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Building the new State. First Lithuanian (provisional) constitutions

Abstract

The author is describing the circumstances of the coming into existence — after the First World War — of the independent Lithuanian state. In particular he is presenting three Lithuanian provisional constitutions (1918, 1919, 1920).

Keywords

Lithuania, constitution, 1918, 1919, 1920

Tworzenie nowego państwa. Pierwsze konstytucje litewskie (tymczasowe)

Streszczenie

Autor opisuje okoliczności powstania niepodległego państwa litewskiego po pierwszej wojnie światowej. W szczególności przedstawia obowiązujące wówczas trzy tymczasowe konstytucje (1918, 1919, 1920).

Słowa kluczowe

Litwa, konstytucja, 1918, 1919, 1920

After World War I constitution of the new-born Lithuanian state had to be based on interim regulations. These experiences can be considered fairly typical for the region (occurring — for example — in similar shape also in Latvia¹ and Estonia²).

The genesis of Lithuanian independence is related to the country's occupation by the German army in 1915. In June of 1916, Lithuanian group of activists sent the commander of German troops in the east memorial, in which he was informed about the development of Lithuanian national movement and Lithuanian aspirations

¹ See P. Kierończyk, *Państwo litewskie. Geneza i ustrój konstytucyjny*, Gdańsk 2008, pp. 28–29; *idem*, *Wstęp* [in:] *Konstytucja Łotwy*, Warszawa 2001, p. 10.

² See L. Garlicki, P. Łossowski, *Wstęp* [in:] *Konstytucja Estonii*, Warszawa 1997, p. 5.

for independence³. In November of 1916, two Lithuanian activists (J. Šaulys⁴ and A. Smetona⁵) turned — this time to German Chancellor — with a request for disclosure of German policy objectives in relation to Lithuania. Soon appeared a similar letter to German Secretary of State — A. Zimmermann⁶.

In March 1917 a Lithuanian delegation went to Berlin, asking for granting the autonomy⁷. Germans after all approved the idea of creating a Lithuanian *quasi*-state. At the moment they gave consent for convening a “Lithuanian conference” and appointing the Lithuanian National Council. “Nevertheless, the German occupational regime prohibited conducting elections. They insisted and demanded that a Lithuanian conference had to be limited to a representation of three to five delegates appointed for each of thirty-three districts of the country. Having accepted this condition, the organizational Committee for the Lithuanian Conference visited the country consulting many leaders and drawing a list of possible representatives to the Conference. 264 delegates were chosen from various professional and political strata of life”⁸.

The conference gathered in September 1917⁹. In the course of the debate they dealt with demands of creating independent Lithuania, establishing the Legislative *Seimas* (Parliament — pol. Sejm) and preparing the constitution. But the main achievement of the conference was the selection of the Lithuanian National Council (*Lietuvos Krašto Taryba*), in short called *Taryba*¹⁰. She was composed of twenty persons, mostly from right-wing political circles.

³ See J. Ochmański, *Historia Litwy*, Wrocław–Warszawa–Kraków 1990, p. 265 et seq. P. Łossowski, *Po tej i tamtej stronie Niemna. Stosunki polsko-litewskie 1883–1939*, Warszawa 1985, p. 84.

⁴ Biography: http://www.kvb.lt/leidiniai/nepriklausomybes_signatarai/j_saulys.html and https://lt.wikipedia.org/wiki/Jurgis_%C5%A0aulys [accessed December 7, 2014].

⁵ Biography: T. Zubiński, *Ciche kraje*, Rzeszów 2006, pp. 5–27. See also: <https://www.lrp.lt/lt/prezidento-institucija/istorija/antanas-smetona/123> and https://lt.wikipedia.org/wiki/Antanas_Smetona [accessed December 7, 2014].

⁶ Biography: https://de.wikipedia.org/wiki/Arthur_Zimmermann [accessed December 7, 2014]. His name is connected with so called “Zimmermann Telegram” (or “Zimmermann Note”) — “1917 diplomatic proposal from the German Empire offering a military alliance with Mexico, in the event of the United States entering World War I against Germany”. Cit. after https://en.wikipedia.org/wiki/Zimmermann_Telegram [accessed December 7, 2014].

