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**LEGAL REGULATION PROBLEMS OF LITHUANIAN
LOCAL SELF-GOVERNMENT IN CONTEXT OF
ENSURING POLITICAL MINORITY (OPPOSITION)
RIGHTS**

DOCTORAL THESIS

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ANNOTATION

Legal regulation problems of Lithuanian local self-government in context of ensuring political minority (opposition) rights. Doctoral thesis. Riga: Turība University, 2022, p. 162.

The research object of the doctoral thesis is the influence of social-political and social-administrative factors on the process of legal regulation of local self-government in forming the standard of protection of the political minority (opposition) rights of the municipal council in the Lithuanian local self-government system. The main aim of the thesis is to develop the protection of the minority (opposition) rights of municipal councils as a complementary mechanism of local self-government (regulation) by ensuring the balanced functioning of the system of “checks and balances” between the majority and the minority of municipal councils in Lithuanian municipalities. However, the most important part of the research is an empirical study that consists of two parts: interview research and documentary research. Thus, with the help of qualitative and quantitative data analysis, this doctoral thesis seeks to reveal the most specific problematic aspects of the legal regulation of local self-government in the Republic of Lithuania related to the implementation of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self-Government and other legal acts. Moreover, this doctoral thesis provides some important solutions to develop and to solve some issues in existing legal regulations in Lithuanian law. The research work consists of three main parts each dedicated to a particular topic named above.

Keywords: political minority, local self-government, opposition, municipal council, local democracy.

ANOTĀCIJA

Lietuvas vietējās pašvaldības tiesiskā regulējuma problemātika politiskā mazākuma (opozīcijas) tiesību nodrošināšanas kontekstā. Promocijas darbs. Rīga: Biznesa augstskola Turība, 2022, 162 lpp.

Promocijas darba pētījuma objekts ir sociālpolitisko un sociāladministratīvo faktoru ietekme uz vietējās pašvaldības tiesiskā regulējuma procesu, veidojot pašvaldības domes politiskā mazākuma (opozīcijas) tiesību aizsardzības standartu Lietuvas vietējās pašpārvaldes sistēmā. Darba galvenais mērķis ir attīstīt pašvaldību domju politiskā mazākuma (opozīcijas) tiesību aizsardzību kā vietējās pašpārvaldes (regulācijas) papildinošu mehānismu, nodrošinot līdzsvarotu “pārbaudes un līdzsvara” sistēmas funkcionēšanu starp vairākumu un pašvaldību

padomju mazākumu Lietuvas pašvaldībās. Tomēr vissvarīgākā pētījuma daļa ir empīrisks pētījums, kas sastāv no divām daļām: intervijām un dokumentālā pētījuma. Tādējādi ar kvalitatīvās un kvantitatīvās datu analīzes palīdzību šajā promocijas darbā ir mēģināts atklāt Lietuvas Republikas vietējās pašvaldības tiesiskā regulējuma specifiskākos problemātiskākos aspektus, kas saistīti ar politiskā mazākuma (opozīcijas) paredzēto tiesību īstenošanu Pašvaldības likumā un citos tiesību aktos. Turklāt šis promocijas darbs sniedz dažus svarīgus risinājumus esošajām problēmām Lietuvas tiesību aktos. Pētnieciskais darbs sastāv no trim galvenajām daļām, katra veltīta noteiktai iepriekš minētajai tēmai.

Atslēgvārdi: politiskais mazākums, vietējā pašvaldība, opozīcija, pašvaldības dome, vietējā demokrātija.

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LIST OF ABBREVIATIONS

- (EIPA) European Institute of Public Administration;
- (COVID-19) Severe Acute Respiratory Syndrome Coronavirus;
- (CVPA) Central Project Management Agency;
- (STRATA) Government Strategic Analysis Center;
- (LVBOS) Lithuanian Association of Local Community Organizations;
- (NUTS) Nomenclature of Territorial Units for Statistics;
- (ALAL) the Association of Local Authorities in Lithuania;
- (ECHR) European Court of Human Rights;
- (EU) European Union;
- (USA) United States of America;
- (PhD) a Doctor of Philosophy - the highest academic level awarded following a course of study;
- (Charter) European Charter of Local Self-Government;
- (Constitution) Constitution of the Republic of Lithuania, 1992.

INTRODUCTION

The relevance of the topic. The model of state governance is usually determined by the constitutions of the states. The Constitution of the Republic of Lithuania¹ devotes a separate section to local self-government and its management, which not only shows the importance of local self-government in the institutional structure of state authorities, but also ensures the constitutional protection of the rights granted to local self-government. There are sixty separate administrative units of the territory in Lithuania, which are guaranteed the right of self-government, which is implemented through municipal councils elected by secret ballot.

After the direct elections of mayors held for the first time in Lithuanian history on March 1st, 2015 in sixteen municipalities (Birštonas municipality; Druskininkai municipality: Ignalina district; Jonava district; Kaunas district; Lazdijai district; Marijampolė municipality; Neringa municipality; Pagėgiai municipality; Palanga municipality; Pasvalys district; Rietavas municipality; Šakiai municipality, Šalčininkai municipality, Vilkaviškis district, Vilnius district);² one political party or public political movement won an absolute majority in the elections. After the March 3rd, 2019 municipal council elections, the number of “one-party” municipalities increased to seventeen³, which further highlighted the importance of ensuring the minority (opposition) rights of municipal councils in different municipalities.

In this context, it is important to note that after the restoration of the independence of the Republic of Lithuania (March 11th, 1990), in 2019, for the first time in the Republic of Lithuania, a situation arose when the absolute majority of the members of the council of one political party or public political movement would be elected in the municipal council of at least one of the five Lithuanian big cities (Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys). It should be noted that after, the March 3rd, 2019 elections of municipal councils and direct mayors in the second largest city in Lithuania - Kaunas, in general, only two lists of candidates entered the municipal council, with a ratio of 33 to 8, and in Šiauliai the public political movement led by the mayor won an absolute majority.

¹ Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucija), Official Gazette, 30.11.1992, No. 220, 33-1014.

² See data available on the official website of the Central Electoral Commission. Retrieved 04.10.2018 from: http://www.vrk.lt/statiniai/puslapiai/2015_savivaldybiu_tarybu_rinkimai/output_lt/rezultatai_daugiamand_apygardo_se/rezultatai_daugiamand_apygardose1turas.html.

³ See data available on the official website of the Central Electoral Commission. Retrieved 06.06.2019 from: <https://www.vrk.lt/2019-savivaldybiu-tarybu/rezultatai?srcUrl=/rinkimai/864/1/1506/rezultatai/lt/rezultataiTarNariaiMeraiSavivaldybese.html>.

Although there is no precise, universally accepted definition of democracy⁴, democratic form of government means that all citizens have the right to participate in the governance of the country and is fundamentally different from a form of government in which such a right belongs to one class, exclusive group or autocrat. Even before the introduction of direct mayoral elections A. Urmonas and A. Novikovas⁵ noted, that “*one of the most important foundations of a democratic society is a multi-party system*”, and made an assumption, that “*with the legalization of direct mayoral elections, oligarchic tendencies may develop in local government.*” As can be seen, in such a case a paradoxical situation may arise where, in the absence of sufficient protection of the minority (opposition) rights of municipal councils, difficult-to-control and autocratic manifestations of local government can be accessed. The presence and functional operation of a minority (opposition) in the municipal council is not only a normative phenomenon but also a necessary expression of democracy. In principle, for the minority (opposition) of the municipal council, the legislation gives two main responsibilities:

First, the minority of the municipal council (opposition) prevents the establishment of a one-party management style, curbs the arbitrariness of the dominant government represented in the municipal council, helps to maintain the constitutional model of local government;

Second, the minority of the municipal council (opposition) supervises the legality and fairness of the majority of the decisions made by the municipal council, recognizes the mistakes and shortcomings of the adopted public decisions and functions as an instrument for the prevention of violations of the rights granted to the municipality.

Recognition of the parliamentary opposition and the obligation to defend it in order to ensure pluralist democracy should be noted as one of the key elements of pluralist democracy⁶. The fact that ensuring the protection of the rights of the minority (opposition) in the municipal council is a necessary element of a pluralistic democracy has been emphasized by the Constitutional Court of the Republic of Lithuania⁷. The term pluralist democracy in the current jurisprudence of the Constitutional Court of the Republic of Lithuania is related not only to the diversity of opinions, but also to a broader analysis: in the political, ideological and cultural context⁸.

⁴ Kekic, L. (2007). The Economist Intelligence Units index of democracy. *The Economist*, p. 1-8. Retrieved 06.06.2019 from: https://www.economist.com/media/pdf/democracy_index_2007_v3.pdf.

⁵ Urmonas, A., Novikovas, A. (2011). The peculiarities of the implementation and incorporation of the principles of European charter of local self-government in Lithuanian local government and National legal systems. *Jurisprudence*, No. 18 (3), p. 1019-1034. (ISSN 1392-6195).

⁶ Ragauskas, P. (2016). The reflections of the principle of democracy in the jurisprudence of the Constitutional court of Lithuanian Republic. *Law Institute of Lithuania*, p. 1-86. (ISBN online 978-9986-704-38-6).

⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 26.11.1993 and 25.01.2001.

⁸ Ibid.

In European countries that promote the rule of law and long-standing constitutional values, the influence of democracy in the adoption and implementation of public decisions at the local government level is constantly debated, that is, the right of self-government to safeguard the interests of local people and communities⁹. It should be noted that the decisions taken by municipal institutions must comply with the requirements of transparency, integrity and openness, such decisions must not create conditions conducive to conflicts of interest and prevalence of corruption in the municipalities. The requirement to develop an anti-corruption environment is mandatory for the entire public sector, however, the commitments of municipal institutions and its managers in their implementation remain formal. This can be seen through the performance practice of ethics and anti-corruption commissions in municipalities, which, unfortunately, does not contribute to the formation of a high compliance culture for the local self-government¹⁰. It is not for nothing that local self-government (with its municipal institutions) has been identified in Lithuania for the last five years as having the highest probability of corruption¹¹. According to the 2020 data¹² of the Corruption Map Survey of the Lithuanian Secret Investigation Service, it has been established, that the most common forms of corruption in Lithuania are:

- 1) Nepotism (74%);
- 2) Politicization¹³ (66%) - patronage of members of political parties;
- 3) Adoption of favorable legislation for the benefit of individual groups (58%).

According to the Lithuanian Secret Investigation Service anti-corruption environment assessment, the average intensity of nepotism risk in Lithuanian municipal administrations is as high as 18%; every fifth employee of the municipality is related by kinship; every fourth employee of the municipal administration is a member of a political party; every ninth employee of Lithuanian municipal enterprises and institutions belongs to a political party; 12 percent winners of municipal public procurement that provided support to municipalities accounted for one third of the value of all public procurement, that is, 483.3 million Euros¹⁴.

⁹ Spurga S. (2012). Democratisation and Civil Society in National States and the EU: Democratisation of Central and Eastern Europe, (in Lithuanian). Monograph, Mykolas Romeris University, p. 3-299. (ISBN 978-9955-19-444-6).

¹⁰ Kalesnykas, R. (2020). The development of anti-corruption environment in Lithuanian public sector: best practice and experience. *Acta Prosperitatis*, No. 11, p 92-116. Doi: [10.37804/1691-6077-2020-11-92-115](https://doi.org/10.37804/1691-6077-2020-11-92-115).

¹¹ Report of the Investigation of the Corruption Map of the Secret Investigation Service, (2020), p. 85. Retrieved 04.03.2021 from: <https://www.stt.lt/analitine-antikorupecine-zvalgyba/lietuvos-korupecijos-zemelapis/7437>.

¹² Ibid, p. 74.

¹³ See data available on the official website of the Office of Secret Investigations. Retrieved 04.03.2021 from: <https://www.stt.lt/analitine-antikorupecine-zvalgyba/kiti-tyrimai/politizacijos-rizikos-stebesena-savivaldoje/7547>.

¹⁴ Data available on the official website of the Office of Secret Investigations. Retrieved 04.03.2021 from: <https://www.stt.lt/naujienos/7464/stt-veikloje-demesys-korupecijos-rizikoms-savivaldoje:2688>.

Intensive scientific discussions are still taking place in Lithuania about the optimal model of local self-government that would be acceptable at the level of implementation of municipal representative and executive power. It should be noted that the model of local self-government should not satisfy the interests of individual political groups, but should be focused on the communal (public) needs of all local residents. Such a model should be based on the principle of democracy as a result of the rule of law, recognized and declared by the Constitution.

In the current legal system of Lithuania, municipal institutions are considered to be one of the forms of expression of civil society, when the state power is decentralized to a certain extent and the right to resolve many important issues of public administration is granted to the citizens themselves¹⁵. European Charter of Local Self - Government¹⁶ obliges Member States to comply with the basic requirements guaranteeing the political, administrative and financial independence of local authorities. It stipulates that self-government institutions are the subsidiary basis for the organization of any democratic order. However, according to L. Pratchetto, “The categories (*independence of local authorities*) and (*local democracy*) are not identical. The independence of local authorities is a necessary but not sufficient condition for local democracy to flourish.¹⁷”

Although in law the system of checks and balances is usually associated with the management of the state rather than municipalities and the institutional structure of their government differs substantially¹⁸, however, the essential legal provisions of the system of checks and balances are very similar between municipal councils and the Seimas of the Republic of Lithuania as collegial authorities in which political decisions (legal acts) are made. During the empirical research in the dissertation it is important to pay attention to a certain analogy between the municipal council and the Seimas of the Republic of Lithuania, especially on the issues of separation of powers - the procedure for their internal formation, determination of powers and competencies between the majority and the minority.

It must be borne in mind that the power in the lowest territorial administrative units is closest to the person and directly influences the law-making policy and administrative decisions relevant to the local population. In this dissertation, the author presents a non-orthodox approach

¹⁵ 119 Article of the Constitution of the Republic of Lithuania. Official Gazette, 30.11.1992, No. 220, 33-1014; 4 Article of the Law on Local Self-Government of the Republic of Lithuania. Official Gazette, 20.07.1994 No. 55-1049.

¹⁶ European Charter of Local Self-Government. Strasbourg, 1985, No. 122 // Official Gazette. 1999, No.82-2418.

¹⁷ Pratchett, L. (2004). Local Autonomy, Local Democracy and the ‘New Localism’. *Political Studies*, No. 52 (2), p. 358–375. Doi: <https://doi.org/10.1111/j.1467-9248.2004.00484.x>.

¹⁸ Novikovas A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 58–64. (ISSN 1392-6195).

to the State structure based on many years of practical experience in the field of local self-government.

In the context of the still ongoing pandemic situation of COVID-19, research interest on local self-governance inputs to participate in – and to manage emergency situation has become even more relevant in Lithuania. This might be an evidence, that when decisions made by municipal institutions directly restrict the rights of individuals (for example: freedom of movement, the right to conduct certain types of business, right to have a good administration etc.). There are reasonable doubts whether the administrative decisions made at the level of self-government do not exceed the limits of competence, therefore there is a need to study the situation of local self-government in the State, the relationship of local self-government with central government and the interaction of local self-government institutions between themselves.

The above-mentioned circumstances determine the need to rely in scientific work on the principle of separation of powers enshrined in the Constitution of the Republic of Lithuania, the semantic analysis of which allows to clearly define the scope and limits of empirical research in the chosen topic through:

1) *Interaction of authorities*, by selecting the elements of the legal regulation mechanism (constitutional - administrative) for research and establishing the existing administrative - legal and constitutional - legal relations between separate public authority entities at the territorial level. These legal relations include the co-operation of the authorities, the division of competences, powers and responsibilities and the co-ordination of common statutory actions, the functioning of the “checks and balances” system by ensuring a balance of interaction between the authorities;

2) *Separation of functions of the authorities*, that is, directing research not only according to the division of powers of the authorities for the implementation of public functions into the branches of state administration, but also with the determination of the procedure for their own internal formation, legal status, powers and responsibilities, ensuring independence¹⁹. Following this logic and in order to achieve a democratic form of governance at the local government level, separation of powers is necessary not only between the representative and executive branches of the municipality, but also between the majority and the minority of the municipal council. For example, in the Statute of the Seimas²⁰ legal guarantees for the activities of the opposition are established – a certain number of seats and positions in committees, the status of the leader of the

¹⁹ Jarašiūnas, E. (2001). Separation of powers - a principle of the organization and operation of a democratic state. *Lithuanian Constitutional Law*, Publishing Center of the Lithuanian University of Law, Vilnius.

²⁰ Statute of the Seimas of the Republic of Lithuania, (Lietuvos Respublikos Seimo statutas). Official Gazette, 25.02.1994, No. 15-249.

opposition, the initiation of agendas and commissions and so on. Systematically assessing the provisions of the Law on Local Self-Government of the Republic of Lithuania²¹, it can be seen that the obligation to form a Control Committee, Anti-Corruption and Ethics Commissions in each municipality, the opposition of which is delegated by the opposition of the municipal council, is one of the ways provided by the legislator to ensure pluralistic democracy in self-government and the rights of political minorities (oppositions) in municipal councils, on which the balance of local government depends.

J. Madison, one of the main founders of the doctrine of the division of powers, also held the position that the constitutional provisions defining the powers of each individual government were not sufficient. He stated²² that a mechanism is needed to guarantee self-regulatory control by public authorities. *“J. Madison’s goal was to protect freedom and minority interests by creating a system in which central governments remain independent but at the same time control and counterbalance each other. Based on the experience of the United States, J. Madison saw the greatest threat to (democracy) in the power of the legislature (decisions)”*²³.

The dissertation formulates a **problematic situation** when the insufficient guarantee of the minority (opposition) rights of the municipal council causes violations of the rule of law and the development of autocratic governance tendencies in the local government system of the Republic of Lithuania. Although democratic institutions of local self-government are formally enshrined in Lithuanian legislation, however, different demographic situation, different emerging municipal management traditions, different work regulations of municipal councils, poor control of decisions and administrative actions of municipal councils, incorrect treatment and application of statutory legal norms creates conditions for the formation of situations where democratic values, the principles of law declared by international organizations and the protection of civil rights and freedoms in the fields of activity of municipalities are endangered. In the research work, the problematic situation includes the analysis of such debatable issues as:

- a) Uncertainty about the all-round (full) realization of the rights of the minority (opposition) of the municipal council;
- b) Formal performance of administrative supervision of municipal activities;

²¹ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

²² Madison, J., Hamilton, A. (1788). The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments. *The Federalist Papers*, No. 51-60, New York. Available in Library of Congress: <https://guides.loc.gov/federalist-papers/text-51-60>.

²³ Griškevič, L. (2008). Theory of separation of powers by J. Madison. *The Law*, No. 66 (2), p. 154-161. (ISSN 1392-1274).

c) Clear, open and transparent interaction of the minority (opposition) of the municipal council with other municipal institutions, participating in municipal management processes and forming bodies supervising (controlling) the decisions made by municipal institutions and their implementation.

The scientific novelty of the PhD thesis. With the emergence of liberal democratic lawyers such as Petras Leonas (1864–1938) and Mykolas Römeris (1880–1945) in interwar Lithuania, the democratic concept of local self-government in Lithuania began to be formed scientifically. Political figure and scientist Petras Leonas, who was mainly interested in the problems of law, philosophy of law, political economy, sociology, and ethics, also analyzed the issues of local municipalities in his works. Petras Leonas and Mykolas Römeris (1880–1945) were the most famous scientists of the First Republic of Lithuania who wrote about the problems of local municipalities²⁴ and to this day the ideas of Petras Leonas and Mykolas Römeris represent Lithuania's political thought on local government issues.

After the restoration of Lithuania's independence on March 11th, 1990 there are a number of works by well-known Lithuanian scientists on separate elements of local government in the Republic of Lithuania (for example: Šileikis, E.²⁵; Kūris, E.²⁶; Bakaveckas, A.²⁷; Kulakauskas, A.; Urmonas, A.; Novikovas, A.²⁸; Ragauskas, P.²⁹; Mažylis, L.³⁰; Žilinskas, G.³¹; Grigienė, K.³²; Kondratienė, V.³³; Čiupaila, R.³⁴; Burbulytė-Tsiskarishvili, G.³⁵; Raišienė,³⁶ A. G.; Astrauskas,

²⁴ Leonas, P., (1923). Regarding municipal reform. *Savivaldybė*, No. 7; Römeris, M. (1922). Local municipalities. *Law*, No. 3.

²⁵ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 208-264. (ISSN 1822-4520).

²⁶ Kūris, E. (1990). Self-government, democracy, law. *Žinija & Lietuvos teisininkų draugija*, Vilnius.

