as well as the judicial power, is not a classical (ordinary) executive authority, i.e. to be attributed to a specific «mixed» or «the fourth» power»[8]. Therefore, the President of the Republic, even though, under the Constitution and other laws, implementing certain authorities related to all branches of state power and, in a certain way, being a part of the executive power, organisationally is not attributed to any system of the institutions of state power, including the one of the executive power.

Once the place of the President of the Republic in the aspect of the system of state power is defined, one may conclude that the Government is the most important and fundamental executive authority. T. Birmontienė stresses, «even though on the basis of the constitutional doctrine the institute of the President of the Republic is attributed to the executive power, in this aspect his/her constitutional status cannot be treated equal to that of the Government. The authorities of the President of the Republic and the Government, as two branches of the dual (duplicated) executive power, are different and independent with regard to each other […], the President of the Republic does not have the authority to directly supervise the activity of the Government. The Constitution does not stipulate any particular spheres where the President of the Republic may give assignments to the Government […]»[9].

In the context of the issue being discussed, Chapter VII «The Government of the Republic of Lithuania» of the Constitution of the Republic of Lithuania is relevant. This chapter is devoted to a single executive authority and does not directly provide any definition or structure of the system of executive authorities. Under Article 91 of the Constitution, ministers are attributed to the Government, while under Article 94 subparagraph 3 it (Government) also coordinates the activities of the ministries and other establishments of the Government. Even though this provision is meant for emphasising the directions of activity (functions) of the Government, it as well allows claiming that ministries and establishments of the Government are to be attributed to the group of executive authorities. However, as will be revealed further on in this article, in terms of structure the system of these authorities is far more complex, and today, having no clear legal regulation, it is not that easy to provide its precise definition. Therefore, the systemic and logical analysis of the provisions of this subparagraph of the Constitution allows identifying only a preliminary system of executive authorities that without, as mentioned above, the Government would be supplemented by ministries and establishments of the Government.

As regards to the system of Lithuanian executive authorities in the context of the Constitution, its Article 123 Paragraph 2 (the legitimacy of the activities of the municipalities is supervised by the representatives appointed by the Government) is important. The implementation of this paragraph belongs to the competence of the Government as the supreme executive authority. Thus institutions of the representatives of the Government are also to be considered as executive authorities. Such doubts are eventually settled by norms regulated under the Law on the

Government and the Law on Administrative Supervision of Municipalities of the Republic of Lithuania. Therefore, the representatives of the Government in the regions should also be considered to be territorial executive authorities that perform the functions of the supervision of the legitimacy of the activities of municipalities in a certain territorial administrative unit (county), as the representatives of the Government in the counties are appointed by the Government and they are subordinate and accountable to it.

One of the most important legal acts (after the Constitution) for the analysis of the system of executive authorities is the Law on the Government of the Republic of Lithuania that provides for the legal grounds for the establishment and activity of separate executive authorities. This legal act also lacks direct definition of the system of executive authorities; however, its systemic and logical analysis (Article 22 Subparagraphs 7, 8, 11, 14, 15; Article 26 Paragraph 3 Subparagraphs 7, 8, 10; Article 27 as well as Chapter VIII of the Law on the Government) suggests that institutions under the ministries as well as institutions of the representatives of the Government are attributed to this system. It would probably not be a mistake to claim that in terms of legal indefiniteness the Law of Government is the most important legal foundation for the designing of the system of executive authorities.