⁷ Zob. P. Łossowski, *Po tej..., op. cit.*, pp. 84–85.

⁸ Cit. after J. Laučka, *Lithuania's Struggle for Survival 1795–1917*, “LITUANUS”, Lithuanian Quarterly Journal of arts and sciences, Volume 30, No. 4, Winter 1984, http://www.lituanus.org/1984_4/84_4_01.htm [accessed December 7, 2014].

⁹ Detailed information about the selection of delegates and conference proceedings in: H. Wisner, *Litwa. Dzieje państwa i narodu*, Warszawa 1999, pp. 158–161 and https://lt.wikipedia.org/wiki/Vilniaus_konferencija; https://lt.wikipedia.org/wiki/S%C4%85ra%C5%A1as:Vilniaus_konferencijos_dalyviai; https://en.wikipedia.org/wiki/Vilnius_Conference [accessed December 7, 2014].

¹⁰ Of course, this name — waking certain associations for Polish-speakers (“ta ryba” means “this fish” in Polish) — was eagerly exploited by the Poles (especially opponents to new created *Taryba*). The term “tarybiarz” (also “tarybista”) was popularized, meant — according to Polish critics — the person collaborating with Germans (or, later, Soviets), acting against the interests of “real” Lithuanians (and, of course, Poles). See — for example — T. Zubiński, *Ciche kraje*, *op. cit.*, p. 7, footnote 4, and a series of cartoons in the collection published by K. Buchowski, *Panowie i żmogusy. Stosunki polsko-litewskie w międzywojennych karykaturach*, Białystok 2004, e.g. caricature on p. 39.

At the beginning of December 1917 representatives of *Taryba* conducted talks in Berlin on the future status of the Lithuanian state. During these negotiations matured solution of a Lithuanian-German state formula, similar in shape to the federation. On 11 December 1917, *Taryba* adopted a declaration of independence, commonly known as a “first Lithuanian declaration of independence”. Declaration clearly swept away all previous national associations (unions) of Lithuania (what *de facto* meant Poland or Russia), but proclaimed such a relationship with *Kaiser Germany*¹¹.

Rather surprisingly for Lithuanian activists, *Reich* government refrained from recognition of the declaration of independence. *Taryba*, then decided on a more radical move, designed to provide its independence from German authorities. February 16, 1918, *Taryba* again declared independence of Lithuania (ie. “The second declaration of independence”)¹². It provided establishment of a sovereign and democratic Lithuania with its capital in Vilnius and declared no longer any state connections with Germany.

After the second declaration, Lithuanian-German hard bargaining and debates started. Also discussions inside *Taryba* began, concerning bases of the future system of government. As a result, *Taryba* decided to accept the monarchical system¹³. Lithuanian Council has also developed a draft constitution of the future state¹⁴. On June 11, 1918 — *Taryba* changed its name from the Lithuanian National Council to Lithuanian State Council (*Lietuvos Valstybės Taryba*).

Tarybas activity, although subordinated to the Germans, laid the ground for the coming into existence of the independent state of Lithuania¹⁵. Let us add, that *Taryba*, using the weakness of the German Empire in the last phase of the war, became gradually more and more emancipated. But only complete defeat of Central States could bring the real independence to Lithuania — and simultaneously the fiasco of plans of the building Kingdom of Lithuania, *de facto* puppet-state in dominated by Germany *Mitteleuropa*¹⁶.

¹¹ General characteristics of both the Declarations of Independence of Lithuania, e.g. in: A. Zakrzewski, *Wstęp [in:] Konstytucja Litwy*, Warszawa 2006, p. 9. See: P. Kierończyk, *System konstytucyjny państwa litewskiego (1922–1940)*, Gdańsk 2008, p. 29.

¹² Declaration text e.g. in: J. Ochmański, *Historia..., op. cit.*, p. 170 (photo). Interesting article about genesis and problem of the authorship: R. Klimavičius, *Vasario 16 osios aktas: teksto formavimo šaltiniai ir autorystės problema*, Istorija. Lietuvos aukštųjų mokyklų mokslo darbai 59–60/ 2004, pp. 57–66, www.ceeol.com/aspx/getdocument.aspx?logid=5&id=8e57bf2c-f20c-494d-8b04-9bfedd6a3fbd [accessed December 7, 2014].