²⁷ Bakaveckas, A. (2005). The problems of Development of legal base of local self-government. *Public policy and administration*, No. 12 (109), p. 104-110. (ISSN online 2029-2872 / ISSN print 1648-2603).

²⁸ Urmonas, A., Novikovas, A. (2011). The peculiarities of the implementation and incorporation of the principles of European charter of local self-government in Lithuanian local government and National legal systems. *Jurisprudence*, No. 18 (3), p. 1019-1034. (ISSN 1392-6195).

²⁹ Ragauskas, P. (2016). The reflections of the principle of democracy in the jurisprudence of the Constitutional court of Lithuanian Republic. *Law Institute of Lithuania*, p. 1-86. (ISBN online 978-9986-704-38-6).

³⁰ Mažylis, L., Leščauskaitė, V. (2015). Direct election of mayors in Lithuania: Ongoing debates and fresh experiences. *Versus aureus*, Vytautas Magnus university press, No. 17, p. 38-56. (ISSN 2029-0225).

³¹ Žilinskas, G. (2010). Constitutional Aspects of Development of Local Governance in the Republic of Lithuania. *Public Policy and Administration*, No. 33, p. 57-68. (ISSN online 2029-2872 / ISSN print 1648-2603).

³² Grigienė, K. (2011). Constitutional frameworks for regional self-government in Lithuania and central and eastern Europe: Do the reforms of the regions determine the need of constitutional amendments?. *Societal studies*, No. 3 (4), p. 1479-1496. (ISSN online 2029-2244 / ISSN print 2029-2236).

³³ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 60-66. (ISSN 1392-6195).

³⁴ Čiupaila R. (2011). Possible inconsistencies between the legal acts of the Republic of Lithuania and the policy pursued by state institutions with the requirements of the European Charter of Local Self-Government. *Association of Lithuanian Municipalities*, Study – Vilnius.

³⁵ Burbulytė - Tsiskarishvili, G., and others. (2018). Changes of Local Functions and Local Powers in Lithuania 1994–2016 . *Public policy and administration*, Vol. 17, No. 3/ 2018, p. 399-420. Doi: <https://doi.org/10.5755/j01.paa.17.3.21955>.

A.³⁷ and others), however, the level of scientific research in Lithuanian science on the problems of legal regulation and political nature affecting the principles of democracy and, in particular, the rights of political minorities in municipal councils in the local government of the Republic of Lithuania is low. The analysis of the listed scientific sources relevant to the empirical research shows that the chosen topic of the dissertation is analyzed in a fragmentary manner, does not reflect the complex process of local government functioning through equal participation of the minority (opposition) in municipal affairs.

It should be noted that in the foreign literature one can find research papers that examine the relationship between municipalities in the context of the division of powers, however, works on such topics are abundant and not new. For example, In 1958, F. Pike examined the relationship between the municipality and the Spanish American colonial administration in a system of “checks and balances”³⁸, however, it should be noted that in the days of colonialism, the accession of the territories of other countries and nations, in contrast to the present times, was not characterized by democracy and the aspiration to implement the principle of the rule of law.

The scientific novelty of the dissertation research is based on the fact that the significance of the realization of the minority (opposition) rights of municipal councils in the management of the municipality is examined from a systematic point of view: at the beginning, a general analysis of the functioning of local government in the Republic of Lithuania in the context of public administration is presented, and its modern understanding is based on the synergy of philosophy, politics and law, the interaction between state and municipal institutions is examined later, which allows for a holistic transition to the assessment of the internal legal situation of the local government itself, that is, public decision-making and implementation processes at the lowest level of municipal governance. The need to realize the rights of the minority (opposition) in municipal councils should be focused on creating a system of democratic governance at the local public level that would effectively help citizens to exercise their rights and legitimate interests in any organization with an institutionalized structure.

The practical significance of the PhD thesis. The thesis is relevant on both theoretical and practical aspects. After April 19th, 2021 decision of the Constitutional Court of the Republic

³⁶ Raišienė, A. G. (2010). Conceptualization of inter-organizational partnership structural model in local-government. *Public policy and administration*, No. 34., p. 107-121. (ISSN online 2029-2872 / ISSN print 1648-2603).

³⁷ Astrauskas, A. (2014). Local Self-Government in Lithuania in 1990-2013: Changes of the Competence of Municipalities. *Public Policy and administration*, Vol. 13, No. 2, p. 187-208. Doi: <https://doi.org/10.13165/VPA-14-13-2-01>.

³⁸ Pike, F. (1958). The Municipality and the System of Checks and Balances in Spanish American Colonial Administration. *The Americas*, No. 15 (2); Jordan, P. and Popescu, C. (2002). The Europe of the Regions: Strategies and Perspectives in the View of the Forthcoming Enlargement of the European Union (Part II on Bulgaria, Latvia, Lithuania, Malta, Romania, Slovakia and Turkey). Study on behalf of the Committee of the Regions of the European Union.

of Lithuania³⁹, which recognized that the direct election of mayors is contrary to the current wording of the country's basic law, that is, the legal regulation of the elections and powers of municipal mayors is in conflict with the Constitution. However, such a decision of the Constitutional Court will officially come into force only after a couple of years, that is, on May 3rd, 2023, in order not to legally question the powers of the current directly elected mayors, including the mayor's relationship with the municipal council, there is a need to legitimize or abandon direct mayoral elections altogether.

The status of the municipal council and the role of the mayor and the municipal administration in the future will depend on the formulation of Article 119 of the Constitution of the Republic of Lithuania. If the Seimas of the Republic of Lithuania fails to agree on the amendments to the Constitution of the Republic of Lithuania within the next year and a half, the old order will be returned to in the spring of 2023, when elected municipal councils, in turn, will elect mayors. And in order to change the Constitution, it is necessary that more than two-thirds of the members of the Seimas vote for it twice with an interval of at least three months, that is, at least 94 out of 141 members of the Seimas.

The results of the empirical research conducted in the dissertation can be directly useful in the practical legislative process, which will help to increase democracy in municipal governance, creating a balance of legal regulation between the majority and minority of the municipal council (opposition). The conducted research and published results, scientific insights and recommendations may be of interest to both legislators and researchers in developing a long-term or creating a new strategic model of local self-government in Lithuania, the search for the optimal version of which is currently underway.

The object of the research. The object of the research is the influence of social-political and social-administrative factors on the process of legal regulation of local self-government in forming the standard of protection of the minority (opposition) rights of the municipal council in the Lithuanian local self-government system.

The aim and objectives of the research. The aim of the dissertation is to develop the protection of the minority (opposition) rights of municipal councils as a complementary mechanism of local self-government (regulation) by ensuring the balanced functioning of the system of “checks and balances” between the majority and the minority of municipal councils in municipalities.

³⁹ The ruling of the Constitutional Court of the Republic of Lithuania of 19.04.2021: Regarding the compliance of the provisions of the Law on Local Self-Government of the Republic of Lithuania and the Law on Elections to Municipal Councils of the Republic of Lithuania related to the elections and powers of municipal mayors with the Constitution of the Republic of Lithuania. Case No. KT59-N5/2021.

Theoretical analysis of municipal law as a separate legal institute of public law and practical implementation of legal regulation of municipal activities in determining the legal position of the municipal council minority (opposition) in the local government system create preconditions to properly substantiate and not deviate from the chosen research object. On the other hand, detailed empirical research on the protection of the minority (opposition) rights of municipal councils and their practical implementation helps to increase the understanding of the role of the minority (opposition) in municipal councils in the activities of municipal institutions, also allows to justify the prevailing provisions regarding the insufficient involvement of the minority (opposition) in municipal councils together with the majority of municipal councils to participate in the public decision-making and implementation process on equal terms, ensuring the protection of local people's rights and freedoms and public interest.

In order to achieve the set aim, the following objectives are to be addressed in the dissertation thesis:

1) *To analyze* the factors of the social environment affecting the changes in the formation of the local government institute and the problems of legal regulation in the Lithuanian national law;

2) *To evaluate* the effectiveness of the local government legal acts of the Republic of Lithuania regulating the rights of the minority (opposition) of municipal councils to participate in the management of public affairs on equal terms together with the majority of the municipal council;

3) *To study* the legal status and place of local government entities in the system of institutional structure of state governments, including the relationship of local government with the central executive government and the interaction between the institutions of the same municipalities;

4) Based on empirical research data *to determine* (identify) gaps in legal regulation and/or legal uncertainty, which limits the possibilities of implementation and protection of minority (opposition) rights of municipal councils and causes uncertainty of the system of checks and balances between the majority and minority of municipal councils in local government of the Republic of Lithuania.

5) *To draw some research-based solutions* for issues identified related to these analyzed questions of better protection of minority rights of municipal council for Lithuanian legislator in order to improve national regulatory mechanism.

Taking into account the topic, goals and objectives of the dissertation, both empirical and theoretical **methods of the research** in the social sciences were chosen:

The method of document analysis is the stage of the research focused on the normative content of the research phenomenon, in order to assess the problematic issues of the functioning of the national municipal law institute, which create preconditions restricting the proper realization of the minority (opposition) rights and their legal protection. The application of this method helped to better understand the content of the research object in the context of social processes related to the objective implementation of the minority (opposition) powers of the municipal council. This method has been used to collect and research information sources, such as national legislation, European Union and international legislation, rulings of the Constitutional Court of the Republic of Lithuania, current case law, related research, official statistics, etc.

Systematic, comparative and logical analysis was applied to obtain the approved results of the analytical research data and their bases (interpretation, prediction, practical recommendations). The complex use of analysis methods allowed to study the synergy of municipal legal norms and the practice of national and international courts in applying these norms in the aspect of ensuring the protection of minority (opposition) rights of municipal councils. The juxtaposition of the phenomena of the research object, the connection of the elements and the gradually deepening analysis and synthesis by systematizing the obtained research data, evaluating and comparing them with each other, revealed the relations of uniformity, difference, identity and similarity of the researched phenomena.

The specifics of the research object also obliged to choose qualitative research methods, as the solution of the problem formulated in the work requires the analysis of many variables, and some of them are difficult to identify by theoretical means alone. In order for the empirical research not to become only a data collection tool, but to actually serve to improve the regulatory processes of municipal management, the second chapter of the dissertation was chosen to combine elements of quantitative methodology and qualitative approach. Analyzing the problematic aspects of the legal regulation of local government in Lithuania related to the realization of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self-Government of the Republic of Lithuania and other legal acts, an *interview method* was also used, which sought to identify as precisely as possible the problems of the realization of the rights of political minorities (opposition) in the whole Lithuanian municipality. It is the *interview method* that has been chosen to ensure the interaction of the researcher and the respondent, which enables to obtain the widest and most in-depth information possible in identifying practical problems and also to collect the detailed data needed to solve the identified problems.

The observation method was systematically applied as a method of collecting primary information, which in interaction with other research methods helped to better understand and

record the phenomena related to the practical and theoretical aspects of the implementation of minority (opposition) rights in the municipal council. It should be noted that the author of the dissertation has accumulated many years of practical experience in the field of legal regulation of local self-government of the Republic of Lithuania, since 2011 to date, he has been elected a member of the municipal council for three consecutive terms. *The generalization method* was used to summarize the collected and analyzed research data and to formulate conclusions and suggestions.

The hypothesis: In the dissertation it was chosen to formulate a *purposeful*⁴⁰ hypothesis, aimed at proving that the protection of the minority (opposition) rights of municipal councils will be effectively ensured by the comprehensive improvement of the existing legal institution of local government in the Republic of Lithuania, the processes of autocratic governance will also be avoided and an effective “checks and balances” mechanism will be created at the level of local government in Lithuania.

The approbation of the research results. The main statements, theoretical conclusions and practical recommendations set out in the dissertation have been published in five peer-reviewed scientific articles, and the results of the dissertation research have been presented at six scientific - practical conferences. The author of the dissertation has also published articles on the topic of the dissertation and on the largest Lithuanian media portals, participated as a speaker in various press conferences, including in the Seimas of the Republic of Lithuania. A detailed list with references to the sources is provided below.

List of scientific publications related to the doctoral thesis:

1. Kaklys, K. (2021). *Approbation of the Results Obtained During the Interview: Research of Possibilities for Exercising the Rights of Political Oppositions in Lithuanian Self-Government* // Socrates, 3 (21), p. 127-138. Indexed in the Erih + database. Doi: [10.25143/socr.21.2021.3.127-138](https://doi.org/10.25143/socr.21.2021.3.127-138).
2. Kaklys, K. (2021). *Problematic Aspects of Lithuanian Legal Regulation of Impeachment Procedure to a Member of Local Municipal Council* // Acta Prosperitatis, 12, p. 72-91, ISSN 1691-6077, Turība University Press, Latvia. Doi: [10.37804/1691-6077-2021-12-24-37](https://doi.org/10.37804/1691-6077-2021-12-24-37).
3. Kaklys, K. (2020). *Search for Checks and balances System at Local - Government Level of the Republic of Lithuania* // Insights, pp. 210-217, ISSN 2669-0330 (online), Utena University Press, Lithuania. Reference: <https://www.utenos->

⁴⁰ Charles, C. M. (1998) Introduction to Educational Research. Third Edition. *Alma littera*, p. 1-416. (ISBN-0-8013-1872-6); Kardelis, K. (2002). The module summary is prepared according to the textbook: Research methodology and methods. 2nd revised and supplemented edition, p. 18. Retrieved 04.04.2020 from: <https://verslas09.files.wordpress.com/2010/01/mtp.pdf>.

kolegija.lt/upload/file_manager/Visuomenei/%c4%ae%c5%bevalgos/2020-Nr1/20%20K.%20Kaklys_SEARCH%20FOR%20CHECKS%20AND%20BALANCES%20SYSTEM%20AT%20THE%20LOCAL%e2%80%93%20GOVERNMENT%20LEVEL%20OF%20THE%20REPUBLIC%20OF%20LITHUANIA.pdf

4. Kaklys, K. (2020). *Analysis of Lithuanian Regional Democracy According to the Articles of European Charter of Local Self-Government* // Acta Prosperitatis, 11, p. 72-91, ISSN 1691-6077. Turība University Press, Latvia. Doi: [10.37804/1691-6077-2020-11-72-91](https://doi.org/10.37804/1691-6077-2020-11-72-91).
5. Kaklys, K. (2019). *The Problematicity of Legal Regulations of Local Self - Governance in the Republic of Lithuania in the Context of Ensuring Minority Rights and Democracy* // Social Research, 42 (1), p. 41-49, ISSN 2351-6712 (online). Vilnius University Press, Lithuania. Indexed in the Erih + database. Doi: [10.21277/st.v42i1.263](https://doi.org/10.21277/st.v42i1.263).

List of scientific reports related to the doctoral thesis:

1. 13th of May, 2021 - Participated in the International scientific conference *Relevant issues of environment management 2021* organized by Kaunas Forestry and Environmental Engineering University of Applied Sciences and presented the scientific report on the topic: *Legislative Solutions for Ensuring Political Minority Rights at Local - Self Government of Lithuania*. Certificate registration No. IC-5 87.
2. 29th of April, 2021 - Participated in the International conference *Problems and Challenges of Contemporary Law in the Context of International Law 2021* organized by Kazimieras Simonavičius University and presented the scientific report on the topic: *Problems of Realization of the Rights of Political Minorities (Oppositions) in the Municipal Councils of the Republic of Lithuania*. Certificate registration No. TF-223002434.
3. 22th of April, 2021 - Participated in the XXII International scientific conference *Artificial intelligence and green thinking* organized by Turība University and presented the scientific report on the topic: *Problematic Aspects of Lithuanian Legal Regulation of Impeachment Procedure to a Member of Local Municipal Council*. Certificate registration No.2021-422.
4. 21th of April, 2020 - Participated in the XXI International scientific conference *Sustainable Economy, Latvian story* organized by Turība University and presented the scientific report on the topic: *Analysis of Lithuanian Regional Democracy According to the Articles of European Charter of Local Self-Government*. Certificate registration No. 2020-028.
5. 28th of November, 2019 - Participated in the International scientific conference *Circular economy for competitive Regions* organized by Vilnius University Šiauliai Academy and

presented the scientific report on the topic: “*Importance of Self- Government Council Minority Rights and its Impact on Municipal Governance*”. Certificate registration No. RP-8-670.

6. 16th of May, 2019 - Participated in the *International Scientific Conference of Young Researchers* organized by Vilnius University Šiauliai Academy and presented the scientific report on the topic: “*Challenges for democracy in self-government*”. The scientific report was named as the best scientific report in section of *Opportunities for the public sector* and given a special diploma confirming this. Certificate registration No. RP-8-277.

Other activities and articles published in the media on the dissertation topic:

1. The article on the topic: “*Karolis Kaklys: How did the construction of Vijūnėlė manor reveal sensitive problems for the whole of Lithuania?*” was published on the online news portal - www.tiesos.lt on 30th of July, 2020. Reference: <http://www.tiesos.lt/index.php/tinklarastis/straipsnis/karolis-kaklys-kaip-vijuneles-dvaro-statybos-atskleide-visai-lietuvai-opias>.
2. The article on the topic: “*Karolis Kaklys: Let's see that the "Polish" strengthening of self-government does not backfire*” was published on the online news portal - www.15min.lt on 27th of August, 2019. Reference: <https://www.15min.lt/naujiena/aktualu/nuomones/karolis-kaklys-ziurekime-kad-lenkiskas-savivaldos-stiprinimas-neatsisuktuantru-galu-18-1193930>.
3. The article on the topic: “*Karolis Kaklys: Is democratic self-government possible without a minority?*” was published on the online news portal - www.delfi.lt on 2nd of February, 2019. Reference: <https://www.delfi.lt/news/ringas/politics/karolis-kaklys-ar-imanoma-demokratiska-savivalda-be-mazumos.d?id=80216849>.
4. The article on the topic: “*Karolis Kaklys: One-party system threats to self-government*” was published on the online news portal - www.15min.lt on 14th of April, 2015. Reference: <https://www.15min.lt/naujiena/aktualu/nuomones/karolis-kaklys-vienpartines-sistemos-gresmes-savivaldai-18-496867>.
5. The article on the topic: “*Karolis Kaklys: Druskininkai municipality is a unique example - how power can be concentrated in one hand*” was published on the online news portal - www.tiesos.lt on 3rd of July, 2013. Reference: <http://www.tiesos.lt/index.php/tinklarastis/straipsnis/druskininkai-unikalus-pavyzdys-kaip-galima-sutelkti-valdzia-vienose-rankose>.

6. Participated as a speaker in Press conference on the topic: “*Legal nihilism and the sunset of democracy in Druskininkai municipality*” in Seimas of Republic of Lithuania. Event date was 4th of April, 2013. Reference: <https://sc.bns.lt/view/item/143836>.

The structure of the PhD thesis was determined by the object of the research selected.

The thesis is constituted by the four parts:

a) Introduction, where the research carried out is reviewed, the relevance of the topic is emphasised, the methods applied as well as other criteria that characterise the research of the thesis are described;

b) Explanatory expository and research part divided into three chapters with the main statements (interim conclusions) and suggestions where the object of the research selected is comprehensively analysed in detail;

c) Summarised results of the research where the conclusions and suggestions are provided;

d) List of references used in order to prepare the thesis.