Scholars and practitioners also argue whether local self-government institutions (municipalities) are to be treated as a constituent part (element) of the system of Lithuanian executive authorities. In Article 5 Paragraph 1 of the Constitution of the Republic of Lithuania municipalities are not mentioned among the institutions executing state power. Furthermore, attention should be paid to the fact that a separate Chapter X of the Constitution is dedicated to local self-government as well as other institutions representing the types of state power. Thus, local self-government institutions comprise an individual level of government; they are not subordinated to any state institution and not attributed to any group of the institutions of state power, including the executive power. This is supported by the principle of the separation of powers stipulated in Article 5 Paragraph 1 of the Constitution («State power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary»[10]), by Article 120 Paragraph 2 of the Constitution («Municipalities shall act freely and independently within their competence defined by the Constitution and laws»[11]), by Article 4(2) of the European Charter of Local Self-Government («Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority»[12]) as well as by Article 52 Paragraph 2 of the Law on Local Self-Government of the Republic of Lithuania («Municipalities shall not be subordinate to State institutions»[13]). The Constitutional Court of the Republic of Lithuania is of the same opinion. In some of its rulings (of 18 February 1998, of 24 December 2002, etc.) it has stated that, pursuant to the Constitution, state government and local self-government are two separate systems of public administration. In the Constitution, local-self government is defined as a local system of public administration acting on the grounds of self-efficacy and not directly subordinate to state power institutions. Local self-government is the power of the territorial communities of administrative units provided for by law that is formed and functions on constitutional grounds different from the ones state power is based on. State government is implemented through state power institutions and other institutions set out in the Constitution and laws. The right to self-government is implemented through municipal councils and executive institutions subordinated to them. Constitutional principles on which the organisation of state power and local self-government is based coincide only in part. Thus they are not formations (structures) of the state and, consequently, not a part of the system of executive authorities, as «in the Constitution local self-government is not identified with state government»[14].

As mentioned before, commissions and committees of the Government set up by the Government are also attributed to the system of executive authorities; however, the inclusion of some of them into this system is doubtful. In this case, attention should be paid to the period of the functioning of the commissions and committees of the Government. They are classified into temporary and permanent. Temporary committees and commissions of the Government are set up to solve specific organisational questions (for example, Resolution No. 687 of the Government of the Republic of Lithuania of 19 June 2000 «On the Setting up of the Commission for the Reorganisation of State Enterprise State Radio Frequency Service», Resolution No. 1243 of the Government of the Republic of Lithuania of 16 October 1998 «On the Setting up of the Commission for the Organisation of the Third Conference of the Baltic Sea States»[15], Resolution No. 736 of the Government of the Republic of Lithuania of 18 June 2001 «On the Setting up of the Organising Committee of the World Masters' Orienteering Championship of 2001 in Lithuania»[16], etc.). As such temporary commissions and committees of the Government deal with organisational issues and do no perform the functions of the executive power; they should not be included in the system of executive authorities. Considering the functions performed, only permanent committees and commissions of the Government performing the coordinative functions may, in part, be attributed to the system of executive authorities. These are coordinating institutions that are set up by the Government, perform functions of administrative nature and, considering their essence, are not attributed to executive authorities. Certain reservations exist in defining such institutions as executive authorities, i.e. one must logically realise that their dependence to this power or their attribution to executive authorities is determined by the fact that they are set up by the supreme executive authority and that they usually perform administrative (coordination, control, supervision) functions.

Permanent committees of the Government the members of which are ministers and the Prime Minister, in other words, committees that are set up from the members of the Government only should not be considered to be executive authorities and attributed to their system. They are collegial advisory institutions the functioning of which is treated as one of the forms of the activity of the Government. Such permanent committees of the Government consider topical, priority or controversial (not agreed upon) questions of a specific sphere of government and provide

conclusions and submit proposals for the drafters of legal acts and the Government, i.e. perform functions of advisory nature.

A group of other institutions (for example, the Bank of Lithuania, State Security Department, National Audit Office of Lithuania, Special Investigation Service, The Seimas Ombudsmen's Office, etc.) that perform important executive functions are also not attributable to the abovementioned system. Their heads are appointed by and accountable and subordinate to the Seimas (for example, the Seimas Ombudsman, Equal Opportunities Ombudsman, the Chair of the State Commission for Cultural Heritage, the Chair of the Central Electoral Commission, etc.), the President of the Republic (for example, the Chair of the National Control Commission for Prices and Energy, etc.), or both abovementioned institutions when they both are involved in the process of their appointment (for example, National Audit Office of Lithuania, Special Investigation Service, State Security Department, etc.). Namely the procedure for the setting up of these institutions as well as their accountability and subordination to the Seimas or the President of the Republic (or both) does not allow including them in the system of executive authorities, one of the features of which is the accountability and subordination of institutions comprising it to the Government. This is a solid ground that allows treating these institutions as so-called administrative (also, institutions of state government (administration)) rather than executive authorities.

The majority of executive authorities have their territorial structures. Considering the fact that they perform their functions in a certain territorial administrative unit (county, municipality or several counties), they should also be included in the system of executive authorities and attributed to the territorial level of the system.