¹³ On 4 June 1918, the *Taryba* voted to invite Prince Wilhelm of Urach, Count of Württemberg and 2nd Duke of Urach, to become the king of Lithuania. Wilhelm agreed and was elected on 11 July 1918, taking the name Mindaugas II (pol. Mendog II). Mindaugas II — in reference to the Mindaugas, ruler of Lithuania from the twelfth century, who was the only one King in history of Lithuania (years 1253–1263). See https://en.wikipedia.org/wiki/Wilhelm_Karl,_Duke_of_Urach and https://en.wikipedia.org/wiki/Kingdom_of_Lithuania_%281918%29 [accessed December 7, 2014].

¹⁴ A. Grigaravičius, *Lietuvos konstitucijų projektai. 1916–1918 metais*, “Lietuvių Atgimimo istorijos studijos”, t. 3, Vilnius 1991, p. 351–391; cited after: A. Zakrzewski, *Wstęp, op. cit.*, p. 9, footnote 8.

¹⁵ About the *Taryba* activities of the autumn of 1918 see in: J. Ochmański, *Historia..., op. cit.*, pp. 271–273.

¹⁶ See about *Mitteleuropa* term and conception: F. Naumann, *Mitteleuropa*. Berlin 1915; I. Góroworska-Puchala, *Mitteleuropa. Rdzeń Starego Kontynentu*, Toruń, 1997; J. Pajewski, *Mitteleuropa. Studia z dziejów imperializmu niemieckiego w dobie pierwszej wojny światowej*, Poznań 1959.

In such a situation *Taryba* has taken steps to control the real power in Lithuania. Already at the meeting of October 28, 1918 — Lithuanian Council decided that assume supreme power in the state.

November 2, 1918 — *Taryba* adopted the first temporary Constitution of Lithuania¹⁷. It was an relatively small act (6 chapters, 27 articles)¹⁸. In the preamble *Taryba* identified itself as the supreme power in Lithuania (with Latin words *suprema potestas*)¹⁹. Duration of the constitution had to be limited — to entry into the force constitution adopted by the Lithuanian Parliament. The Basic Law was a very fragmentary, regulated only the status of the highest state bodies: the Council of State of Lithuania (*Lietuvos Valstybės Taryba*), its Presidium (*Valstybės Tarybos Prezidiumas*) and the government (*Ministerių kabinetas*)²⁰. Chapter V of Constitution contained basic civil rights. Chapter VI dealt with the future Parliament (*Seimas*), and democratic elections to it. *Taryba* had the legislative power and the right to change the provisional constitution and also a power of control the government — in particular the right of its dismissal.

The functions of head of state exercised *Tarybos* triple *Prezidiumas* — Bureau (A. Smetona — chairman, members: J. Staugaitis²¹ and S. Šilingas²²), responsible politically before *Taryba* and operate on the principle of collegiality. Every action of the Bureau had to be strictly collegial act, and its core competencies defined art. 11 of the Constitution²³.

Taryba entrusted the mission of forming the government to the one from the nationalists — A. Voldemaras²⁴. The government finally appointed on 11 November. Work began on the development of local administrative bodies. However, the process of state formation was disrupted by the entry of the Red Army. In such circumstances, the next Lithuanian government (formed on 26 December 1918, with M. Sleževičius²⁵

¹⁷ Originally published in "*Lietuvos aidas*" from November 13, 1918, No. 130(178)/1918. Then published in „*Laikinosios Vyriausybės žinių papildymas*” No. 1.

¹⁸ In the constitution there were no “typical” division of articles.

¹⁹ Although the text of the Constitution does not use the word “republic” (only “Lithuanian State” — *Lietuvos valstybė*), it was clear that the idea of inviting Wilhelm of Urach to the Lithuanian throne was already abandoned — and Lithuania adopted a republican system.

²⁰ The seat of government was to be — according to the constitution — Vilnius (pol. Wilno). See footnotes 27 and 28.

²¹ Biography: https://lt.wikipedia.org/wiki/Justinas_Staugaitis [accessed December 7, 2014].