Three chapters constitute the explanatory expository part of the thesis (part b):

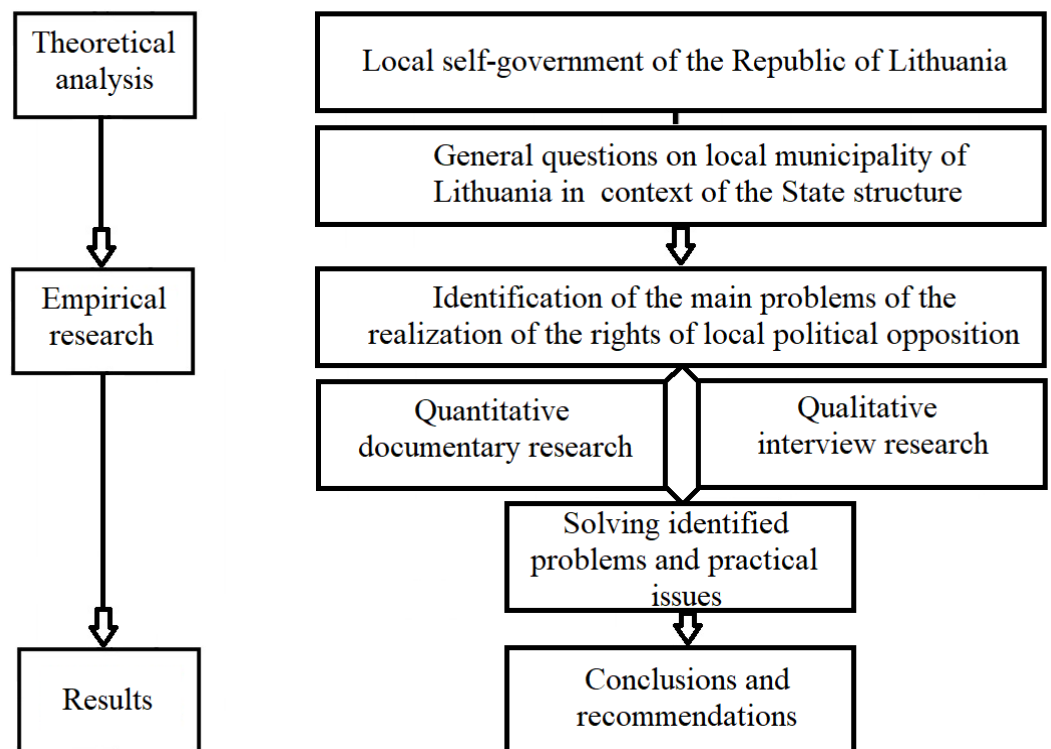
The first chapter of the dissertation is of a theoretical analytical nature, in which the general issues of local government in the Republic of Lithuania are analyzed. Taking into account the problems and goals raised in the scientific work, this chapter aims to reveal the essential features of Lithuanian local government, the situation of local government in the context of the State, interaction with State institutions, competence and legal environment, which later (in the second chapter of the dissertation) will help to better understand and delve deeper into the field in which the political minorities of municipal councils operate.

The second chapter of the dissertation is of a practical, exploratory nature. This chapter presents an empirical study that consists of two parts: interview research (qualitative) and documentary research (quantitative). In order for the research not to become only a data collection tool, but to actually serve to improve the municipal management processes, the specifics of the research object oblige to choose both quantitative and qualitative research methods, whereas the solution of the problem formulated in the work requires the analysis of many variables, some of which are difficult to identify by theoretical-documentary means alone. Thus, with the help of qualitative and quantitative data analysis, this chapter seeks to reveal the most specific problematic aspects of the legal regulation of local self-government in the Republic of Lithuania related to the implementation of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self-Government and other legal acts. It can be mentioned that in order to get the greatest possible practical benefit from the research, as many

as thirty respondents were interviewed, all of whom are current or former members of municipal councils.

The third chapter of the dissertation is of a general, strategic, perspective and innovative nature. This chapter summarizes the results of the empirical research, presents solutions to the problems of different sections, specific suggestions on how to apply the results to improve the national legal framework to ensure the rights of local political minority, including the democratic governance model in the local government of the Republic of Lithuania.

Figure No. 1⁴¹. The logical structure of the dissertation



⁴¹ The figure is compiled by the author.

I. GENERAL QUESTIONS ON LOCAL SELF-GOVERNMENT AS MUNICIPAL LAW INSTITUTE IN CONTEXT OF THE LITHUANIAN STATE STRUCTURE

The first chapter of the dissertation is of a theoretical analytical nature. Taking into account the problems and goals raised in the scientific work, this chapter aims to reveal the essential features of Lithuanian local self-government, the situation of local self-government in the state context, interaction with state institutions, competence and legal environment, which later (in the second chapter of the dissertation) will help to better understand and delve deeper into the field in which the political minorities of municipal councils operate.

1.1. The essential features of the national regional policy

1.1.1. The institutional system of municipalities and the constitutionality of its formation

Scientific sources distinguish the elements of the mechanism establishing local self-government: value, institutional, legal and financial. The value element is the most important, determinant of other elements, determining the essence, weight and role of local self-government. The remaining elements are instrumental in nature, supporting, enhancing, and optimizing the value element. The coordinated operation of all these elements ensures the efficiency of the system. Although, if one of them functions unevenly, the whole system⁴² transforms accordingly.

Institutions in the context of local self-government are a more practical element on which the competence of the territorial community to solve tasks and potential problems depends. However, they are part of the system of state institutions, the legal status and powers of which are determined by the organizational and financial capabilities of the state, the content, expediency, international obligations, etc. of the policy pursued during the relevant period and conditions. Thus, the Seimas, bound by the Constitution⁴³, establishes or abolishes local self-government institutions, as well as other state institutions, determines their legal status and powers. The Constitution of the Republic of Lithuania (1992) provides for a separate section on local self-government and its management, which shows not only the importance of local self-government in the context of the State, but the principles of local self-government mentioned in the Constitution of the Republic of Lithuania also acquire constitutional protection. In Lithuania, there are 60 separate administrative units of the territory, which are guaranteed the right of self-

⁴² Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 31. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

⁴³ The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2004.

government, which is implemented through municipal councils elected by secret ballot. It should be noted that the Constitution mentions “self-government institutions” from which the representations of territorial communities and the municipal council are distinguished, mentioning in general features its functions and competence: “For the direct implementation of the laws of the Republic of Lithuania, decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it” (Pt. 4 of Art. 119 of Constitution). The formation of these bodies - is a constitutional duty of municipal councils. However, the bodies mentioned in the Constitution are not named, nor are their types, order of formation or mutual relations established, but in performing the following actions, the principles of local self-government enshrined in the Constitution of the Republic of Lithuania must be observed: representative democracy, the representation of the accountability of executive bodies, the supremacy of municipal councils over the executive bodies accountable to them, etc. (Other sources distinguish between the principles of freedom and independence of municipalities within the limits defined by law, the principles of coordination of the interests of the municipality and the state)⁴⁴. Although executive bodies accountable to municipal councils are usually set up for the term of office of municipal councils, municipal councils themselves (with the permission of the legislator) can only determine the structure and number of members of these bodies and control them. Everything else (order of conclusion; types: collegial, one-person; interrelations) is left to the will of the legislator. It should be noted that the executive bodies accountable to municipal councils may not consist of:

- 1) Members of municipal councils;
- 2) Military, paramilitary and security personnel (Art. 141 of Constitution);
- 3) Persons exercising public authority;
- 4) Public officials, in accordance with the powers granted by the Constitution and laws, controlling the activities of municipalities⁴⁵.

Other state institutions that have significance for local self-government are enshrined in the Constitution without specifying their exact names, e.g. Government representatives overseeing whether municipalities comply with the Constitution and laws or implement Government decisions. In other words, in higher administrative units, in accordance with the procedure established by law, management is organized by the Government (Pt. 1 of Art. 123 of Constitution), and in them, state institutions are established and their heads are appointed by the Seimas (Pt. 5 of Art. 67 of Constitution).

⁴⁴ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 676. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

⁴⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 13.02.2004.

According to the interpretation of the Constitutional Court: “The system of state powers includes legislative, executive and judicial powers; it is the relationship between these three powers that is determined by the constitutional principle of the division of state powers”⁴⁶. Local self-government institutions (municipal council, executive bodies accountable to the municipal council, other institutions established by the municipal council) are not assigned to any of the above-mentioned powers, however, as part of the system of state institutions, they perform the respective functions of the state, that is, they are established in order to realize the interests of municipalities and directly implement laws, Government resolutions, decisions of municipal councils⁴⁷. The Constitution enshrines the principle of the supremacy of municipal councils over the executive bodies accountable to them. It is also indicated that the competence and functions of these institutions are established by the Seimas by law⁴⁸. In addition, the state, municipalities and municipal institutions and bodies have a specific legal status: the rights and obligations of these entities may not contradict the goals and objectives of the state⁴⁹. Another important thing is that the functions of the state are performed by civil servants - officials working in state and municipal institutions⁵⁰. Public service is their professional activity related to ensuring the public interest. In the context of public administration and the provision of public services, decisions are taken by professional civil servants, however, they do not perform functions exercising state power and may not have other powers under the Constitution. This definition of civil service does not include municipal councils⁵¹. Consequently, not all bodies of local authorities have the status of civil servants, that is, persons belonging to the representative institution of local self-government are not considered to be civil servants: members of the municipal council, mayor, sub-elders. Such a provision, apart from sub-elders, is also enshrined in Part 11 of Article 2 of the Law on Civil Service of the Republic of Lithuania, which states that state politicians are persons elected or appointed to the positions of the President of the Republic, the Speaker of the Seimas, a member of the Seimas, the Prime Minister, a minister, a member of a municipal council, a mayor of a municipality, a deputy mayor in accordance with the procedure established by law⁵².

It is self-evident that the above-mentioned provisions of the Constitution are also reflected in the Law on Local Self-Government of the Republic of Lithuania. According to both

⁴⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002: Regarding the competence of the representative and executive bodies of the Municipality.

⁴⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 17.03.2003.

⁴⁸ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002: Regarding the competence of the representative and executive bodies of the Municipality.

⁴⁹ The ruling of the Constitutional Court of the Republic of Lithuania of 08.06.2009.

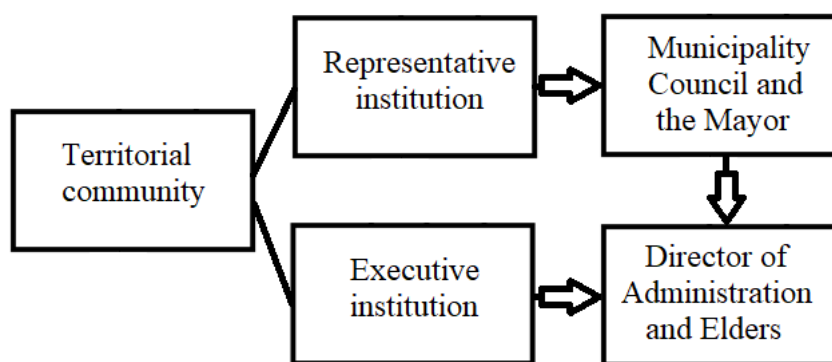
⁵⁰ The ruling of the Constitutional Court of the Republic of Lithuania of 21.04.1998.

⁵¹ The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2004.

⁵² Law on the Civil Service of the Republic of Lithuania, (Lietuvos Respublikos Valstybės tarnybos įstatymas). Official Gazette, 30.07.1999, No 66-2130.

the Constitution of Lithuania⁵³, and the Law on Local Self-Government,⁵⁴ the municipal council (representative institution) and the director of the municipal administration (executive institution) are responsible for the implementation of the right of self-government in the interests of the municipal community. The scientific literature indicates that the system of municipal institutions consists of the municipal council, the mayor of the municipality and the executive branch of municipalities⁵⁵. By systematizing legal and scientific sources, it is possible to provide a general description of these institutions implementing the right of self-government (Figure 2).

Figure No. 2⁵⁶. Institutional framework of local self-government



The author of the paper chose this graphic expression of the institutional structure of local self-government because, according to the Constitution (and as it was clarified at the beginning of the work) the right of local self-government is guaranteed to territorial communities. Consequently, without territorial communities, there would be no local self-government, and it is argued that it is an integral part of the self-government mechanism. The further graphic position of local self-government entities was chosen according to hierarchical relations, mutual interaction and formation processes - representatives of territorial communities implementing local self-government law - municipal council and executive bodies accountable to it, over which the latter prevails. Subjects not singled out in the table can be briefly discussed.

The municipality performs the functions of local government, public administration and provision of public services.

The municipal council is the only self-governing institution that implements the right of self-government guaranteed to territorial communities (Pt. 1 of Art. 119 of Constitution). It has

⁵³ The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2004.

⁵⁴ 3 Article of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁵⁵ Collective of authors, (2017). Constitutional law of the Republic of Lithuania. *Constitutional law*, Mykolas Romeris university press, Vilnius. (ISBN online 978-9955-30-260-5 / ISBN print 978-9955-30-261-2). Retrieved 04.10.2020 from:

<https://www.registrucentras.lt/bylos/dokumentai/literatura/Lietuvos%20konstitucija%20teis%C4%97%C4%97.pdf>.

⁵⁶ The figure is compiled by the author.

the rights and responsibilities of local government and public administration. Approves the administrative structure, municipal budget, general, strategic activity and development plans. Citizens of the Republic of Lithuania and other permanent residents of an administrative unit who are elected by law by citizens of the Republic of Lithuania and other permanent residents of an administrative unit on the basis of universal, equal and direct suffrage may be members of the Municipal Council (for a period of 4 years) (Pt. 2 of Art. 119 of Constitution). According to the Law on Local Self-Government, the municipal council (whose representatives, like the mayor, are considered state politicians) consists of democratically elected representatives of the municipal community who have reached the age of 20 on election day⁵⁷. Candidates for members of the municipal council (may be nominated by parties, election committees or may be nominated by the person himself) are elected in multi-member constituencies by secret ballot according to the proportional electoral system⁵⁸. However, the following persons may not be members of a municipal council:

- 1) Assigned to military, paramilitary and security service (Art. 141 of Constitution);
- 2) Have not completed their sentence 65 days before the election, according to a court judgment;
- 3) Foreign nationals whose right to vote is restricted by a court in the State of which he is a national;
- 4) Declared incompetent or irresponsible by a court;
- 5) The controller of that municipality, civil servants of the control and audit service, civil servants of the administration and employees working under a contract of employment;
- 6) Entities exercising state power;
- 7) Having the power to control or supervise the activities of the municipality;
- 8) Officials of institutions accountable to the municipal council⁵⁹. The basics of the institutional system of municipalities, the procedure for the formation and elections of the council, its powers and competence are regulated by the Laws on Elections to Municipal Councils, Local Self-Government and other laws.

Municipal council committees occupy an important place in the institutional system of municipalities - they are formed for the preliminary examination of issues submitted to the municipal council, for the submission of conclusions and proposals. It also monitors compliance with the law and the implementation of decisions of the municipal council and the mayor (Pt. 1

⁵⁷ Pt. 2 of Article 11 of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁵⁸ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 684. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

⁵⁹ The ruling of the Constitutional Court of the Republic of Lithuania of 13.02.2004.

of Art. 14 of the Law on Local Self-Government). Committees are formed (number of members, powers, etc.) from the members of the municipal council (at least 3 persons) by the decision of the municipal council. Municipalities must form a *control committee* consisting of an equal number of delegated representatives of all factions and groups of all members of the municipal council (if they consist of at least three members of the municipal council). The committees take decisions of a recommendatory nature⁶⁰. It is interesting that other laws specify that the Municipal Public Administrative Disputes Commission⁶¹, the Petitions Commission⁶², the Municipal Privatization Commission⁶³ must be formed in municipalities.

Another important part of the institutional system of municipalities is *the commissions of the municipal council*. The legal bases of these commissions are enshrined in Article 15 of the Law on Local Self-Government, which, among other things, states that these, like other committees, are formed for the term of office of the municipal council (permanently) or temporarily to examine individual issues. *Ethics* and *anti-corruption commissions* are formed for the term of office of the municipal council. They are formed in accordance with the principle of proportional representation of the majority and minority of the municipal council. For example, standing commissions may be formed both in compliance with the requirements of the law and on the initiative of the municipal council. The members of the commissions formed by the latter may be members of the municipal council, civil servants, experts, sub-elders, representatives of the public, representatives of community organizations and other residents of the municipality. Specifically, ethics and anti-corruption commissions must, by law, be composed of at least 1/3 of the commission members must consist of sub-elders or sub-elders and members of the public⁶⁴. Such an imperative provision enshrined in law, among other significant provisions, presupposes ensuring the involvement of the community in local self-government at the statutory level.

The mayor of the municipality, although since 2015, has been directly elected by the population, but a separate institution has not been formalized⁶⁵. In this case, the right was left to the legislator to decide on the necessity of the mayor as a self-governing entity, to establish his

⁶⁰ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁶¹ Law on Administrative Disputes Commissions of the Republic of Lithuania, (Lietuvos Respublikos Administracinių ginčų komisijų įstatymas). Official Gazette, 03.02.1999, No. 13-310.

⁶² Law on Petitions of the Republic of Lithuania, (Lietuvos Respublikos Peticijų įstatymas). Official Gazette, 30.07.1999, No. 66-2128.

⁶³ Law of the Republic of Lithuania on Privatization of State and Municipal Property No. Act amending VIII-480, (Lietuvos Respublikos Valstybės ir savivaldybių turto privatizavimo įstatymo Nr. VIII-480 pakeitimo įstatymas). Official Gazette, 03.04.2014, No. 4032.

⁶⁴ Ibid.

⁶⁵ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 233. (ISSN 1822-4520).

legal status, the procedure of election or appointment, to establish powers, etc.⁶⁶. The status of the mayor (which according to the Law on Local Self-Government can be interpreted in three ways: the head of the municipality, a member of the municipal council, the chairman of the municipal council) is distinguished from other municipal authorities by the representation of the municipality in court, cooperation with other municipalities, states or foreign institutions, and changes in the legal regulation related to the mayor's activities. As the mayor has the status of a state politician, he is not subject to the Civil Service Act. However, the mayor is subject to the provisions of the Labor Code governing material liability, working and rest time, etc.⁶⁷ Other aspects of the mayor's status are regulated by the Law on Local Self-Government and the Law on Elections to Municipal Councils.

Unlike members of the municipal council, the mayor in the 2015 and 2019 elections was elected according to the absolute majority electoral system in a single-member constituency, for the term of office of the municipal council (4 years), but such an electoral system and the extension of the mayor's powers were recognized as being in conflict with the Constitution of the Republic of Lithuania⁶⁸.

The mayor is not a symbolic, but rather an influential figure in the system of Lithuanian self-government. Validation of direct mayoral elections in 2015 did not change the essential relations of this institution with the Municipal Council and the entire administrative structure⁶⁹. Although the mayor's functions were slightly expanded, entrusting him with certain administrative services. However, its functions are more closely linked to various initiatives, the organization of the political agenda and the oversight of administrative institutions (recruits and dismisses heads of institutions, without the need for Council approval). However, the mayor's independent activities are limited, the most important and in general most of the issues of self-government are decided by the Municipal Council, and the executive power is entrusted to the director of administration, a servant of political trust, appointed by the Municipal Council on the recommendation of the mayor.⁷⁰ With the enactment of direct mayoral elections, he became

⁶⁶ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 691. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

⁶⁷ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 691. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

⁶⁸ The ruling of the Constitutional Court of the Republic of Lithuania of 19.04.2021: Regarding the compliance of the provisions of the Law on Local Self-Government of the Republic of Lithuania and the Law on Elections to Municipal Councils of the Republic of Lithuania related to the elections and powers of municipal mayors with the Constitution of the Republic of Lithuania. Case No. KT59-N5/2021.

⁶⁹ Mažylis, L., Leščauskaitė, V. (2015). Direct election of mayors in Lithuania: Ongoing debates and fresh experiences. *Versus aureus*, Vytautas Magnus university press, No. 17, p. 38-56. (ISSN 2029-0225).

⁷⁰ Mikalauskas, A., (2016). Mayorship in Lithuania: Public Opinion Research. *Culture and society: journal of social research*, No. 7 (1), p. 135-158. (ISSN online 2335-8777). Doi: <https://doi.org/10.7220/2335-8777.7.1.7>.

accountable to the municipal council and the community (Art. 20 of the Law on Local Self-Government). What determines that the chances of the mayor's resignation are minimal, and the procedure itself has become extremely complicated, linking it both with the proceedings of the Administrative Court and with the decision of the absolute majority of the Municipal Council⁷¹. And with the divergence of the political preferences of the majority of the Mayor and the Municipal Council, the conflict basically leads to a stalemate, the way out of which has not yet been discovered in Lithuania. It is worth recalling the above-mentioned Constitutional Interpretation, which obliges to make a distinction between the representative and executive branches at the level of self-government as well.⁷²

Regarding the compliance of direct mayoral elections with the Constitution, 46 parliamentarians addressed the Constitutional Court in 2019, who raised the question of whether it was possible to legitimize direct elections of mayors in Lithuania without amending the Constitution. Following the April 19th, 2021 ruling of the Constitutional Court⁷³ that the direct elections of mayors introduced in Lithuania six years ago contradict the one-tier system of self-government enshrined in the Constitution. From a legal point of view, direct elections of mayors, when elected by the municipal community, are possible only after the amendment of the Constitution. This ruling of the Constitutional Court will enter into force on May 3rd, 2023, which is the end of the term of office of the currently elected mayors. This means that mayors elected in the 2019 (and subsequent) elections will be able to hold office until the end of their term. However, in 2023, direct elections of mayors of municipalities will be possible only if the relevant amendments to Article 119 of the Constitution have been made by then. According to the Constitutional Court, the Constitution of the Republic of Lithuania enshrines an equal and uniform mandate for all elected politicians, regardless of how they are elected, and no exceptions are provided. According to the Chairman of the Constitutional Court D. Žalimas, “Members of municipal councils cannot be unequal in their constitutional status. Each member of the municipal council represents the whole relevant territorial community, they are all equal, must have equal opportunities to participate in the work of the council, equal rights to be elected to the municipal council, must have equal voting rights in municipal council decisions.”⁷⁴. In order to

⁷¹ Mažylis, L., Leščauskaitė, V. (2015). Direct election of mayors in Lithuania: Ongoing debates and fresh experiences. *Versus aureus*, Vytautas Magnus university press, No. 17, p. 38-56. (ISSN 2029-0225).