With reference to the arguments laid out, the Constitution of the Republic of Lithuania and the Law on the Government of the Republic of Lithuania adopted on the basis of the Constitution, it is possible to conclude that the system of executive authorities of Lithuania is comprised of the following institutions:

1) The Government (the supreme executive authority);
2) Ministries (central executive authorities);
3) State enterprises (central executive authorities);
4) Commissions and committees of the Government (central executive authorities);
5) Enterprises under ministries (central executive authorities);
6) Institutions of the representatives of the Government in the counties (territorial executive authorities);
7) Territorial structures of central executive institutions.

Therefore, the Constitution of the Republic of Lithuania by providing for one of the most important principle of state activity – the principle of the separation of powers – indirectly excludes the executive power as an independent type of state government and delegated the function of its implementation to the system of executive authorities under the supervision of the Government. In terms of structure, the system of Lithuanian executive authorities is rather complex: it is comprised of seven groups of institutions of various legal forms. The majority (and most important) of such institutions function in the central level of the system of executive authorities.

Final remarks

1. The President of the Republic of Lithuania performs several functions of the executive power. However, the President is not attributed to the system of executive authorities. The analysis of the provisions of Article 84 of the Constitution of the Republic of Lithuania shows that the President of the Republic of Lithuania performs the functions related to all three powers, thus it would not be logical to attribute the President to the system of executive authorities only.

2. The Constitution of the Republic of Lithuania lacks a clear and explicit definition of the system of executive authorities. For the juridical identification of the institutional structure of executive power, very important is the Law on the Government of the Republic of Lithuania. Even though it also does not directly define the system of executive authorities, a systemic and logical analysis of its norms allows identifying this system.

3. Local self-government institutions (municipalities) are not to be attributed to the system of executive authorities. The fact that a separate chapter of the Constitution of the Republic of Lithuania is dedicated to local self-government means that the state acknowledges local self-government as a separate level of government independent from state power. The organisation of local government is not based on the doctrine of the separation of powers.

4. Only institutions (bodies) that are set up by the Government and subordinate and accountable to it are attributable to the system of executive authorities. Institutions that are set up by as well as subordinate and accountable to the President of the Republic of Lithuania and/or the Seimas of the Republic of Lithuania cannot be attributed to the system of executive authorities.

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[10] Constitution of the Republic of Lithuania. – Vilnius, 1992. – P. 6.

[11] Ibid. – P. 47.

[12] Official Gazette. 1 October 1999. No. 82. Publication No. 2418.

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РОЛЬ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В ПРОДВИЖЕНИИ И ИСПОЛЬЗОВАНИИ ИННОВАЦИЙ В РЕСПУБЛИКЕ МОЛДОВА

Национальная стратегия развития «Moldova-2020»[1] в качестве основного направления экономического роста страны определяет новую парадигму экономического развития Республики Молдова, которая предполагает:

– привлечение инвестиций;
– развитие экспортных отраслей промышленности;
– развитие общества, основанного на знаниях;
– усиление научных исследований и разработок;
– инновации и передачу технологий, направленные на повышение эффективности и конкурентоспособности.

В контексте глобализации и международной конкуренции сценарий инновационного экономического развития страны не имеет альтернативы.

Человечество вступило более 30 лет назад в эпоху экономики, основанной на знаниях, что значительно увеличивает роль и значение результатов интеллектуальной деятельности в развитии общества.

В этих условиях, согласно Президенту Европейской комиссии Жозе Мануэлю Баррозу, «мы не можем отвечать на вызовы будущего инструментами прошлого»[2].

Интеллектуальные продукты, информация и знания, духовный, научный и культурный потенциал современного общества являются движущей силой устойчивого развития и определяют экономическую конкурентоспособность, а способность интеллектуальной собственности генерировать доходы не менее важна, чем доступ к ресурсам или наличие промышленной базы.

Значение и роль интеллектуальной собственности также находят свое отражение во **Всемирной декларации по интеллектуальной собственности, принятой 26 июня 2000 г. в Женеве**[3]. С исторической точки зрения, интеллектуальная собственность была и остается одним из основных и необходимых элементов прогресса и развития всего человечества; ее настоящее значение и определяющая роль в человеческой деятельности проявились в современную эпоху – «эру знаний». Интеллектуальная собственность способствует экономическому росту, конкурентоспособности, трудовой занятости, повышению уровня благосостояния населения.