²² Biography: https://en.wikipedia.org/wiki/Stasys_%C5%A0ilingas [accessed December 7, 2014].

²³ See A. Zakrzewski, *Konstytucja Litwy...*, op. cit., p. 5.

²⁴ Activist nationalist, played an important role in the later the history of Lithuania. A brief biographical note in: P. Łossowski, *Kraje bałtyckie na drodze od demokracji parlamentarnej do dyktatury (1918–1934)*, Wrocław–Warszawa–Kraków–Gdańsk 1972, pp. 83–84, footnote 17. See also K. Vaičikonis, *Augustinas Voldemaras*, “LITUANUS”, Lithuanian Quarterly Journal of arts and sciences, Volume 30, No. 3, Fall 1984; http://www.lituanus.org/1984_3/84_3_06.htm and https://lt.wikipedia.org/wiki/Augustinas_Voldemaras [accessed December 7, 2014]. For unknown reasons in interwar Poland was adopted a different spelling of the name of this political figure — Valdemaras (ew. Waldemaras). See (e.g.): M. Wańkowicz, *W kościołach Meksyku. Opierzona rewolucja. Na tropach Smętka*, Warszawa 2010, p. 199.

²⁵ Biography: http://www3.lrs.lt/seimu_istorija/w3_viewer.viewdoc-p_int_tekst_id=2796&p_int_tv_id=386.htm; https://lt.wikipedia.org/wiki/Mykolas_Sle%C5%BEvi%C4%8Dius [accessed December 7, 2014].

as a Prime Minister), had first of all to deal with the organization of the army and the defence of the new-born state²⁶. For this purpose, they obtained help of German troops, still residing in Lithuania.

In those days failed attempt to install the Lithuanian authorities in Vilnius. Surrounded by the reluctance of the majority of the Polish-speaking population of the city²⁷, threatened by the activity of the Polish self-defence, with the news of the approaching Soviet divisions — the Lithuanian government went by train to the areas still occupied by the Germans (2 January 1919)²⁸.

At that time *Taryba* also introduced some reforms into the political system. Constitutional novella of 24 January 1919 added a new chapter (VII) to the interim constitution²⁹. Changes admitted the government the right to issue decrees with the force of law in the period between *Tarybas* sessions³⁰.

April 4, 1919 — *Taryba* adopted a new (second) temporary constitution³¹. Consisting of 42 articles basic law introduced some changes in the system of power. The most important was a head of the state institution — *Presidentas* (President). His rights and duties defined the art. 6–14 of the provisional constitution. Also on April 4, *Taryba* elected nationalists leader (and former *Tarybas* chairman) A. Smetona as the first Lithuanian President. The President received the right to issue decrees with the force of law (jointly with the government), as well as the right to appoint the government. Soon, Lithuania relatively stable political (and military³²) situation allowed the conduct of elections to the Legislative *Seimas*.

²⁶ At that time, an attempt to create a Soviet power in Lithuania was made (eventually in the form of the Soviet Socialist Republic of Lithuania and Belarus — commonly known by the acronym *Litbel* or *Lit-Bel*). See (inter alia): H. Wisner, *Litwa...*, *op. cit.*, pp. 167–172; E. Zieliński, J. Zieliński, *Rządy w państwach Europy*, t. 3, Warszawa 2006, p. 121. Documents connected with *Litbel* in: *Obrazowanie SSSR. Sbornik dokumentov 1917–1924*, Moskwa–Leningrad 1949, inter alia pp. 96–100 a. 120–122.

²⁷ Ethnic Lithuanians were in Vilnius approximately 1–2% of the population. In 1931 — only 0,8%. A. Maryański, *Litwa. Łotwa. Estonia*, Warszawa 1993, p. 45.

²⁸ P. Łossowski, *Litwa*, *op. cit.*, p. 74.

²⁹ “*Laikinosios Vyriausybės Žinios*” No. 4/1919.

³⁰ “*Laikinosios istatymus*” — could be translated as „interim laws”.

³¹ See G. Flanz, *Constitutions of the countries of the world. Lithuania*, New York 1992, pp. 2–3; A. Zakrzewski, *Wstęp*, *op. cit.*, p. 10.