⁷² Mikalauskas, A., (2016). Mayorship in Lithuania: Public Opinion Research . *Culture and society: journal of social research*, No. 7 (1), p. 135-158. (ISSN online 2335-8777). Doi: <https://doi.org/10.7220/2335-8777.7.1.7>.

⁷³ The ruling of the Constitutional Court of the Republic of Lithuania of 19.04.2021: Regarding the compliance of the provisions of the Law on Local Self-Government of the Republic of Lithuania and the Law on Elections to Municipal Councils of the Republic of Lithuania related to the elections and powers of municipal mayors with the Constitution of the Republic of Lithuania. Case No. KT59-N5/2021.

⁷⁴ Žalimas, D., (2021). Constitutional Court: Direct election of mayors is unconstitutional, (KT: tiesioginiai merų rinkimai prieštarauja Konstitucijai). Retrieved 20.04.2021 from: <https://www.delfi.lt/news/daily/lithuania/kt-tiesioginiai-meru-rinkimai-priestarauja-konstitucijai.d?id=86974501>.

amend the Constitution, it is necessary that more than two thirds of the members of the Seimas vote for it twice with an interval of not less than three months, that is, at least 94 members of the Seimas of the Republic of Lithuania.

Therefore, there was a need to look for the most suitable model of self-government in Lithuania. Currently, both in the Seimas and in society, there is a wide-ranging discussion on the selection of the most appropriate model of self-government. Most agree that the current model of self-government, in which the mayor is both chairman of the municipal council and head of the whole municipality, should be improved in order to clarify whether the mayor is part of the executive power, or a part of legislature power – chairman of the municipal council. The Constitutional Court has, in a sense, defined what that elected mayor should look like and that he cannot, in principle, constitutionally be above other members of the council and that the executive cannot be “shaken” with the legislature.

If the new model of self-government makes the mayor completely independent or almost independent of the council, this could have an impact on the transparency of decision-making, as well as on corruption in the municipality. And the decisions made would be more influenced by personal beliefs or friends, political parties, other dominant political entities. In this case, parliamentarians may also have to decide on the possibility of limiting the mayor's term of office. Limitation of term of office works in such a way that if a politician is elected to the same office twice in a row, he or she would have to take a break afterwards, and after the break, as in many European countries limiting the term of office, they can run for office again. However, if the Councils take key decisions, such as on municipal budgets, fees, and so on, that is, under a normal power ratio, there is no need to introduce any term of office for mayors. Not only is it unnecessary, but it could even be harmful.⁷⁵

The institute of distrust of the mayor of the council (which functioned dysfunctionally⁷⁶) valid until 2015, was replaced by the establishment of a parliamentary impeachment institute. The establishment of the Institute is based on actions taken by the mayor of the municipality and other members of the municipal council during the performance of their duties, which are in conflict with the Constitution and laws. On the basis of them, at least 1/3 of the group of council members have the right to apply in writing to the council for the initiation of the procedure for deprivation of the powers of a council member (or mayor), if: the oath is broken; powers are not exercised (no later than one month from the date of clarification). The Council, based on the

⁷⁵ Karklytė, D. (2021). Kūris - on the decision on the election of mayors: the CC should not instruct the Seimas on how to amend the Constitution, (Kūris – apie sprendimą dėl merų rinkimų: KT neturėtų nurodinėti Seimui, kaip keisti Konstituciją). Retrieved 10.05.2021 from: https://www.delfi.lt/news/daily/lithuania/kuris-apie-sprendima-del-meru-rinkimu-kt-neturetu-nurodineti-seimui-kaip-keisti-konstitucija.d?id=87069009#cxrecs_s.

⁷⁶ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 233. (ISSN 1822-4520).

conclusion of the formed commission, has the right to apply to the Supreme Administrative Court of Lithuania, in the conclusion of which, upon approval of at least one of the above-mentioned grounds, to decide by a 3/5 majority of all members on the loss of the authority of a member (or mayor) of the council⁷⁷. Regarding the above-mentioned actions, on the basis of which impeachment proceedings may be initiated, the Supreme Administrative Court of Lithuania detailed that only gross violations of the mayor's oath and standards of conduct arising from the law can be recognized as a breach of the mayor's oath and failure to exercise statutory powers⁷⁸. In addition to impeachment proceedings, Part 8 of Article 19 of the Law on Local Self-Government provides for the possibility of removing the mayor (valid until the entry into force of a court judgment, ruling or decision or termination of the pre-trial investigation) if he is formally suspected of having committed a crime⁷⁹. This possibility is also regulated in Part 1 of Article 157 of the Code of Criminal Procedure⁸⁰. But according to the Constitutional Court, procedural coercive measures can be applied only to the mayor and his deputy or deputies⁸¹. Other grounds for the loss of the mayor's powers, established in Parts 6 and 7 of Article 20 of the Law on Local Self-Government, in addition to those related to the failure to perform duties, include the loss of citizenship of the Republic of Lithuania.

In order to briefly discuss the main subjects of the municipal executive institution and those clearly identified in the Law on Local Self-Government, it is useful to single out the *Municipal Administration*. It “is a municipal institution consisting of structural subdivisions, civil servants not included in structural subdivisions and branches of the municipal administration - elderships (structural territorial subdivisions of the municipal administration). The structure of the municipal administration, its operating regulations and the salary fund, the maximum number of civil servant positions and employees working under employment contracts and receiving remuneration from the municipal budget are approved and amended by the municipal council on the proposal of the director of the municipal administration on the recommendation of the mayor, and the positions are approved by the director of the municipal administration. The powers of the municipal administration are not related to the end of the powers of the municipal council. The municipal administration has a heraldic seal and bank

⁷⁷ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 233. (ISSN 1822-4520).

⁷⁸ 17th of June, (2016) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-17-438/2016; 07th of July, (2016) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-19-143/2016.

⁷⁹ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁸⁰ Approval, entry into force and implementation of the code of criminal procedure; Code of Criminal Procedure, (Lietuvos Respublikos Baudžiamojo kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas; Baudžiamojo proceso kodeksas). Official Gazette, 09.04.2002, No. 37-1341.

⁸¹ The ruling of the Constitutional Court of the Republic of Lithuania of 17.02.2016.

accounts⁸². The exact statute of the municipal administration is a public legal entity (Article 2.34 of the Civil Code of the Republic of Lithuania).

The municipal administration is headed by the *director of the municipal administration*. As mentioned above, the director of the municipal administration and his deputies have the status of a municipal executive body and are given the powers of an executive body⁸³. A person is appointed to the position of the director of the municipal administration after the municipal council has expressed confidence in him, that is, by the decision of the municipal council on the recommendation of the mayor. As the municipal council has the exclusive constitutional duty to form the executive body of the municipality, the director of the municipal administration is subordinate to it and accountable to the municipal council and the mayor. Irrespective of the representative government, the number of terms of office of the executive power is not limited.

Of course, the institutional system of local self-government also includes *elderships* - providing public services to the inhabitants of the served area, *sub-elderships* - combines residential areas or parts thereof. The communities in these areas have the right to elect representatives – sub-elders. Sub-elders represents the interests of the sub-elderships community in the eldership, municipal institutions and state institutions operating in the territory of the municipality. The municipal council has the right to decide on the form of elderships. The topic of elderships and sub-elders is analysed in more detail in the course of the work. In the context of this topic, it should be noted that the establishment of elderships is not mandatory. This is noted in the Law on Local Self-Government⁸⁴, indicating that branches or budgetary institutions - elderships, may be established in the structure of the municipal administration, and in Article 2 of the Law on the Establishment of Administrative Units and their Boundaries of the Territory⁸⁵. To date, there are five municipal territories in the country not divided into elderships: Klaipėda, Panevėžys, Alytus municipalities and Visaginas, Neringa municipalities.

It should be noted that other entities participating in the system of local self-government institutions are also singled out:

1) *Lithuanian Association of Municipalities* - The association actively participates in problem solving, represents municipalities at the national (government and management institutions) and international level (foreign municipalities and international organizations)⁸⁶;

⁸² Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁸³ Pt. 2 of Article 3 of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

⁸⁴ Ibid.

⁸⁵ Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, .19.07.1994, No. 60-1183.

⁸⁶ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

2) *Bilateral Commission* - the role of the commission includes coordinating the interests and position of the Government and the Association of Lithuanian Municipalities. It is made up of representatives of central and local government, and meetings are organized as needed. Goals: assessment of self-government problems, search for alternative solutions and their optimal implementation⁸⁷;

3) “*STRATA*“, “*Investuok Lietuvoje*“, “*Versli Lietuva*“, “*Mita*“, “*CVPA*“ and others - public bodies performing expert functions. They provide research analysis, forecast and advise municipalities and regional development councils;

4) “*LVBOS*” - brings together, coordinates and represents local community organizations, enhances their role and competence;

5) *National Agency for Regional Development* - seeks to participate in ensuring regional development policy by supporting the implementation of economic and social development policy initiatives in the regions⁸⁸.

Summarizing the above, it is obvious that one of the most important subjects of the municipal institutional system, apart from the municipal territorial community, is the representative (municipal council, mayor) and executive institutions (director of the municipal administration, his deputies). There are significant differences between these institutions in terms of status, powers, election or appointment, and others. The subjects of the representative institution are state politicians, to whom the Law on Elections to Local Self-Government and the Municipal Council applies, and in certain matters, the Labour and Criminal Procedure Code. Their term of office is fixed at four years, and the term of office of the director of the municipal administration and his deputies is not limited. Their status is governed by local government and civil service laws, as they fall into the category of civil servants. Despite the differences, the above-mentioned local self-government institutions are part of the system of state institutions through which the state performs its functions. The functions of the state and municipalities are described in more detail in the next section.

Levels. It is common knowledge that communities developed before the States and the process of their crystallization is the result of the structure of the States. Gradually, certain models of governance emerged, usually derived from the constitution (e.g. Lithuania, Denmark,

⁸⁷ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 684. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

⁸⁸ Vaitiekūnas, V., Sujetaitė, D., Grigaitė - Mockevičienė, S. (2020). The state of Lithuanian regions and the extent of municipal independence: an analysis of the current situation, (Lietuvos regionų būklė ir savivaldybių savarankiškumo apimtis: esamos situacijos analizė). Retrieved 10.01.2021 from: http://kurklt.lt/wp-content/uploads/2020/03/Lietuvos-regioni%C5%B3-b%C5%ABkl%C4%97s-ir-savivaldybi%C5%B3-savaranki%C5%A1kumo-analiz%C4%97_.pdf.

Belgium, etc.), one of the most influential and universal of which is democracy, characterized by equality, freedom, power arising from the will of its citizens, and others. In order to ensure sustainable democracy, the territories of the state are divided into administrative territorial units, within the boundaries of which the communities have the right to independently form institutions realizing their needs and interests, as intermediaries with the main state power. This is how the institute of local self-government emerged, promoting community initiative, decentralization of management and establishing certain limits of state intervention.

Some sources indicate that the origin of the use of the term "self-government" is in Great Britain. In the country, *self-government* expressed the internal organization of state power. In Europe, self-government has been interpreted as semi-autonomous governance, exercised by citizens directly or through their elected authorities⁸⁹, in Germany - *Selbstverwaltung*, in the Netherlands - *zelfbestuur*, in the Czech Republic - *samospráva*⁹⁰. Thus, the terminology of local government is different in the world. At the same time, administrative territorial units also differ, on the basis of which local self-government systems are usually formed.

France can be given as an example in which the term municipal government and decentralization is used instead of the term local government. The terms *local government* and *self-administration* are used in Great Britain⁹¹, in France – *collectivités locales* or *territoriales*, in Spain – *entesterritoriales*, in Portugal – *autarquias locais*⁹². Other sources of law provide for a more specific division and a more general grouping for most countries. For example, Ireland and Malta are dominated by the *Local Council*, in Romania and the United Kingdom - *Local Authorities*, and in the rest of the European Union (Bulgaria, Cyprus, Estonia, Finland, Portugal, Latvia, Lithuania, Luxembourg, Slovenia, Austria, the Czech Republic, Denmark, Greece, Hungary, the Netherlands, Slovakia, Sweden, Belgium, Italy, France, Germany, Portugal, Spain⁹³) - *municipalities*⁹⁴.

Part 1 of Article 10 of the Constitution of Lithuania emphasizes the integrity and indivisibility of the territory of the State of Lithuania into state structures. The February 18th, 1998 ruling of the Constitutional Court of the Republic of Lithuania emphasizes that the said

⁸⁹ Novikovas A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 58–64. (ISSN 1392-6195).

⁹⁰ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 13. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

⁹¹ Novikovas A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 58–64. (ISSN 1392-6195).

⁹² Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 13. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

⁹³ 03th of May, (2013) Council of the European Union Directive, no. 2013/19/ES.

⁹⁴ Subnational Government System In The EU And Its Recent Reforms. CESifo DICE Report 4/2013 (December). Retrieved 20.06.2020 from: <https://www.ifo.de/DocDL/dicereport413-db1.pdf>.

provision contains the establishment of a unitary state system, which unambiguously establishes the idea of a unified and indivisible state. But in order to organize governance rationally, the territories of all, as well as unitary states, have a specific internal structure - the division of the territory into administrative units and the formation of specific institutions of government in them. This statement is substantiated by Article 11 of the Constitution: “Administrative units of the territory of the State of Lithuania and their boundaries shall be established by law”, and is further elaborated in Section X of the Constitution “Local Self-Government and Governance”⁹⁵. It distinguishes between two levels of administrative units and assigns them a management system:

- The Constitution guarantees the right of self-government to the units of the first tier;
- Second-tier units organize management (Government).

The above provisions are reflected in Article 1 of the Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries: “The territory of the Republic of Lithuania is divided into administrative units, which consist of residential areas. An administrative unit of the territory of the Republic of Lithuania is a part of the territory in which management is organized by the Government of the Republic of Lithuania or municipal institutions. The administrative units of the territory of the Republic of Lithuania are counties and municipalities”⁹⁶. Thus, in Lithuania there are two administrative territorial units (county, municipality), where management is organized by municipalities or central government institutions.

A similar situation has arisen in the countries of Central and Eastern Europe, which are dominated by a slightly different division of administrative territorial units, that is, not into stages, but into levels: national (level of government) and sub-national (level of management of regional/local authorities), of which there are three in total:

Management level I: Bulgaria, Cyprus, Estonia, Ireland, Latvia, Luxembourg, Slovenia, Malta;

Management level II: Portugal, Finland, Czech Republic, Denmark, Greece, Slovakia - municipalities, regions; Austria (municipalities, federations), Hungary and Sweden (municipalities, counties), the Netherlands (municipalities, provinces), Romania (local government, departments);

⁹⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 18.02.1998: Regarding the amendment and supplementation of the Law on County Management of the Republic of Lithuania and the repeal of the Law on the Representative of the Government, the Law of the Seimas of the Republic of Lithuania of 1996 December 12 Conformity of the Resolution “On Supplementing the List of Positions of Level A Officials of the Public Administration Service of the Republic of Lithuania” with the Constitution of the Republic of Lithuania. Case No. 18 – 435.

⁹⁶ Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, .19.07.1994, No. 60-1183.

Management level III: Belgium - municipalities, provinces, regions; Italy, France - municipalities, departments, regions; Germany - municipalities, rural areas, federations; Portugal; Spain; United Kingdom⁹⁷.

Thus, in unitary states, administrative territorial units are distinguished, in the higher ones the management of which is organized by the central authorities, and in the lower ones - by the local government. Federal states are characterized by the operation of autonomous formations, which independently divide their territory into two levels (for example, counties and municipalities operate in individual states in the United States, Län and communities in Swedish regions, and communities and provinces in the Netherlands). However, despite the obvious differences, the common features of local self-government are visible:

- Constitutionally based autonomy;
- Specific territorial boundaries and the right of legislative initiative in them (in the process of formation and operation of public authorities)⁹⁸;
- The right of the population of a given territory to elect representatives of the authorities in direct universal suffrage⁹⁹.

The above-mentioned features characterize the form of local self-government in Europe, expressing the concept of natural rights of local self-government. However, the concept of local self-government in Europe is best described in the European Charter of Local Self-Government, which is signed, *inter alia*, by all 47 member states of the Council of Europe. The Charter describes local self-government as “<...> the right and capacity of local authorities to manage and administer, within the limits set by law, a fundamental part of public affairs, taking full responsibility for it and acting in the interests of local self-government”.

In summary, despite the differences in territorial and administrative jurisdictions between states, the concept of local government in Europe is unequivocally characterized by a synthesis of the rights and capabilities of local authorities in administering the statutory part of public affairs, taking responsibility for their actions and representing local interests. Or, more narrowly - a form of realization of public power operating at the level of local significance, the subjects of which have the characteristics characterizing power. Finally, the concept of local self-government in Europe can be defined as an organic whole of three elements: territory, community, government.

⁹⁷ Subnational Government System In The EU And Its Recent Reforms. CESifo DICE Report 4/2013 (December). Retrieved 20.06.2020 from: <https://www.ifo.de/DocDL/dicereport413-db1.pdf>.

⁹⁸ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 60-61. (ISSN 1392-6195).

⁹⁹ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 13-14. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

In Lithuania, two-tier (regional and municipal) local self-government is possible only after the Constitution has been amended beforehand, that is, by *expressis verbis* enshrining in the Constitution territorial administrative units, which are granted the right of self-government¹⁰⁰.

1.1.2. The concept of local self-government and municipality

In Lithuania, among other equally important national and international legal acts, local self-government is regulated by two essential sources: the Constitution of the Republic of Lithuania and the Law on Local Self-Government of the Republic of Lithuania. The Constitution does not provide a specific concept of local self-government, but it enshrines the basic aspects of local self-government, the detailed analysis of which is carried out in the course of research. In addition, the Constitution provides for a separate section on local self-government¹⁰¹, the terms "self-government" and "municipalities" are often used in its text to describe local self-government itself¹⁰². The said "deficiency" is compensated¹⁰² by the detailed jurisprudence of the Constitutional Court and other legal acts. In this respect, it is considered that territorial communities with the right of local self-government are best described by the terminology of local municipalities, which, *inter alia*, characterizes municipalities established in other countries.

Before revealing the concept of local self-government in Lithuania, it should be mentioned that the terms: local self-government and municipality are often compared or mixed. For example, the Lithuanian dictionary provides the following definitions of the above terms: "self-government – self-management in any field", "municipality - is a form of government in which the public, an organization, etc. independently decides internal management issues; self-government"¹⁰³. Consequently, these terms are characterized by synonymy, which in turn inevitably confuses the process of their use.

Chaos can also be "contributed" to the use of these terms by the fact that the word "self-government" alone is heterogeneous in national law. For example, there are arguments in the scientific literature that local self-government is characterized by dualism - the dependence of natural rights of local self-government on central government institutions¹⁰⁴. Systematic analysis

¹⁰⁰ Grigienė, K. (2011). Constitutional frameworks for regional self-government in Lithuania and central and eastern Europe: Do the reforms of the regions determine the need of constitutional amendments?. *Societal studies*, No. 3 (4), p. 1494. (ISSN online 2029–2244 / ISSN print 2029–2236).

¹⁰¹ Section X Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucijos X Skirsnis), Official Gazette, 30.11.1992, No. 220, 33-1014.

¹⁰² Ibid. Articles 40, 41, 67, 73, 119-124, 127, 141, 143.

¹⁰³ Lithuanian language dictionary, (Lietuvių kalbos žodynas). Lithuanian Language Institute, 2018, No. I-XX. Retrieved 21.08.2019 from: <http://www.lkz.lt/>.

¹⁰⁴ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 62. (ISSN 1392-6195).

of the Constitution and other legal acts allows to conditionally agree with such an insight, as several forms of realization of self-government are distinguished in the Constitution itself: self-government of courts, ethnic communities, traditional churches and religious organizations, and higher education institutions. Although the position of municipalities has not been established in this context, the following expression of established words: “special institution”, “autonomy”, “are independent”, “manages independently”, etc., presupposes ways of realizing self-government. An almost analogous division is observed in the jurisprudence of the Constitutional Court, which names the following institutes: “self-government of the judiciary”¹⁰⁵, “Professional self-regulation and self-government system”¹⁰⁶, “self-government of higher education institutions”¹⁰⁷. Thus, in trying to refine the excursion of these terms in the context of the analysed topic, first a systematic analysis of them at the level of diversity of concepts is performed, and finally essential differences are distinguished, which help to understand the direct expression of these terms (Table 1).

Table No. 1¹⁰⁸. The concept of local self-government from a legal point of view

Source	Definition	Attributes
European Charter of Local Self-Government	“Local self-government means that local authorities have the right and ability, within the limits set by law, to manage and control the main part of public affairs, taking full responsibility for it and acting in the interests of the local population” ¹⁰⁹ .	-Local authorities; -Rights, competencies; -Public administration; -Responsibility; -Local people; -Interests.
The Constitutional Court	“<...>the authority of the territorial communities of the administrative units provided for by law” ¹¹⁰ .	-Administrative territorial units; -Community government.
Law on Local Self-Government	“<...>the self-regulation and self-efficacy of the community of permanent residents of the administrative unit of the state	-Administrative territorial units; -The right of self-government guaranteed by the Constitution;

¹⁰⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 21.12.1991;
The ruling of the Constitutional Court of the Republic of Lithuania of 12.07.2001;
The ruling of the Constitutional Court of the Republic of Lithuania of 09.05.2006;
The ruling of the Constitutional Court of the Republic of Lithuania of 27.11.2006.

¹⁰⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 07.01.2008.

¹⁰⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 22.12.2011;
The ruling of the Constitutional Court of the Republic of Lithuania of 10.11.2014.

¹⁰⁸ The table is compiled by the author.

¹⁰⁹ Article 3 of European Charter of Local Self-Government, Strasbourg, 1985, No. 122.

¹¹⁰ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

of the Republic of Lithuania	territory established by law, which has the right of self-government guaranteed by the Constitution, in accordance with the competence defined by the Constitution and laws” ¹¹¹ .	-Self-regulation and self-efficacy; -Competence defined by the Constitution and laws.
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The presented data show that the definitions provided in the Charter and the Law on Local Self-Government of the Republic of Lithuania are broad, but differ only in the construction and features of the sentences. The definition provided by the Constitutional Court is concise but very specific. It can be said that the definitions provided in the Charter and the Law on Local Self-Government detail the definition provided by the Constitutional Court, which, in summary, states that local self-government is the power of communities of administrative territorial units with the right of self-government.

Continuing the idea, it is expedient to compare the possible diversity of municipal concepts at the legislative level (Table 2).

Table No. 2¹¹². The concept of municipality from a legal point of view

Source	Definition	Attributes
The Constitutional Court	“Territorial communities are the subject of the right of self-government and in the Constitution they are called municipalities (or local municipalities)” ¹¹³ .	-Territorial community; -Subject of municipal law.
Law on Local Self-Government of the Republic of Lithuania	“<...>an administrative unit of the state territory established by law, the community of which has the right of self-government guaranteed by the Constitution, exercised through a municipal council elected by the permanent residents of the administrative unit of that state territory, which forms the executive and other municipal institutions and bodies accountable to it for the direct implementation of laws, decisions of the Government of the Republic of Lithuania	-Community of a territorial administrative unit; -The right of self-government guaranteed by the Constitution; -Municipality Council; - Public legal entity.

¹¹¹ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

¹¹² The table is compiled by the author.

¹¹³ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

	(hereinafter - the Government) and the municipal council. The municipality is a public legal entity”.	
Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries	“An administrative unit of the territory of the Republic of Lithuania, which is managed by a municipal council elected by its community in accordance with the Law on Local Self-Government of the Republic of Lithuania and other laws” ¹¹⁴ .	-Territorial administrative unit; -Community-elected municipal council;

The data presented in this table show that the main features of the municipality defined in the above-mentioned laws are: territorial administrative unit and municipal council. The Law on Local Self-Government of the Republic of Lithuania characterizes the municipality most broadly, distinguishing additional features: the right of self-government, a public legal entity. Consequently, at the statutory level, a municipality can be characterized as a territorial administrative unit in which management is organized by a municipal council elected by the community, which has the right of self-government and acts as a public legal entity.

It should be noted that at present the definitions of “local government” and “municipality” are treated quite uniformly at the legislative level. However, such coordination of legal acts appeared only after certain changes in the legal regulation with regard to the Law on Local Self-Government. After all, the initial concepts of these definitions differed from the doctrine of the Constitutional Court and the provisions enshrined in the Constitution¹¹⁵.

As there are often contradictions at the academic level regarding certain phenomena, systems, areas and others in the context of legal regulation, it is expedient to analyse the concepts of “local self-government” and “municipality” on the basis of scientific insights (Table 3).

Table No. 3¹¹⁶. The concept of municipality from an academic point of view

Source	Definition	Attributes
Law on Local	“ Municipality - an administrative unit of the	-Territorial unit of the state;

¹¹⁴ Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, 19.07.1994, No. 60-1183.

¹¹⁵ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 26. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

¹¹⁶ The table is compiled by the author.

Self-Government of the Republic of Lithuania	state territory established by law, the community of which has the right of self-government guaranteed by the Constitution, exercised through a municipal council elected by the permanent residents of the administrative unit of that state territory, which forms the executive and other municipal institutions and bodies accountable to it for the direct implementation of laws, decisions of the Government of the Republic of Lithuania (hereinafter - the Government) and the municipal council. The municipality is a public legal entity”.	-The right of self - government; -The municipal council is directly elected. -Legal person status; -Institutions formed by the population; -Right to public administration. -Implementation of local government;
G. Žilinskas	“The territorial unit of the state established by the laws of state power, which has the status of a legal person, the institutions formed by the population of which have the right to manage local public affairs” ¹¹⁷ .	- Territorial unit of the state; - Legal person status; - Institutions formed by the population; - Right to public administration.
V. Kosmačaitė	“<...>the right of self-government is at the disposal of the community living in a certain territory <...> the municipality is a public legal entity and the functions of government are performed by municipal institutions” ¹¹⁸ .	- Territory; - Institution.
V. Kondratienė	“A territorial community having the right of self-government guaranteed by the Constitution to act freely and independently in an administrative unit established by law in the exercise of local government through a municipal council directly elected by it” ¹¹⁹ .	- Territorial community; -The right of self - government; - Implementation of local government; - Directly elected municipal

¹¹⁷ Žilinskas, G. (2011). Local Municipalities in the First Republic of Lithuania: Petras Leonas’s works. *Acta humanitarica universitatis Saulensis*, No. 12, p. 182. (ISSN 1822-7309).

¹¹⁸ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 674. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹¹⁹ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 63. (ISSN 1392-6195).

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As can be seen, in the definition of the concept of municipality, researchers do not tend to add more features than are required by law. There is one difference that researchers tend to emphasize that the municipality is an area of government. A slightly different situation emerges when analysing considerations in interpreting local self-government. As stated in the current Lithuanian dictionary, the word “self-government” means “the right to self-manage in accordance with the law”¹²⁰. (Table 4).

Table No. 4¹²¹. The concept of local self-government from an academic point of view

Source	Definition	Attributes
Law on Local Self-Government of the Republic of Lithuania	“ Local self-government - is the self-regulation and self-efficacy of the community of permanent residents of the administrative unit of the state territory established by law, which has the right of self-government guaranteed by the Constitution, in accordance with the competence defined by the Constitution and laws.”	-Communities of permanent residents of a territorial unit of the state; -The right of self-government; - Self-regulation, self-efficacy, within the limits set by law.
R. Čiupaila	“Independent activities of the residents of the administrative territorial units of the Republic and the local municipal bodies accountable to them to resolve their affairs and implement the adopted decisions within the limits established by law” ¹²² .	-Residents of administrative territorial units; -Accountability; -Municipal bodies; -Independent activity; -Affair management, implementation.
A.Morkūnaitė-Lazauskienė	“This is the right of self-management granted to the community of a particular administrative unit. In many places, local self-government provides people with a sense of community and allows them to participate	-The right to self-regulation; -Administrative community; -Ensuring community spirit; -Participation in self-

¹²⁰ St. Keinys ir kiti red., (2000), Dabartinės lietuvių kalbos žodynas (Vilnius: Mokslo ir enciklopedijų leidybos institutas. p. 681.

¹²¹ The table is compiled by the author.

¹²² Čiupaila, R. (2010). Vietos savivalda ir savivaldybės Lietuvoje nuo 1990 iki 2010 metų. Konferencija „Vietos savivalda ir bendruomenės Lietuvoje“. Vilnius. P. 8-18.

	more realistically in local life, to feel like citizens.” ¹²³	government; -Public spirit.
A.Astrauskas	“This is also the right of self-government guaranteed to the community of permanent residents of the administrative unit of the state territory, it is also the self-regulation and self-efficacy of the community of permanent residents of the administrative unit of the state territory, which has the right of self-government guaranteed by the Constitution, it is also the authority of territorial communities which is not directly subordinate to the State, it is also a system of public administration operating on legal bases other than state power, it is also a specific form of manifestation of the sovereignty of a state to the Nation and so on and so on” ¹²⁴ .	-Community/administrative communities of the state territorial administrative unit; -Right of self - government; -Self-regulation, self-efficacy; -Authority; -Public administration system; -Distinctive functionality; -An expression of sovereignty.
A.Novikovas	“Local self-government - is a form of exercise of power belonging to a nation provided by democracy” ¹²⁵ .	-Power belonging to the nation; -Democracy.
J.Jasaitis	“It is the aspiration of civil society and its ability to address the social, economic, cultural and environmental challenges of the relevant administrative-territorial unit, that is, to ensure its sustainable development in line with the strategic objectives of the country as a whole. The municipality relies on the identification of social needs and a thorough analysis of the possibilities to meet them. Self-government is	-Civil society; -Problem solving; -Identification and implementation of social needs; -Moral value system; -Community initiative, participation.

¹²³ Morkūnaitė – Lazauskienė, A. (2010). Vietos savivaldos sistema pirmojoje ir antrojoje Lietuvos Respublikoje . Šiauliai. P. 99-118.

¹²⁴ Astrauskas, A. (2011). Development of the Local Government in Lithuania from 1990 to 2010. *Public Policy and Administration*, Vol. 10, No. 2, p. 283-298. (ISSN online 2029-2872 / ISSN print 1648-2603).

¹²⁵ Novikovas A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 58–64. (ISSN 1392-6195).

	based on legal acts, a morally based system of values, the initiative of the civil community and its constant active participation” ¹²⁶ .	
A.Ndreu	“<...>an authority elected by the citizens with administrative, executive and legislative functions in the territory under its jurisdiction” ¹²⁷ .	-Citizens' suffrage; -Authority; -Administrative, executive, legislative functions; -Territorial jurisdiction.
V.Kosmačaitė	“Local self-government - is a way of exercising public power in the territory of a municipality” ¹²⁸ .	-A way to exercise public power; -municipal territory.
V.Kondratienė	“Independent action of an individual or a group of people in specific conditions in pursuit of specific goals that do not contradict the higher order” ¹²⁹ .	-Individual, group; -Independent action; -Pursuit of goals; -Established order.
E.Štareikė	“ Local authorities, as governing bodies, are closest to the public and are the link between the public, local organizations, private companies <...> understood as a coordinator, public services must be delivered with the involvement of citizens, the private sector, local communities and non-governmental organizations” ¹³⁰ .	-Managing authority; -Connecting link; -Coordinator; -Provision of public services; -Involving citizens.
E.Kūris	“Local self-government is defined as the independent functioning of the organization, ensured by the management decisions made by the members of this organization and the	-Independent functioning and decisions of the members of the organization.

¹²⁶ Jasaitis, J. (2014). Strategic Management of the Countryside Areas. Methodological publication for municipal employees. *BMK Publishers*, Šiauliai University. p. 1-80. (ISBN 978-609-468-005-2).

¹²⁷ Ndreu, A. (2016). The definition and importance of local governance. *Social and Natural Sciences Journal*, No. 10 (1), p. 5-8. Doi: <https://doi.org/10.12955/snsj.v10i1.730>.

¹²⁸ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 675. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹²⁹ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 63. (ISSN 1392-6195).

¹³⁰ Štareikė, E. (2013). Problematic aspects of implementation of sustainable development principle. *Management theory and studies for rural business and infrastructure development*, Vol. 35, No. 2, p. 293. (ISSN 1822-6760).

	norms related to its existence, the solution of issues common to all” ¹³¹ .	
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The data presented in the table show that at the academic level, local self-government is characterized more broadly, highlighting more features. However, analogous features are distinguished accordingly, such as: self-government law, self-activity, self-efficacy, management. R. Daujotas gives a relatively different definition of municipalities and local authorities when talking about the subdivisions of states. According to the author, “a composite subdivision encompasses various entities, depending on whether a particular state is unitary or not.” As Lithuania is classified as a unitary state, its municipalities and local authorities are classified as composite units¹³². In this respect, we can say that municipalities and local authorities are integral parts of the state. The Law on Public Administration of the Republic of Lithuania is closely related to the activities of local self-government entities. The law does not provide definitions of the terms analysed, but a systematic analysis of the legal act allows to state that the municipality is indicated as a public administration entity providing official assistance, administrative and public services¹³³.

The given definitions presuppose a management process in which two participants predominate: the management entity (municipality) and the management object (local government). This distribution of roles is an essential distinguishing feature. According to the author, distinctive and unifying features are: the rights of citizens to participate in the administration of public affairs, the limits established by the Constitution and laws, the competence to solve the problems of the territorial community, responsibility for the consequences of activities and legal guarantees of violated interests¹³⁴.

Summarizing and based on the variety of concepts of the terms “local self-government” and “municipality” presented by their similarities and differences, it is mechanized to conclude that they are not only synonymous from a terminological point of view, but also from a practical point of view. The discourse of the analysed concepts showed that the governing body of local government is the municipality. Municipalities are the totality of the population belonging to an administrative territorial unit, which forms the governing bodies of local government.

¹³¹ Kūris, E. (1990). Self-government, democracy, law. *Žinija & Lietuvos teisininkų draugija*, Vilnius, p. 5.

¹³² Daujotas, R. (2015). International Investment Law and Arbitration. *Eugrimas*, Monograph – Vilnius, p. 99. (ISBN 978-609-437-296-4).

¹³³ Pt. 4, 17, 18, 21 of Third Article of the Law on Public Administration of the Republic of Lithuania, (Lietuvos Respublikos Viešojo administravimo įstatymo 2 straipsnio 4, 17, 18, 21 d.). Official Gazette, 09.07.1999, No. 60-1945.

¹³⁴ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 675. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

Consequently, these phenomena are fundamental interdependencies. Therefore, they should not be classified as antitheses in relation to each other, but at the same time not to be confused, as they play different roles as elements of the construction structure of the self-government mechanism.

1.1.3. Municipal rights and protection of territorial boundaries

The analysis of the discourse of the concepts of local self-government and municipalities revealed one of its essential advantages - the right of self-government. Of course, it is not possible to identify specific rights of self-government from the provided definitions, but the general characteristic of the legal object is visible - rights in self-administration of public affairs taking into account the interests and needs of local residents. On the other hand, it is obvious that the subject of the right of self-government is the permanent residents of the administrative unit of a specific territory - the territorial community. While developing various theories of self-government, its creators and followers, explaining the nature of self-government, raised the theory of free community, which meant the right of communities to manage their own affairs independently. According to them, this right is inherent and inalienable, as the community is the basis for the emergence of the state and its freedoms of self-government are respected, especially since the state only recognizes the community and does not create it¹³⁵. In addition, local self-government is part of the system of state governance, and state governance is national self-government at a wider territorial level¹³⁶. Thus, the rights of self-government are primarily derived from the lowest level and are considered part of natural rights, one of the main ones being the rights of autonomy and independence in relation to state power.

This insight can be substantiated on the basis of the Constitution of the Republic of Lithuania, Article 120 of which enshrines a provision expressing the freedom of activity and independence of municipalities, without exceeding the limits of competence established by law. Article 121 gives municipalities the right to draw up and approve their own budget. Other rights distinguished in Articles 122 and 123 of the Constitution are attributable to municipal councils: to organize local tolls, to provide tax and toll exemptions (at the expense of its own budget) within the limits and in accordance with the procedure provided by law; judicial defence. Thus, the Constitution distinguishes four rights of municipalities: self-government; autonomous budgeting and approval; the ability to influence the level and base of taxes; judicial defence. In

¹³⁵ Novikovas A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 60–61. (ISSN 1392-6195).

¹³⁶ Kavaliauskas, P. (1998). Local self-government and territorial governance of the state: mystification and realities. Creation and development of modern self-government in the Baltic States. Scientific conference, Šiauliai, p. 91.

addition, the subject of the implementation of the right of self-government through self-government institutions is identified (institutions, through which the right of community self-government is exercised¹³⁷) – the municipal council (Pt. 1 of Art. 119 of the Constitution). However, scholars tend to say^{138,139}, that these rights are not absolute, as the above-mentioned articles reflect “dependence” on the will of the legislator (an exception applies to the right to draw up and approve one's own budget and to the right of municipal councils to judicial defence). The author A. Astrauskas sees an ambiguity regarding the guaranteed right of self-government, as the provision of Part 1 of Article 119 of the Constitution may be interpreted differently, that is, it is not clear to which entity (territorial administrative unit, municipal community, municipal council) the right of self-government is guaranteed¹⁴⁰. In this case, it is considered that the right of self-government guaranteed by the Constitution must not be interpreted very narrowly and understood as applicable to local self-government, which includes inseparable elements: territorial administrative unit, residents of that territory (municipality) and elected representatives of these residents - municipal council. Or that the right of self-government is exercised in the municipality¹⁴¹, and according to the Constitutional Court - a municipality is a community of an administrative unit of the state territory with the right of self-government guaranteed by the Constitution¹⁴².

Attention should be paid to the fact that legal guarantees are enshrined in Article 54 of the Law on Local Self-Government of the Republic of Lithuania. The first part of the article, as well as the Constitution, distinguishes the right to judicial defence, indicating that “municipal institutions shall act on behalf of the municipality in accordance with the powers granted to them by this and other laws”. The rights enshrined in other parts of the article can be summarized:

- Binding of municipal council decisions (within the limits of their competencies) to all legal and natural persons in its territory;
- The rights and powers of municipalities are not restricted by the subjects of public administration, except for the exceptions provided by law. It should be noted that the

¹³⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

¹³⁸ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 20. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

¹³⁹ Žilinskas, G. (2010). Development of special principles of local self-government in Lithuania. *Ekonomika ir vadyba: aktualijos ir perspektyvos*, No. 2 (18), p. 142-154. (ISSN 1648-9098).

¹⁴⁰ Astrauskas, A. (2014). Who Is Granted the Right to Self-Government in Lithuania and who Implements This Right and how?. *Public Policy and administration*, Vol. 13, No 4, p. 685. Doi:[10.13165/VPA-14-13-4-10](https://doi.org/10.13165/VPA-14-13-4-10).

¹⁴¹ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 676. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹⁴² The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

municipalities, taking advantage of this principle, did not use the additional right granted to them to establish municipal administrative dispute commissions¹⁴³.

- Validity and binding of municipal council decisions on taxes and local fees, established rules for entities belonging to its territory. A similar provision is enshrined in the European Charter of Local Self-Government, Article 9 of which additionally specifies the rights and obligations related to the use of funds allocated for the financing of self-government: municipalities have the right to dispose of their financial resources; mandatory adequacy of municipal financial resources for the performance of functions assigned by law¹⁴⁴.

- Competence to take legal measures to ensure the implementation of the general plans, detailed plans of the municipal general plan or parts of the municipality and the fulfilment of the related requirements.

- To contribute directly or on behalf of the Association of Lithuanian Municipalities to the preparation of laws and other legal acts regulating local self-government, to submit comments and suggestions¹⁴⁵.

The presented list of municipal rights is not extensive in theory, but their practical expression is multifaceted. For example, the rights of identified municipalities do not include the right to protection of territorial boundaries, but they, like other rights attributed to municipalities, are directly or indirectly established in other articles of the law. In addition, the Law on Local Self-Government, since its adoption, is constantly amended and adjusted. Such dynamism of legal regulation leads not only to a possible lack of specificity and uncertainty on certain issues, but also presupposes a lax attitude of politicians recognizing the rights of municipalities as core values¹⁴⁶.

Nevertheless, it can be generally stated that: forming municipal councils (representative local authorities); forming bodies and other municipal institutions accountable to them; within the limits established by legal acts, freely and independently administering public affairs of the municipality; by establishing universally binding rules and creating rights and obligations for the participants of self-government legal relations and implementing them - local government is implemented in municipalities, the needs and interests of local residents are ensured, conditions are created for citizens to participate in managing and nurturing the state.