³² About 1918–1920 military situation in Baltic region (esp. Lithuania) see (inter alia): W. Rezmer, *Litewskie lotnictwo wojskowe 1919–1940*, Toruń 1999, p. 19 et seq.; J. Rutkiewicz, W.N. Kulikow, *Wojsko litewskie 1918–1940*, Warszawa 2001, p. 5 et seq.; P. Łossowski, *Konflikt polsko-litewski 1918–1920*, Warszawa 1996; T. Paluszyński, *Walka o niepodległość Łotwy 1914–1921*, Warszawa 1999, p. 219 et seq.; A. Skrzypek, *Stosunki polsko-łotewskie 1918–1939*, Gdańsk 1997, pp. 17–24; P. Łossowski, *Łotwa nasz sąsiad. Stosunki polsko-łotewskie w latach 1918–1939*, Warszawa 1990, pp. 8–9; J. Ochmański, *Historia...*, *op. cit.*, p. 283; W. Pobóg-Malinowski, *Najnowsza historia polityczna Polski 1864–1945, Tom drugi 1919–1939*, Paryż 1953, pp. 187–196.

On April 14–15, 1920 Lithuania conducted general elections, according to a relatively democratic electoral law³³. Legislative *Seimas*³⁴ consisted of 112 members³⁵, and was dominated by the Christian Democrats³⁶ (59 seats). There was also an influential peasant center (Union of Peasants³⁷ — 20 seats, and the Socialist Peasant Party³⁸ — 9). The Social Democrats³⁹ received only 13 seats, and the Union of Working People — 1 mandate. National minorities received 10 seats (Jews — 6, Poles — 3, Germans — 1). The elections have brought dominance of the right-wing parties⁴⁰, but A. Smetona nationalists suffered a total defeat.

The first session of the *Seimas* was held 15 May 1920 in the Kaunas theatre⁴¹. This Parliament adopted a next temporary constitution (10 June 1920)⁴². It consisted of 7 chapters and 18 paragraphs. Lithuania was defined as a democratic republic (§ 1). The Constitution introduced supremacy of Parliament in the system of power. First of all — *Seimas* had the legislative and constitutional power. The Constitution mentioned about the status of the MP, specifying such person as “untouchable” (§ 17).

The executive power consisted of both — President and a Government. President was elected by the *Seimas* (§ 7). Until the election of the President of the Republic his duties were realized by Chairman of the Legislative (what surprisingly happened to be a common practice). The institution of the political responsibility of the government to the *Seimas* was introduced (§ 11). The 1920 Constitution introduced the institution of State Auditor — § 14. Basic law contained also a catalog of civil rights (§ 15–16). But comments (*pastaba*) to § 15 and 16, however, permit withholding the appropriate

³³ P. Łossowski, *Kraje...*, op. cit., p. 16–21; B. Paszkiewicz, *Pod znakiem Omegi*, Warszawa 2003, pp. 178–179, draws attention to the cases of electoral fraud during *Seimas* elections (*gerrymandering*).

³⁴ *Steigiamasis Seimas*. In Polish literature usually translated as “Sejm Ustawodawczy” (“Legislative Sejm”) — *per analogiam* to Polish 1919–1922 and 1947–1942 Parliaments (Sejms). See, for example: W. Kręcis, *Republika Litewska*, [in:] E. Gdulewicz (red.), *Ustroje państw współczesnych*, Lublin 2002, p. 99; J. Zieliński, *Instytucjonalizacja przemian ustrojowych na Litwie, Łotwie i w Estonii*, Warszawa 2004, p. 23; *idem*, *Systemy konstytucyjne Łotwy, Estonii i Litwy*, Warszawa 2000, p. 7; A. Zakrzewski, *Wstęp*, op. cit., p. 10; P. Łossowski, *Litwa*, Warszawa 2001, p. 81 a. 82; *idem*, *Kraje...*, op. cit., p. 20. But *Steigiamasis Seimas* could be also translated as “Founding Seimas” (pol. “Sejm Założycielski”). See in dictionary: A. Kaleda, B. Kalediene, M. Niedzwiecka, *Lietuvių-lenkų kalbų žodynas*, Vilnius 1991, p. 441, *steigiamasis* — translated in Polish as “założycielski” (“founding”).