¹⁴³ Gelmanienė, L., Jungaitytė, A. (2020). The administrative disputes commission: Development and perspectives. *Public security and public order*, No. 25, p. 157. Doi: [10.13165/PSPO-20-25-10](https://doi.org/10.13165/PSPO-20-25-10).

¹⁴⁴ European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

¹⁴⁵ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

¹⁴⁶ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 13. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

Protection of territorial boundaries of municipalities

The reforms of national centralization that took place around the world at the beginning of the 21st century have contributed to the strengthening not only of national governance but also of sub-national governance, giving more power to local government. As has already been shown, three levels of sub-national governance prevail in Europe. In Lithuania, subnational governance is at one level, related to the administrative territorial division in the state. This division, after the restoration of independence, also entered the process of reformation, re-constructing the territorial administrative units of the state, establishing more innovative local self-government institutions.

Even in interwar Lithuania, local self-government territories were divided into volosts. During the Soviet era, the territorial structures of local self-government were constructed following the example of the country occupying the state¹⁴⁷. After regaining independence, the territorial administration of the state was reformed by restructuring the state administration, which currently includes two administrative units: counties and municipalities. A county is a higher administrative unit consisting of the territories of municipalities, of which there are currently 60 in the country, and counties - 10. Unfortunately, the Soviet relic is reflected here, as the concept of self-government and territorial administrative reform prepared in 1991 planned to return to the administrative-territorial division into counties, volosts and cities of the republic, but in the end it was decided to use the Soviet model – to create 10 counties¹⁴⁸. Also, the Soviet relic includes the names of local self-government territorial units – districts (rayon) that have survived to this day in the Russian Federation¹⁴⁹. Moreover, it is feared that the reform of the country's territorial administrative system will be unsuccessful, ignoring the experience of European countries in territorial regionalization. Scientists are of the opinion that it was not the counties that needed to be established in the higher administrative units, (which did not meet any of the criteria specific to European regions - "their territory was not characterized by historical - ethnocultural peculiarity, nor by the commonality of socio-economic interests of territorial communities, therefore the counties did not become centres of cultural or economic attraction") but the regions compared to them. The establishment of such an administrative unit would allow for the direct decentralization and democratization of public administration, and the construction

¹⁴⁷ Paulikas, V. (2013). Local Self-Government Reforms in Lithuania and Other Countries. *Public policy and administration*, Vol. 12, No. 2, p. 198-200. (ISSN online 2029-2872 / ISSN print 1648-2603).

¹⁴⁸ Mačiulytė, J., Ragauskas, P. (2015). Lithuanian self-government: towards an independent society?. *Versus Aureus*, Kaunas, p. 60. Retrieved 04.05.2018 from: <http://www.civitas.lt/wp-content/uploads/2015/07/Lietuvos-savivalda-I.pdf>.

¹⁴⁹ Paulikas, V. (2013). Local Self-Government Reforms in Lithuania and Other Countries. *Public policy and administration*, Vol. 12, No. 2, p. 200. (ISSN online 2029-2872 / ISSN print 1648-2603).

of a system of three levels of government in accordance with the principle of subsidiarity. In this way, decisions would be made closer to the people, and the solution of socio-economic problems in the state would be more effective¹⁵⁰.

The Constitution mentions the territorial boundaries of municipalities, but only by indicating that: the administrative units of the territory of the country and their boundaries are established by law (Art. 11 of Constitution); the right of self-government is guaranteed to the administrative territorial units of the state (Pt. 1 of Art. 119 of). The Constitutional Court, supplementing these provisions, indicated that in accordance with the Constitution, the Seimas may establish administrative units and their boundaries, abolish existing or establish new municipalities, reform the boundaries or centres of their territory only within the limits defined by law¹⁵¹. At present, the protection of territorial boundaries of municipalities and other related issues in the national legal system are regulated by Articles 7 and 13 of the Law on Administrative Units and their Boundaries of the Republic of Lithuania and Items 13, 34 of Article 16 and Part 3 of Article 24 of the Law on Local Self-Government of the Republic of Lithuania. The Law on Administrative Units and Their Boundaries repeats the interpretation of the Constitutional Court, adding that the Seimas carries out reforms of municipalities and their territories upon the proposal of the Government. This means that the Government submits to the Seimas prepared documents on the establishment of new municipalities and the determination of their territorial boundaries (Table 5).

Table No. 5¹⁵². Conditions for reforming the territorial boundaries of municipalities

Conditions for the establishment of municipalities	Conditions for changing the territorial boundaries of municipalities
Income taxes of the population belonging to the territory of the municipality make up at least 20% of the municipal budget, excluding the state budget grants of the Republic of Lithuania allocated to municipal budgets.	When, due to the assignment of a part of the territory of a proposed municipality to another municipality, more than half of the local population entitled to participate in the survey participates in the survey and supports the proposal.
The total population of the municipality exceeds 10 thousand, of which at least 3 thousand live in the centre, and which is not	When, due to the proposed part of the territory of the municipality, in addition to another municipality, it is proposed to assign

¹⁵⁰ Kondratienė, V. (2011). The principle of subsidiarity and its application to public administration and local Government: doctoral dissertation. Mykolas Romeris university, Vilnius. P. 152.

¹⁵¹ The ruling of the Constitutional Court of the Republic of Lithuania of 28.06.2001.

¹⁵² The table is compiled by the author.

closer than 20 kilometres from the nearest existing municipal centre.	the territory of the municipality in the survey of residents, more than half of the eligible local population participates in and supports the proposal.
The municipality borders on at least two municipalities	When a municipality whose part of the territory is proposed to be assigned to another municipality, the part of the territory in addition to the territory proposed to be assigned to another municipality meets the conditions set out above.

Prepared in accordance with the Law on Administrative Units of the Republic of Lithuania and their Boundaries¹⁵³.

The presented data show that the reforms of the territorial boundaries of municipalities can be initiated only on the basis of the position of the population, at the same time listening to the opinion of the councils. In the Law on Local Self-Government, the competence of the municipal council includes decision-making on the reform of elderships, assignment of territories to them and determination or change of boundaries of territories served by elderships, taking into account the opinion of residents (Item 13 of Art. 16) and decision-making “on proposals to change the boundaries of the territory of the municipality, to give the name of the municipality and change it, to create residential areas, to determine and change their names, submission of the boundaries of the territories to the Government<...>“ (Item 34 of Art. 16)¹⁵⁴. Such a provision is set out in the Constitutional Court Resolution on the Establishment and Abolition of Municipalities, Determination and Amendment of the Boundaries and Centres of Their Territories and in Article 5 of the European Charter of Local Self-Government¹⁵⁵. In interpreting the said and other provisions of the Constitution, the Constitutional Court held that these Constitutional provisions, as well as Article 120, Paragraphs 1.2 of Article 123 of the Constitution and other Constitutional provisions “mean that centralized state administration in administrative units shall be coordinated with local self-government <...> that municipalities act freely and independently in accordance with the competence defined by the Constitution and laws, shall be assessed as a guarantee of the participation of these local communities in the

¹⁵³ Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, .19.07.1994, No. 60-1183.

¹⁵⁴ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

¹⁵⁵ European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

management of these territories”¹⁵⁶. The above-mentioned conditions prove that the reformation of municipalities is focused on satisfying the needs and interests of the population. At the same time, it guarantees not only the right of citizens to participate in the decision-making process on issues relevant to local communities, but also one of the fundamental principles of democracy.

A similar position is set out in the October 22nd, 1996 ruling of the Constitutional Court of the Republic of Lithuania: “the division of the state territory into administrative units is aimed at creating the necessary preconditions for optimal organization of management, better service to the population and meeting their administrative needs. In this respect, counties and municipalities <...> are united by common goals. This necessitates their cooperation, as well as the need to combine centralized governance with decentralization”¹⁵⁷.

It should be noted that municipalities are assigned not only specific territorial boundaries, citizens living within these boundaries, certain rights, functions and other powers, but also social, economic and ethnocultural common interests¹⁵⁸. It should also be emphasized that although in the lower administrative units the management is organized by the municipalities, they are not officially named in the legal acts¹⁵⁹. Finally, not only a territorial administrative division but also a territorial statistical division is possible. For example, the January 6th, 2016 resolution of the Government of the Republic of Lithuania “On the Formation of the Capital Region and the Central and Western Lithuania Region” established two regions: the Capital Region from Vilnius County Municipalities and the Central and Western Lithuania Region from Alytus, Kaunas, Klaipėda, Marijampolė, Panevėžys, Šiauliai, Tauragė, Telšiai and Utena counties. A Regulation of the European Parliament and of the Council¹⁶⁰ establishes a common classification of territorial units for statistics (NUTS) for the collection, compilation and dissemination of harmonized regional statistics in the EU. According to the November 21st, 2016 Commission Regulation (EU) 2016/2066, the new equivalents of the NUTS classification levels applied to Lithuania from January 1st, 2018 are: Level 1 - Lithuania, Level 2 - Capital Region and Central and Western Lithuania Region, Level 3 - Counties¹⁶¹. Consequently, in a sense, there are also three levels of government in Lithuania.

¹⁵⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 28.06.2001.

¹⁵⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 22.10.1996.

¹⁵⁸ Official Statistics Portal, (Oficialios statistikos portalas). Administrative division of the territory, 2019. Retrieved 23.04.2020 from: <https://osp.stat.gov.lt/lietuvos-statistikos-metrastis/lsm-2019/teritorijos-administracinis-suskirstymas>.

¹⁵⁹ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 676. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹⁶⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council 1059/2003. Regulation on the establishment of a common classification of territorial units for statistics (NUTS).

¹⁶¹ Official Statistics Portal, (Oficialios statistikos portalas). Administrative division of the territory, 2019. Retrieved 23.04.2020 from: <https://osp.stat.gov.lt/lietuvos-statistikos-metrastis/lsm-2019/teritorijos-administracinis-suskirstymas>.

In summary, it can be stated that although the Soviet relic in the administrative-territorial system of local self-government has been relatively preserved in Lithuania, its protection is regulated by national legal acts. The territorial boundaries of municipalities, like the entire territory of the country, are integral and indivisible into any formations, except in cases provided for by law and strictly regulated. As this decision-making process of local government and central government also involves the local community and their interests are taken into account, it is considered that this forms the activity of citizens at the level of local self-government and citizenship in the state. In addition, at this level, the beginnings of direct democracy can be seen - the population referendum (general population survey) on the transformation of municipal territorial boundaries.

1.1.4. Powers, functions and responsibilities of municipalities

As mentioned in subsection 1.3.2., the system of elements of the mechanism establishing local self-government includes finances. The financial element of the local government implementation mechanism presupposes the need to ensure one of the most important guarantees of local government - the principle of economic independence. This means that economic independence and sufficient financial resources are the basis for local government to carry out the assigned functions. Issues of power, competence and responsibility of local self-government entities receive relatively little attention to discussions between politicians, researchers, citizens and at the level of local self-government. Despite various confrontations on one issue or another, there is a consensus on the need not only to empower local authorities but also to increase financial resources. As the issue of financial resources has been discussed more widely section 1.3., in this part of the work, the need for more funding will be justified by specific examples of the powers, functions and responsibilities assigned to municipalities.

Shortly after the establishment of the institute of local self-government at the legislative and public level, one of the first researches to try to draw attention to the over-territory of municipalities and the related problems appeared¹⁶². The implemented reforms of administrative territorial units have not solved the problematic issues, therefore their relevance is based on these days as well. According to V. Paulikas, large territorial boundaries of municipalities determine the adoption of effective decisions and their implementation, the provision of public services, the maintenance and strengthening of direct communication with the population. The study conducted by the author found that the size of Lithuanian municipalities (1088 km²) significantly

¹⁶² Paulikas V., Adomonis, V. (2003). Decision Making in local Self-Governance. *Public policy and administration*, No. 4, p. 66. (ISSN online 2029-2872 / ISSN print 1648-2603).

exceeds the average size of EU Member States' municipalities (48.6 km²), and their elderships are larger than the average size of EU Member States' elderships in terms of their territorial boundaries and population¹⁶³. It goes without saying that the local authorities of large municipalities are less informed about the needs, interests and other public affairs of the local population than the representatives of smaller municipalities, therefore their expression of powers, functions and responsibilities are insufficiently optimized. With this in mind, we return to the idea that strengthening the role of elderships in local self-government would improve the functionality of local self-government itself.

Without deviating from the topic of the subsection, it is agreed that the powers, functions and responsibilities of municipalities depend to a large extent on the territory assigned to them. At the same time, it shows the essence of municipal-level management¹⁶⁴. With regard to the powers of municipalities, it is first of all noted that their most important powers are local government. This is followed by other related powers: enforcement of the laws of the Republic of Lithuania and decisions of the Government; performance of public administration functions¹⁶⁵; implementation of land reform¹⁶⁶; the right to establish, reorganize, liquidate educational institutions and have other rights and obligations related to the aforementioned aspects¹⁶⁷, control of municipal executive institutions formed by and accountable to the municipal council¹⁶⁸ and etc. Thus, the powers of municipalities are inseparable from the exercise of the right of self-government, as are the related functions, which in all democracies include the following functions:

- 1) Formulates local policy, participates in decision-making and implementation processes on issues relevant to the local community;
- 2) Provides public services.

According to the Constitutional Court, the legislator has the right to establish by law the amount and nature of the functions transferred to municipalities, which the latter must perform

¹⁶³ Paulikas, V. (2013). Local Self-Government Reforms in Lithuania and Other Countries. *Public policy and administration*, Vol. 12, No. 2, p. 199. (ISSN online 2029-2872 / ISSN print 1648-2603).

¹⁶⁴ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 669. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹⁶⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 18.02.1998: : Regarding the amendment and supplementation of the Law on County Management of the Republic of Lithuania and the repeal of the Law on the Representative of the Government, the Law of the Seimas of the Republic of Lithuania of 1996 December 12 Conformity of the Resolution “On Supplementing the List of Positions of Level A Officials of the Public Administration Service of the Republic of Lithuania” with the Constitution of the Republic of Lithuania. Case No. 18 - 435;

The ruling of the Constitutional Court of the Republic of Lithuania of 30.05.2003.

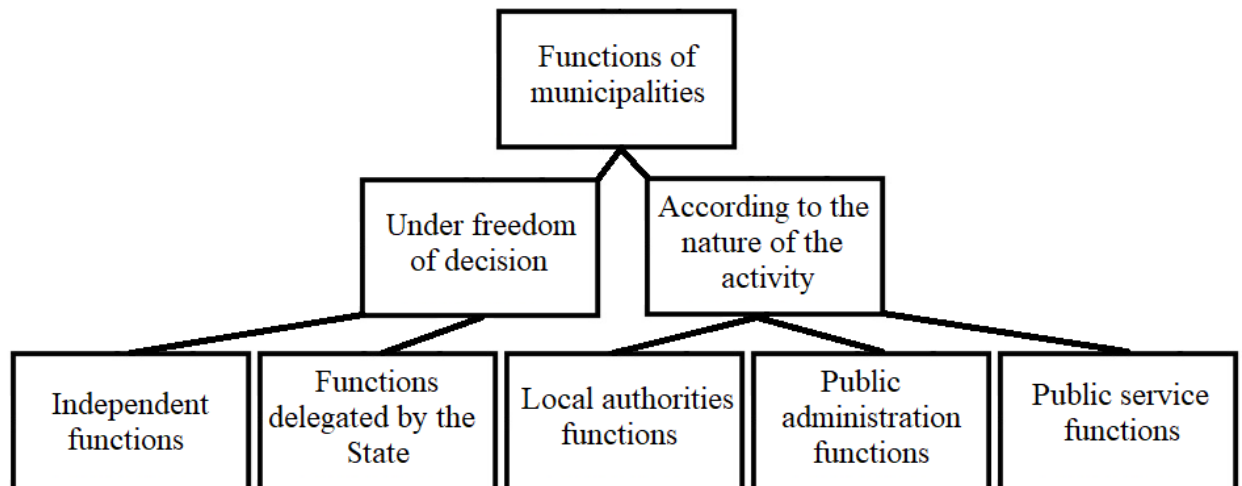
¹⁶⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 08.03.1995.

¹⁶⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 13.06.2000.

¹⁶⁸ Pt. 3 of Fourth Article of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo 4 straipsnio 3 dalis.). Official Gazette, 20.07.1994 No. 55-1049.

within the limits of the powers granted¹⁶⁹. Thus, the powers, functions and responsibilities of municipalities are basically regulated by the Constitution and the Law on Local Self-Government¹⁷⁰, which, in contrast to the Constitution, contains a rather wide list of functions attributable to municipalities, typifying them. The functions singled out in the visual tool are not entirely municipal. This is because, in addition to the functions which belong exclusively to the municipalities, in order to ensure more effective interaction between the state authorities and the citizens and the democratic nature of governance, they may be assigned certain state functions¹⁷¹. On the other hand, as it was clarified at the beginning of the work, effective state governance requires compatibility of the interests of local self-government and state power, as well as well-defined coordination. Consequently, the distribution of certain functions (according to the Constitutional Court - mandatory¹⁷²) among the subjects of different levels of government ensures more efficient performance of state functions.

Figure No. 3¹⁷³. Functions performed by municipalities



The powers to perform independent functions are conferred on municipalities by the Constitution and laws. To implement these functions, municipalities have the freedom of initiative, decision-making and implementation. However, the municipalities themselves are responsible for their performance, although they are bound by the established procedures and must comply with the Constitution and laws¹⁷⁴.

Unlike in terms of independent functions, municipalities are more constrained in performing the functions delegated by the state: they have only the freedom to pass laws;

¹⁶⁹ The ruling of the Constitutional Court of the Republic of Lithuania of 08.07.2005.

¹⁷⁰ Pt. 8 of Seventh Article of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo 7 straipsnio 8 dalis.). Official Gazette, 20.07.1994 No. 55-1049.

¹⁷¹ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

¹⁷² The ruling of the Constitutional Court of the Republic of Lithuania of 08.07.2005.

¹⁷³ The figure is compiled by the author.

¹⁷⁴ The ruling of the Constitutional Court of the Republic of Lithuania of 05.03.2008.

activities are limited by decisions of state institutions and/or officials; with the approval of the municipal council, transfer of functions (short-term, seasonal) on the basis of contracts is possible. However, it is considered that the limited activity of municipalities also manifests itself in the performance of independent functions, primarily due to the fact that according to the Constitutional Court the functions exclusively attributable to municipalities are regulated by law and none of them means that municipalities are absolutely independent¹⁷⁵. Despite the differences, the distinct functions of municipalities must be implemented in the interests of the community and are performed in different areas of governance, such as: social, educational, justice, health, environmental, agricultural, and so on.

According to the nature of activities, the functions of municipalities are regulated in the law by first specifying the specific subjects of the functions performed. For example, *local government* functions are performed by the municipal council and the mayor (the representative government of the municipality). It is unique in that it is directly related to political decision-making at the local level in order to ensure efficient management of the territorial administrative unit, independent decision-making and their implementation. This function is implemented by forming self-government institutions and their subjects, representing self-government interests (at the regional, national or international level), constructing municipal strategic policy, and so on¹⁷⁶.

Public administration functions are performed by entities that have public administration rights granted on the basis of legal acts or municipal council decisions in the municipal territory (municipal council, mayor, municipal executive body (executive bodies), other heads of municipal institutions and services, civil servants). These functions are performed by adopting normative and individual administrative acts, ensuring the control of their implementation, as well as the provision of administrative services and the organization of the internal administration of the management entity¹⁷⁷.

The provision of public services is attributable to service providers established by municipalities or to natural or legal persons publicly elected on the basis of contracts. In the context of the performance of these functions, for the realization of common goals, there is a possibility to conclude joint activity or joint public procurement agreements with state institutions, regional development councils and other municipalities. By mutual agreement of municipal councils, it is possible to transfer administrative and public service functions to

¹⁷⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

¹⁷⁶ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 682. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹⁷⁷ Ibid.

another municipality. Also, by a decision of the municipal council, specific powers for the administration of the provision of public services may be transferred to the regional development council. The delegating municipality is responsible for the implementation of the functions delegated to the said entities¹⁷⁸. It should be emphasized that the function of providing public services is directly related to ensuring the daily needs and interests of the local population, but in fact these services are not provided by municipal institutions or municipal administration. In this case, its task is to ensure the administration of the following services: selection of the service provider, establishment of the procedure and rules for the provision of public services, supervision and control of the provision of public services. The continuous provision of public services must be available to all residents of the municipality¹⁷⁹.

Somewhat differently, municipal functions are treated at the academic level, usually divided into three blocks:

“Main functions inherited from the community system by the institute of self-government (e.g. municipal spatial planning, construction and maintenance of roads and streets, organization of social care and welfare, primary personal and public health care, development and organization of leisure infrastructure, etc.);

Functions arising in the development of civilization, which are also attributed to the natural (e.g. municipal waste management, organization and development of tourism infrastructure, protection of public order (except criminal search within the competence of the state), registration of companies and organizations, census of population and their property, traffic control, organization of public municipal transport and its infrastructure, centralized heating, electricity and gas supply, sewage disposal, etc.);

In general, the competence of state institutions includes functions that the state (by allocating appropriate funding from its budget) may delegate to municipalities by law (e.g. organization of military service and conscript selection, organization of elections, polls and referendums, preparation of citizenship documents, maintenance of cultural, natural and infrastructure objects of state importance)¹⁸⁰.

Such a classification of municipal functions practically corresponds to the functions of municipalities established in the law according to the freedom of decision-making, only their theoretical layout differs. At the same time, it is noticeable that both from the academic point of

¹⁷⁸ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

¹⁷⁹ Kosmačaitė, V. (2017). Constitutional bases of systems of state authorities and state institutions. *Constitutional law*, Mykolas Romeris university press, Vilnius, p. 683. (ISBN online 978-9955-30-2605 / ISBN print 978-9955-30-261-2).

¹⁸⁰ Urvikis M. (2016). Improvement of the system of public services organized by local self-government institutions: doctoral dissertation. Mykolas Romeris University, Vilnius. (ISBN 978-9955-19-785).

view presented for comparison and in the law, the functions of municipalities according to the nature of activities, in contrast to the functions according to the freedom of decision-making, are not specifically identified. However, although the functions of municipalities under decision-making freedom are clearly identified and their list is not exhaustive, they will not be analysed further in the light of the objectives of the study. In the context of this work, it is considered sufficient to realize that municipalities have a relatively wide range of functions, which presupposes the importance of their powers and responsibilities. According to the Constitution, both municipal executive and municipal representative institutions are responsible for the direct implementation of laws, government and municipal decisions within their competence¹⁸¹. The Constitutional Court stated in the May 25th, 2004 ruling: “That citizens - the state community can have a reasonable trust in state officials, that all state institutions, all state officials can follow and obey the Constitution and the law, and that persons who disobey the Constitution and the law do not have the duties that require the trust of the state community, there is a need for public democratic control over the activities of state officials and accountability to the society, including, inter alia, the possibility to remove from office those state officials who violate the Constitution and the law, put personal or group interests above the public interest, discredits the state government by their actions”¹⁸². Consequently, the subjects of municipal institutions, notwithstanding the above-mentioned requirements, may be held liable in accordance with the Constitution and laws. This means that in case of specific violations, the subjects of municipal institutions may be removed from office and/or the issue of their liability may be decided in court.

All of the above are closely linked to decentralization processes, the interconnected forms of which are also identified in the Charter: political, administrative and financial. According to the OECD, financial decentralization cannot take place without political and administrative decentralization, which in turn makes no sense without financial decentralization. In order to optimize the decentralization process, coordination of all forms of decentralization needs to be ensured, as they play a crucial role in the context of democracy building. Political decentralization lays the foundations for legal decentralization, which, within the limits of the principle of subsidiarity, involves the distribution of powers between the various levels of government. This means that the planning and decision-making process is not initiated without prior consultation with local authorities and that they are given more freedom in constructing the administrative structure. Administrative decentralization, in order to optimize the efficiency and transparency of the national territorial administration, controls the reform, the division of

¹⁸¹ The ruling of the Constitutional Court of the Republic of Lithuania of 11.02.2004.

¹⁸² The ruling of the Constitutional Court of the Republic of Lithuania of 25.05.2004.

specific tasks and functions at the territorial level. More specifically, it plans to provide public functions, funding and decision-making, administrative structures, and resource management to lower authorities. Financial (fiscal) decentralization distributes taxes and related responsibilities to public authorities. The level of decentralization is therefore determined by the amount of resources delegated and the limits of the autonomy granted to their management¹⁸³.

In addition, the advantages of decentralization cannot be overlooked:

- 1) The organization of the provision of resources and public services at the local government level responds more effectively to the needs of the population;
- 2) Greater accountability of local government to the people;
- 3) The diversity of service delivery methods encourages more innovative and optimal decisions;
- 4) Lower monitoring costs¹⁸⁴;
- 5) A more stable system of government¹⁸⁵. There are slightly more risks of decentralization, but in Lithuania two main ones are seen: corruption and limited municipal competencies.

Data from the Special Investigation Service and sociological research substantiate the problem of corruption in self-government: “37% of all pre-trial investigations initiated by the Service in 2018 and 28% all investigations launched in 2019 are related to local government. During 2018–2019, the Service initiated 36 pre-trial investigations in the field of self-government, in which 170 criminal offenses were identified”¹⁸⁶. According to another study “Corruption Map of Lithuania 2019”, municipalities of cities and districts are classified as one of the most corrupt institutions in Lithuania. Among all institutions, civil servants, according to the answers of the respondents, took the second place (31%), and municipalities - the fourth (23%)¹⁸⁷.

¹⁸³ Vaitiekūnas, V., Sujetaitė, D., Grigaitė - Mockevičienė, S. (2020). The state of Lithuanian regions and the extent of municipal independence: an analysis of the current situation, (Lietuvos regionų būklė ir savivaldybių savarankiškumo apimtis: esamos situacijos analizė). Retrieved 10.01.2021 from: http://kurkl.lt/wp-content/uploads/2020/03/Lietuvos-regioni%C5%B3-b%C5%ABkl%C4%97s-ir-savivaldybi%C5%B3-savaranki%C5%A1kumo-analiz%C4%97_.pdf.

¹⁸⁴ Booth, P. (2015). Federal Britain. The case for Decentralisation. The Institute of Economic Affairs. (ISBN 978-0255-36714-1). Retrieved 04.04.2021 from: <https://iea.org.uk/wp-content/uploads/2016/07/Booth-Federal-Britain-Interactive.pdf>.

¹⁸⁵ Dillinger, W., Fay, M. (1999). From Centralized to Decentralized Governance. *Issues for the New Millennium. Finance & Development*, this article is based on Chapter 5 of the World Bank's World Development Report: 1999/2000: Entering the 21st Century (New York: Oxford University Press for the World Bank). Retrieved 02.03.2021 from: <http://www.econlib.org/library/essays/hykKnw1.html>.

¹⁸⁶ Official website of the Special Investigation Service of the Republic of Lithuania (2020). The mayor of Kelmė district municipality was detained, (Sulaikytas Kelmės rajono savivaldybės meras). Retrieved 20.05.2020 from: <https://www.stt.lt/naujienos/7464/sulaikytas-kelmes-rajono-savivaldybes-meras:2925>.

¹⁸⁷ Report of the Investigation of the Corruption Map of the Secret Investigation Service, (2020). Retrieved 04.03.2021 from: <https://www.stt.lt/analitine-antikorupcine-zvalgyba/lietuvos-korupcijos-zemelapis/7437>.

According to the author A. Astrauskas, the country has been taking the view for three decades that: “Irrespective of the groups into which the competences (functions) of local authorities are divided, the general principle of the legal regulation of insurance <...> must be applied in the legal regulation of their activities: local authorities <...> may exercise only the powers provided for by law or by an act implementing that law and only in the manner provided for by that law or by an implementing act”¹⁸⁸. At the same time, the author, taking into account the provisions of Article 4 of the European Charter of Local Self-Government, considers the suitability of such regulation for the legal regulation of the country's municipalities and their activities. By the way, in the author's opinion, the division of municipal functions presented at the beginning of the topic does not fully comply with the requirements set out in the Charter, and the level of decentralization is significantly lower compared to the experience of other countries. Thus, given the research-based statements, the fact that the situation has not changed for three decades and the relative limitation of the expression of municipal competencies, the researchers agree that strengthening this area is one of the biggest challenges in addressing the shortcomings of local government¹⁸⁹. The Government of the Republic of Lithuania takes the same position in the project “On the Approval of the National Progress Plan for 2021-2030”¹⁹⁰.

In summary, it can be specified that the powers of municipalities include decision-making and implementation in the context of public administration. Powers are exercised within the respective competencies, which are relatively unanimously divided into two groups: according to the freedom of decision-making (autonomous and delegated by the state) and according to the nature of activities (local government management, public administration and public service provision). All entities of municipal institutions are responsible for the direct implementation of laws, government and municipal decisions. If the established requirements are not observed, the subjects of municipal institutions shall be liable in accordance with the Constitution and laws. The above-mentioned elements of municipal competence are inseparable from the level of decentralization. The fewer functions given to municipalities, the more limited their powers and responsibilities are. But whereas the role of local government in the administration of public services and the needs of the population is favoured over that of public

¹⁸⁸ Astrauskas, A. (2014). Local Self-Government in Lithuania in 1990-2013: Changes of the Competence of Municipalities. *Public Policy and administration*, Vol. 13, No. 2, p. 187-208. Doi: <https://doi.org/10.13165/VPA-14-13-2-01>.

¹⁸⁹ Vaitiekūnas, V., Sujetaitė, D., Grigaitė - Mockevičienė, S. (2020). The state of Lithuanian regions and the extent of municipal independence: an analysis of the current situation, (Lietuvos regionų būklė ir savivaldybių savarankiškumo apimtis: esamos situacijos analizė). Retrieved 10.01.2021 from: <http://kurkl.lt/wp-content/uploads/2020/03/Lietuvos-regioni%C5%B3-b%C5%ABk%C4%97s-ir-savivaldybi%C5%B3-savaranki%C5%A1kumo-analiz%C4%97.pdf>.

¹⁹⁰ Resolution of the Government of the Republic of Lithuania on the approval of the National Progress Plan for 2021-2030, (Lietuvos Respublikos Vyriausybės Nutarimas dėl 2021-2030 metų nacionalinio pažangos plano patvirtinimo). TAR, 16.09.2020, No. 19293.

authorities, it is agreeable with the position expressed in the work that state intervention at the level of local government management could be minimal and based on good motives, but only after proper regulation of local government self - control mechanisms, including issues of realization of political minority rights. In this case, it was considered that local self-government should be granted full autonomy with minimum exceptions providing only for the necessary State intervention.

1.2. Interaction between local self-government and national government institutions

1.2.1. The place of local self-government in the State structure

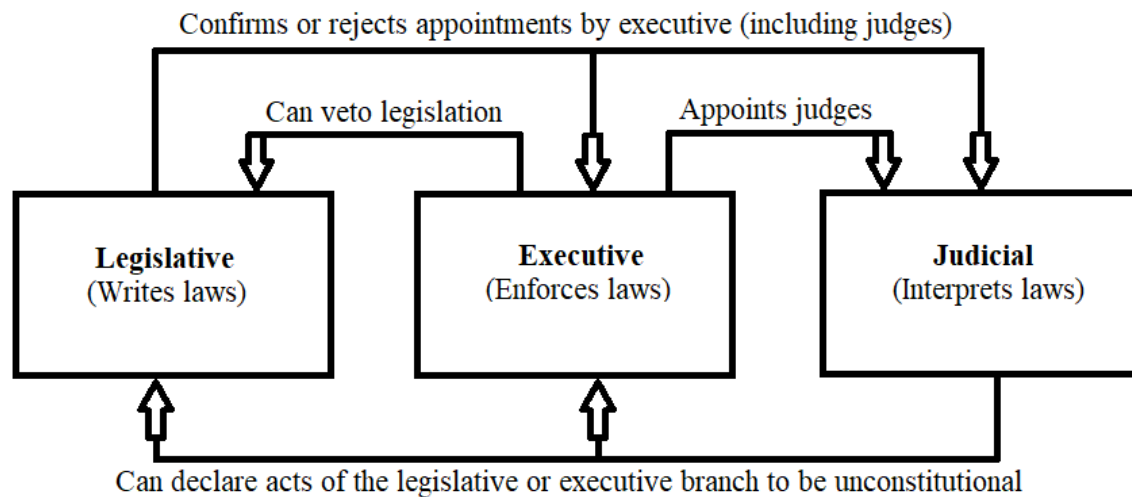
This subsection examines the place of self-government in the Republic of Lithuania, the relationship of local self-government with the central government and the interaction between self-government institutions. Extensive practical and legislative analysis shows that in self-government, powers interactions are specific because they interact not only with each other but also with central government¹⁹¹, however the fact about government interactions presupposes that leverage mechanisms also exist in self-government. In this subchapter trying to reveal the essential features of operation of the Checks and balances system in the local - government.

According to the theory of the Checks and Balances system, each branch of government is separate and has its own area of governmental responsibilities. The goal is that none of the branches would be able to become powerful enough to dominate the other two branches. Checks and balances give each branch of government the ability to change or cancel acts of another branch, preventing any one branch from becoming too powerful.

Figure No. 4¹⁹². Checks and Balances system (State level model)

¹⁹¹ Raišienė, A. G. (2003). Interaction Problems of State Government and Local Self-government *Public Policy and Administration*, No. 4, p. 18-25. (ISSN online 2029-2872 / ISSN print 1648-2603).

¹⁹² The figure is compiled by the author.



The state governance model is usually established by Constitution. In the Constitution of the Republic of Lithuania¹⁹³, a separate section dedicated to local self-governance and its management, which shows not only that the state recognizes local self-government, but the principles of local self-government mentioned in the Constitution of the Republic of Lithuania, also acquire constitutional protection.

The separation of powers (Checks and balances system) is one of the most important constitutional principles of a democratic state, which influences the organization of state power, its functioning and guarantees human rights and freedoms. The separation of powers can be divided into two interrelated parts:

1) Interaction of authorities - is usually associated with the relationship between individual authorities, which is understood as cooperation between authorities, coordination, operation of a system of "checks and balances", which ensures control and balance between authorities.

2) Separation of powers - is not only the division of powers into branches of state power, but also the determination of their own internal formation procedure, legal status, powers and competencies, and ensuring independence.¹⁹⁴

J. Madison, one of the main founders of the doctrine of the division of powers, also held the position that the constitutional framework defining the powers of each individual government was insufficient. He argued that a mechanism was needed to guarantee self-regulatory control over the government¹⁹⁵. "J. Madison's aim was to protect freedom and the interests of the

¹⁹³ Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucija), Official Gazette, 30.11.1992, No. 220, 33-1014.

¹⁹⁴ Jarašiūnas, E. (2001). Separation of powers - a principle of the organization and operation of a democratic state. *Lithuanian Constitutional Law*, Publishing Center of the Lithuanian University of Law, Vilnius.

¹⁹⁵ Madison, J., Hamilton, A. (1788). The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments. *The Federalist Papers*, No. 51-60, New York. Available in Library of Congress: <https://guides.loc.gov/federalist-papers/text-51-60>.

minority by creating a system in which the central authorities remain independent but at the same time control and counterbalance each other. Based on the experience of the United States, J. Madison saw the greatest danger (to democracy) in the power of the legislature.”¹⁹⁶

The system of Checks and Balances is usually associated with the management of the State rather than municipalities and the institutional structure of their government differs¹⁹⁷. Moreover some researchers generally take the view that *local authorities are not State structures, so the principle of separation of powers does not apply to the organization of local government*¹⁹⁸. However, it must be acknowledged that in both: local government and central government, the analogy of the framework for decision-making is very similar.

At the State level: the Seimas of the Republic of Lithuania passes laws, the Government of the Republic of Lithuania is the executive power, the Courts control the legality of legislation and its application. In the municipality: The municipal council makes decisions, the administration is the executive power, the representative of the Government of the Republic of Lithuania exercises administrative supervision, that is, Supervises whether municipalities comply with the Constitution and laws, or implement the resolutions of the Government of the Republic of Lithuania.

According to the Constitution of the Republic of Lithuania, the right of self-government is guaranteed only to municipalities - the lowest territorial administrative units, therefore Lithuania is classified as a state with one-tier self-government¹⁹⁹. The wording of Part 1 of Article 3 of the Charter²⁰⁰ on the right of self-government to conduct its public affairs under its full responsibility is enshrined in Article 120 of the Constitution of the Republic of Lithuania, which establishes, that “*Municipalities shall act freely and independently within the limits of the competence defined by the Constitution and laws*”. This provision is also enshrined in Part 2 of Article 4 of the Law on Local Self-Government²⁰¹. Together with Article 3 of the Charter, which stipulates that the local government shall have the right and ability to handle and manage the major part of public affairs represented by freely elected councils, Article 120 of the Constitution provides for the election of local government decision-making bodies and the right

¹⁹⁶ Griškevič, L. (2008). Theory of separation of powers by J. Madison. *The Law*, No. 66 (2), p. 154-161. (ISSN 1392-1274).

¹⁹⁷ Novikovas, A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 58-64. (ISSN 1392-6195).

¹⁹⁸ Bakaveckas, A. (2005). The problems of Development of legal base of local self-government. *Public policy and administration*, No. 12 (109), p. 104-110. (ISSN online 2029-2872 / ISSN print 1648-2603).

¹⁹⁹ Grigienė, K. (2011). Constitutional frameworks for regional self-government in Lithuania and central and eastern Europe: Do the reforms of the regions determine the need of constitutional amendments?. *Societal studies*, No. 3 (4), p. 1479-1496. (ISSN online 2029-2244 / ISSN print 2029-2236).

²⁰⁰ European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

²⁰¹ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

to vote for citizens and other permanent residents of the administrative unit. The limits within which self-government operates are established only by a law at the State level.

The Constitution of the Republic of Lithuania does not directly define the powers and duties of local self-government bodies, thus leaving them to be established by law. The law defines in detail what functions each level of government should perform. Article 6 of the Law on Local Self-Government lists autonomous functions of municipalities, such as: preparation and approval of the municipal budget; setting local tolls; management, use and disposal of land and other property owned by the municipality; maintenance, repair and construction of municipal roads and streets of local importance; the organization of road safety and many others (45 points in total). It should be noted that the list is not exhaustive, as Part 46 of Article 6 of the Law on Local Self-Government provides that other functions of autonomous municipalities may also be included other functions not attributed to public authorities.

Article 7 of the Law on Local Self-Government specifies the functions delegated by the State to municipalities, such as: registration of acts of civil status; fire safety; involvement in managing state parks; setting up social benefits and compensation; providing free meals to students, and many others (38 items in total). It should also be noted that the list is not exhaustive, as Part 39 of Article 7 of the Law on Local Self-Government provides that functions delegated by the State may include other functions delegated by law.

The constitutional principle of a state under the rule of law involves many different interrelated imperatives, including the requirement of a hierarchy of legislation, from whence arises the rule of law over the secondary legislation²⁰². It means that the constitutional principle does not allow sub-statutory legal acts to establish such legal regulation that would compete with the one provided by the law. Sub-statutory legal acts may not change the law or create new general legal norms that compete with one another, as this would violate the supremacy of the laws enshrined in the Constitution of the Republic of Lithuania over sub-statutory legal acts²⁰³. A sub-statutory legal act must implement the norms of the law, therefore it must be adopted on the basis of law. A sub-statutory act is an act of application of the rules of the law, whether it is of one-time application or of permanent validity.²⁰⁴

²⁰² The ruling of the Constitutional Court of the Republic of Lithuania of 28.09.2011.

²⁰³ The ruling of the Constitutional Court of the Republic of Lithuania of 21.08.2002;
The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2005;
The ruling of the Constitutional Court of the Republic of Lithuania of 19.01.2005.

²⁰⁴ The ruling of the Constitutional Court of the Republic of Lithuania of 06.09.2007;
The ruling of the Constitutional Court of the Republic of Lithuania of 31.03.2010;
The ruling of the Constitutional Court of the Republic of Lithuania of 18.04.2012;
The ruling of the Constitutional Court of the Republic of Lithuania of 20.02.2013.

The principle of municipal autonomy is not absolute²⁰⁵ and it does not relieve public administration entity (municipal councils) from the obligation to comply with all the principles of public law, including the principle of legality. Municipal councils, implementing the functions entrusted to them, has no discretion to establish legal regulation that does not comply with the provisions of higher-ranking legal acts.²⁰⁶

Under Part 1 of Article 123 of the Constitution of the Republic of Lithuania: "*In higher administrative units, the government shall organize the management in accordance with the procedure established by law.*" In accordance with the provisions of the second and third paragraphs of Article 123 of the Constitution of the Republic of Lithuania and Municipal Administrative Supervision law²⁰⁷ - administrative supervision of municipalities is performed by state officials appointed by the Government - representatives of the Government. They supervise the compliance of municipalities with the Constitution and laws of the Republic of Lithuania or the implementation of Government decisions.