³⁵ See list of members: https://lt.wikipedia.org/wiki/Steigiamasis_Seimas [accessed December 7, 2014].

³⁶ *Lietuvos krikščionių demokratų partija*. See https://lt.wikipedia.org/wiki/Lietuvos_krik%C5%A1%C4%8Dion%C5%B3_demokrat%C5%B3_partija [accessed December 7, 2014].

³⁷ *Lietuvos valstiečių sąjunga*. See https://lt.wikipedia.org/wiki/Lietuvos_valstie%C4%8Dion%C5%B3_s%C4%85junga [accessed December 7, 2014].

³⁸ *Lietuvos socialistų liaudininkų demokratų partija*. See https://lt.wikipedia.org/wiki/Lietuvos_socialist%C5%B3_liaudinink%C5%B3_demokrat%C5%B3_partija [accessed December 7, 2014].

³⁹ *Lietuvos socialdemokratų partija*. See https://lt.wikipedia.org/wiki/Lietuvos_socialdemokrat%C5%B3_partija [accessed December 7, 2014].

⁴⁰ Right-wings parties exploited in the pre-election propaganda slogans supporting social reforms, especially agrarian reform. See P. Łossowski, *Kraje...*, op. cit., pp. 18–19, J. Ochmański, *Historia...*, op. cit., p. 284. *Nota bene* J. Ochmański considers the elections for the defeat of the Christian Democrats — what can be discussed.

⁴¹ Inaugural session was chaired by the oldest age-MP, a famous writer G. Petkevičaitė-Bitė. H. Wisner, *Litwa...*, op. cit., p. 190. Her biography: https://lt.wikipedia.org/wiki/Gabriel%C4%97_Petkevi%C4%8Dait%C4%97-Bit%C4%97 [accessed December 7, 2014].

⁴² Published in “*Laikinosios Vyriausybės Žinios*” 12 June 1920, No. 37.

constitutional guarantees in time of war or in order to remove the danger to the state (what happened to be also a common practice).

Soon after adopting a 1920 “small constitution” a coalition government was established under the leadership of K. Grinius⁴³. A. Smetona lost the position of the president. A *Seimas* Chairman A. Stulginskis⁴⁴ — acted as the head of state. Passing the radical agricultural reform⁴⁵ and adopting a new, “normal” not provisional constitution⁴⁶ were included in important tasks of the new *Seimas*.

The period of functioning of the young Republic of Lithuania based on provisional regulations from 1918–1920 was very specific and difficult to clearly judge. It should be remembered that we are dealing with a very young state, with extremely complicated external and internal situation, with the political class *in statu nascendi* and characterized by a very little legislative experience. For example — the members of the constitutional committee of the Lithuanian parliament had to listen to the basic constitutional law lectures (gave by Kaunas lawyer P. Rozenbaum)⁴⁷. This state of affairs, had a strong impact on the quality of legal acts of the first period of independence. But — on the other hand — the most important is, that the process of the formation of the new Lithuanian state in such difficult conditions, was a general success.

⁴³ K. Grinius biography in: T. Zubiński, *Ciche...*, *op. cit.*, p. 33–34. See also <http://atminimas.kvb.lt/asmenvardis.php?asm=GRINIUS%20KAZYS> and https://en.wikipedia.org/wiki/Kazys_Grinius [accessed December 7, 2014].

⁴⁴ Biography: T. Zubiński, *Ciche...*, *op. cit.*, pp. 29–32. See also https://lt.wikipedia.org/wiki/Aleksandras_Stulginskis [accessed December 7, 2014].

⁴⁵ P. Łossowski, *Kraje...*, *op. cit.*, pp. 31–40.

⁴⁶ New constitution was adopted in 1922. Text in “*Vyriausybės žinios*” No. 100/1922, p. 8. Polish translation: *Nowe konstytucje przełożone pod kierunkiem dra Juliana Makowskiego*, Warszawa 1925.

⁴⁷ P. Łossowski, *Litwa*, *op. cit.*, p. 97.