This way the control of the legality of administrative acts adopted by municipal administration entities is within the competence of the Government representative²⁰⁸. Government representative oversees the municipalities' compliance with the Constitution and laws, or enforces government decisions, proposes (must propose) to repeal or amend unlawful legal acts of municipal administrative entities, and when the entities of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or execute the decision of the Government, apply (must apply) to the court.

Article 4 of the new version of the Law on Administrative Supervision of Local Governments of the Republic of Lithuania, which came into force on 01.07.2011, provides that representatives of the Government of the Republic of Lithuania shall be appointed on the recommendation of the Prime Minister of the Republic of Lithuania. In this way, the tender procedure established for the position of the representative of the Government of the Republic of Lithuania was waived. The representative of the Government of the Republic of Lithuania has become a state of political trust, subordinate and accountable to the Government of the Republic of Lithuania. Because the Government itself is a political entity in which political parties play a major role - there is a clear risk that decisions related to administrative control in individual municipalities will be taken selectively, not by law-based arguments, but by political agreements. After the Seimas of the Republic of Lithuania adopted amendments to the Law on

205 Astrauskas, A. (2004). Search for the Optimal Model of the Municipal Institutional Structure. *Public Policy and Administration*, Vol. 1, No. 8, p. 9-24. (ISSN online 2029-2872 / ISSN print 1648-2603).

206 19th of October, (2015) Ruling of the Supreme Administrative Court of Lithuania, in case no. A-737-552/2015.

207 Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

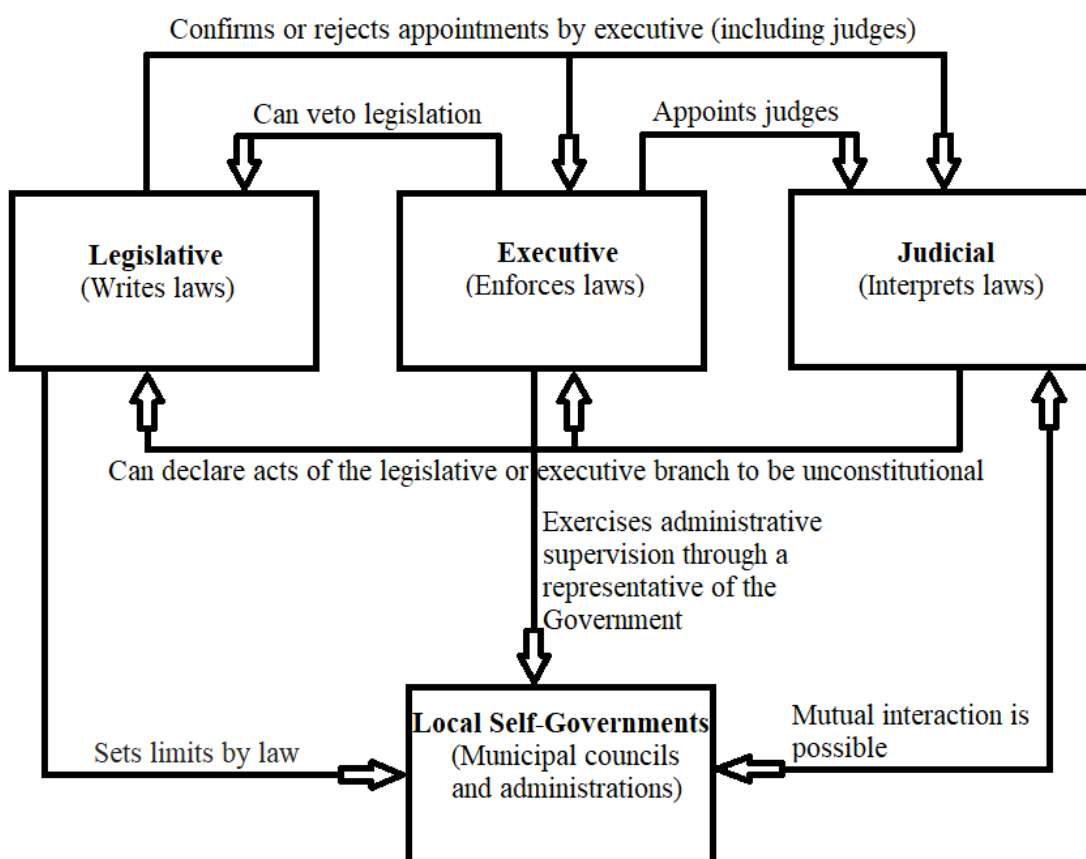
208 06th of December, (2010) Ruling of the Supreme Administrative Court of Lithuania, in case no. A662-1429/2010.

Administrative Supervision of Municipalities of the Republic of Lithuania, also in the public space there are many fears that administrative supervision will be carried out in accordance with political decisions, which could undoubtedly complicate the democratic process in the future.

Local authorities shall have the right to use judicial means to safeguard the right to exercise their powers unrestrictedly and to ensure respect for the principles of local self-government enshrined in the Constitution and in domestic law. Accordingly, Article 122 of the Constitution provides that municipal councils shall have the right to apply to the courts for violation of their rights, which is also enshrined in Article 11 of the European Charter of Local Self-Government.

The place of self-government in the State structure could be depicted like in Figure 5:

Figure No. 5²⁰⁹. The State Structure.



Undoubtedly, the municipal council has the greatest influence on the management of self-government, therefore in each municipality council, the presence of an opposition (minority) is not only a normative phenomenon, but also a necessary expression of democracy. In essence, the opposition has two main functions: One, it does not allow one party to come entrench and curtails government selfishness, it helps to maintain the Constitutional model of Local -

²⁰⁹ The figure is compiled by the author.

Government. Secondly, because the political decisions are not perfect, the opposition points out the mistakes and shortcomings of the government. Opposition works like instrument to restrict government and cultivate social peace.

A brief summary of the subsection should highlight a number of points:

1) In self-government, powers interactions are specific because they interact not only with each other but also with central government, however the fact about government interactions presupposes that leverage mechanisms are also exist in self-government.

2) Considering that the municipal council has the greatest influence on the decisions made in the municipality, and in order to maintain democratic governance at the municipal level (Checks and Balances mechanism), it is necessary to strengthen the capacity of the opposition and ensure proper implementation of laws in the local government.

3) Municipal administrative supervision must be carried out - not on political, but on legal arguments, so reform is needed in this area.

1.2.2. Compatibility of municipal autonomy and state executive power

As explained in the first sections, democracies have certain systems of government. Lithuania is dominated by two: state governance (deconcentration) and local self-government (decentralization). It has also been clarified that the two-tier administrative system dominates: the first (lower) tier belongs to the permanent residents of municipalities, who are guaranteed the right of self-government in accordance with the Constitution; second (higher) tier - Governments that organize management in the administrative units assigned to it. However, from a constitutional point of view, these systems of government are not identical²¹⁰, the constitutional foundations of their formation and functioning also differ.

In addition to the above-mentioned differences, researchers tend to single out differences in competencies, independent sources of funding, forms of elections (elections at the local government level are held within territorial boundaries, and state-level elections are not restricted at territorial boundaries) and differences in the expression (the state government is sovereign, its decisions (with the highest legal force) are applied at the national level, and the decisions of local self-government institutions are valid at the local level and cannot contradict the decisions of the state government) of powers²¹¹. It should also be noted that the entities ensuring local self-government are not bound by subordination relations with state authorities. Although its

²¹⁰ The ruling of the Constitutional Court of the Republic of Lithuania of 14.01.2002;
The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

²¹¹ Novikovas, A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 61. (ISSN 1392-6195).

administrative supervision is provided for, it is carried out only on the basis and in accordance with the procedure regulated by legal acts and is based on ensuring the observance of laws and constitutional principles. Such self-order and self-efficacy of public authorities formed by territorial communities express the freedom and independence of activities of municipalities, emphasized in the ruling of the Constitutional Court of the Republic of Lithuania²¹² and guaranteed in the Constitution itself (Art. 120 of Constitution)²¹³. However, in another ruling, the Constitutional Court pointed out that the independence of municipalities is constrained by the special constitutional principle of harmonizing the interests of municipalities and the state²¹⁴. Part 2 of Article 120 of the Constitution is significant, which states that despite the right of municipalities to act freely and independently, these rights are inseparable from their competence established in the Constitution and laws. This means that no legal regulation is possible that would limit the possibilities of municipalities to implement their constitutional competences. Therefore, inclusive, only municipalities can perform the functions assigned to them.

But this by no means expresses their absolute divide. These two systems of public power not only interact, but also combine their interests. Although the autonomy of municipalities is also manifested through their financial independence, which means that appropriate funds must be allocated for the performance of the functions and responsibilities assigned to municipalities (main and additional - by delegating additional state functions before the end of the budget year), it also reflects the common interests of local self-government and the state - public interests of the community, between which (municipal territorial communities and state communities - civil Nations) there can be no dividing line. This position is supported by scientists who argue that “Local self-government and states coexist as independent units, spheres of life with specific content - local and national interests”²¹⁵. Consequently, when implementing their functions and duties in the context of public administration, municipalities also ensure the public interest of their territorial community and the state community, which is guaranteed by the state institutions in accordance with their competence²¹⁶.

²¹² The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2012: Regarding the compliance of the Constitutional Law on the Procedure for the Application of the Law on Local Self-Government of the Republic of Lithuania. Case No. 49/2000.

²¹³ Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucija), Official Gazette, 30.11.1992, No. 220, 33-1014.

²¹⁴ The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002.

²¹⁵ Novikovas, A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 61. (ISSN 1392-6195).

²¹⁶ Collective of authors, (2017). Constitutional law of the Republic of Lithuania. *Constitutional law*, Mykolas Romeris university press, Vilnius. (ISBN online 978-9955-30-260-5 / ISBN print 978-9955-30-261-2). P. 826-827. Retrieved 04.01.2021 from: <https://www.registrucentras.lt/bylos/dokumentai/literatura/Lietuvos%20konstitucin%C4%97%20teis%C4%97.pdf>.

The independence of local and state authorities and the compatibility of their interests are also evidenced by the principle of prohibition of double mandate enshrined in the Constitution. This means that the same person cannot be a member of the municipal council and the Seimas, the Government or a judge, the President of the Republic at the same time. This group also includes state officials who control or supervise the activities of municipalities in accordance with the Constitution and laws.

Finally, the ruling of the Constitutional Court should be mentioned, which emphasizes the significance and importance of cooperation at different levels of government: “cooperation is a universal constitutional principle. Its implementation creates preconditions for both state institutions and municipalities to achieve the common goal - to ensure efficient management of public and state affairs by fulfilling the powers established by law”²¹⁷. As the autonomy of municipalities does not entitle them to ignore the interests of the state, the two levels of government are linked to common goals²¹⁸, the importance of reconciling their interests cannot be questioned, and cooperation and coordinated action are mandatory. This position, at least at the academic level, has been maintained for several decades, for example, Quoting foreign authors, A. Novikovas agrees that there can be no contradictions between state and local governments, because they can exist only together, they are connected by a common source of power - the nation, and only together can they act effectively in the interests of the nation²¹⁹. The qualitative expression of these inseparable elements determines the smoothness of the decisions made and their nature. Therefore, it can be said that the cooperation and compatibility of interests of the state government and local self-government promotes the development of sustainable regional policy and at the same time increases the limits of self-government autonomy.

Continuing the idea expressed at the beginning of the section that local and state authorities are not identical, but at the same time have common peculiarities, it is expedient to single out the principles of activity of local self-government institutions, which are conditionally analogous to the principles of state power and which are regulated both at the legal level²²⁰, and distinguished in the works of scientists (A. Kulakauskas²²¹, G. Žilinskas²²², V. Pilipavičius and I. Vidrevičienė²²³, V. Kurpuvesas²²⁴ and others):

²¹⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 22.10.1996.

²¹⁸ The ruling of the Constitutional Court of the Republic of Lithuania of 21.04.1998.

²¹⁹ Novikovas, A. (2005). The Nature and the Social Mission of Local Government in the Society. *Jurisprudence*, No. 77(69); p. 61. (ISSN 1392-6195).

²²⁰ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

²²¹ Kulakauskas, A. (2010). Local communities are the basis of territorial self-government. Scientific Conference "Local Self-Government and Communities in Lithuania", Vilnius: Mykolas Romeris university, p. 26-32. Available: <https://www.lituanistika.lt/content/27088>.

1. Accountability to voters. Accountability and responsibility of the members of the municipal council.
2. Citizen participation in the administration of public self-government affairs. The rights of self-government give citizens the opportunity to directly participate in the preparation of draft decisions, organizing surveys, meetings, gatherings, public examination of petitions and initiating other civic ideas of education, culture and organization and so on.
3. Synthesis of the interests of central and local governments in the management of public self-government affairs.
4. Self-activity and independence of local self-government entities in the implementation of laws, obligations to the community, decision-making and other areas not in conflict with the law.
5. Coordinating the interests of individual municipal residents and the community.
6. Transparency, legitimacy and publicity of the activities of local self-government entities.
7. Respect for human rights and freedoms, guarantee of these natural rights.

The presented principles of activity of self-government institutions also include the issue of ensuring self-government and state independence and coordination of interests. At the same time, it is noted that ensuring local self-government strengthens democracy and the subsidiary functioning of local government and society in the context of achieving common goals. It is considered that the self-regulation and self-government of communities is their natural right, therefore only it can decide which issues require state intervention²²⁵. In this respect, the right of self-government to self-employment and autonomy is probably most accurately identified, in other words, the principle of subsidiarity crystallizes, the application of which should start with the principle of decentralization (detailed in the course of work), as this is the only way to ensure: “better satisfaction of the population's needs due to proximity to the consumer,

²²² Žilinskas, G. (2009). Contemporary Problems of Governance Transformation of Counties and Regions in Lithuania. *Public Policy and Administration*, No. 27, p. 90-100. (ISSN online 2029-2872 / ISSN print 1648-2603).

²²³ Pilipavičius, V., Vidravičienė, I. (2014). Local self government and formation of self government in rural areas. *Management Theory and Studies for Rural Business and Infrastructure Development*, Vol. 36, No. 4, p. 937-945. Doi: [10.15544/mts.2014.088](https://doi.org/10.15544/mts.2014.088).

²²⁴ Kurpuvesas, V. (2011). Kurpuvesas, V. (2011). Implementation of the principles of local self-government in Lithuania. Presentation by the Chairman of the Committee on Public Administration and Municipalities of the Seimas of the Republic of Lithuania at the international conference “European Charter of Local Self-Government and Lithuania”.

²²⁵ Kondratienė, V. (2008). The mechanism of legal adjustment of the system of local self-governance. *Jurisprudence*, No. 3 (105), p. 60-61. (ISSN 1392-6195).

government accountability to the population, higher probability of innovative solutions, lower monitoring costs and a more stable government system”²²⁶.

Thus, the cooperation between municipalities and the state is ensured by the coordination of centralized state management with decentralization. This in turn expresses the principle of balance of interests governed by law. Both levels of government are linked by the safeguarding and implementation of the public interest and must therefore operate on the basis of coherence in order to achieve common goals. In addition to significant similarities, they differ in the territorial scope of activities, the construction of the institutional structure, and the amount and form of the mandate. In view of the above, it is reasonably stated that the system of self-government in Lithuania has well-established legal relations between local government and municipal institutions that meet the requirements of democratic governance²²⁷, constitutional foundations of local self-government, the right of self-government guaranteed to territorial communities and the European Charter of Local Self-Government ratified without reservations, the detailed analysis of which is presented in the following sections of the dissertation.

1.3. General overview of the national local self-government legislation

The analysis of the concept of local self-government in Europe, the concept in the national legal system, rights and other related elements allows to state that the Charter is applied quite widely in Lithuania. It is reflected not only at the academic but also in the legislative level.

First of all, it is noted that according to the Constitution, the Charter, although an international legal act, is at the same time an integral part of the legal system of the Republic of Lithuania (Pt. 3 of Art. 138 of Constitution). In addition, if national legislation declares rules contrary to those laid down in the Charter, the provisions of the Charter shall apply²²⁸. According to the doctrine formed by the Constitutional Court, international treaties ratified by the Seimas have precedence over constitutional laws in their legal force. Consequently, the importance of the Charter in the national legal system is unquestionable. This can also be justified by the fact that six decisions related to the Charter have been adopted by the Constitutional Court, and it is mentioned in five other decisions. At the same time, the Constitution itself provides for a separate Section X “Local Self-Government and Governance” for local self-government (Art.

²²⁶ Lithuanian Free Market Institute. (2016). Subsidiarity principle. Concept and criteria. Arguments and discussion, (Subsidiarumo principas. Samprata ir kriterijai. Argumentai ir diskusija). Retrieved 20.02.2020 from: https://www.llri.lt/wp-content/uploads/2016/06/Subsidiarumo-PB-06_30.pdf.

²²⁷ Astrauskas, A., (2011). Development of the Local Government in Lithuania from 1990 to 2010. *Public Policy and Administration*, Vol. 10, No. 2, p. 296. (ISSN online 2029-2872 / ISSN print 1648-2603).

²²⁸ Law on International Agreements of the Republic of Lithuania, (Lietuvos Respublikos Tarptautinių sutarčių įstatymas). Official Gazette, 1999-07-09, No. 60-1948.

119-124 of Constitution): Article 119 regulates that the right of self-government is guaranteed to the administrative units of the territory of the state, which is implemented by the municipal councils. It also specifies the procedure for the formation of a representative institution of self-government, distinguishes the right to form executive bodies accountable to it; Article 120 ensures state support for municipalities and their rights to act freely and independently in accordance with the competence defined by the Constitution and laws; Article 121 declares the economic and financial autonomy and independence of municipalities - municipalities form their budgets and have the right to set local fees and their benefits at the expense of their budgets without violating the limits and procedures provided by law; Article 122 provides guarantees for the activities of municipalities and legal protection measures (right to go to court); Article 123 focuses on the supervision and control of municipal activities. Parts 1–3 of the Article indicate the competence of the representatives appointed by the Government to control the observance of the Constitution and laws of municipalities and the implementation of the decisions of the Government. Part 4 of this Article distinguishes the right of the Seimas to temporarily introduce direct management in the territory of the municipality; Article 124 provides for the possibility to verify the legality of the activities of local self-government bodies: “Acts or actions of municipal councils, their executive bodies and their officials that violate the rights of citizens and organizations can be appealed in court”.

As the Constitution is an integral legal act, its provisions, norms and principles are interrelated and form a coherent system of norms²²⁹, other important articles of the Constitution regulate issues important for local self-government, for example: Article 11 states that the administrative units of the territory of the State of Lithuania and their boundaries shall be established by law; Item 17 of Article 67 enshrines the right of the Seimas to establish the administrative division of the state; Part 1 of Article 127 declares that the national budgetary system consists of the state and individual municipal budgets; Article 141 stipulates that persons performing actual military or alternative service who have not entered the national defence system, police and internal service officers, non-commissioned officers and permanent officials paid by other recurring security services are prohibited from becoming members of municipal councils.

The foundations of the organization of local self-government activities enshrined in the Constitution do not fully reflect the fundamental provisions of the Charter, but whereas: the Constitution pays sufficient attention to local self-government, establishing the main provisions of local self-government activities and other framework provisions; the Constitution was adopted

²²⁹ Jarašiūnas, E. (2020). Pranešimo „Konstitucijos reikšmė” tezės. P. 1-9. Retrieved 04.06.2021 from: <https://www.pavb.lt/wp-content/uploads/2020/09/Prof.-dr.-Egidijaus-Jarasiuno-pranesimas.pdf>.

before the Charter was ratified; after the restoration of independence, Lithuania has fundamentally reorganized the state administration and in a relatively short time has established the basic principles of democratic state governance, ensuring progress at the national level and recognition at the international level - presupposes a sufficient constitutional justification for local self-government. On the other hand, although the constitutional concept, like its law, cannot be equated with ordinary law²³⁰, it would not be possible to fully disclose the legal bases of local self-government, “if it is not mentioned at all how the living constitution is conditionally expressed in those laws which determine in detail the legal status of municipalities”²³¹. Thus, the legal acts relevant to the foundations of local self-government and implementing the provisions of the European Charter of Local Self-Government are the following:

*Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries*²³². The Law details the provisions of the Constitution (Article 11 and Item 17 of Article 67, Part 1 of Article 119, Part 1 of Article 123) regarding the administrative division of the territory of the State, which is discussed in more detail in subsection 1.1.3. of Section 1 of this Chapter. It should be noted that the Constitutional Court on June 28th, 2001 has passed a resolution on the compliance of this law with the Constitution²³³.

*Law on Elections to Municipal Councils of the Republic of Lithuania*²³⁴. It implements the provisions of Parts 2 and 3 of Article 119 of the Constitution, as well as Articles 1 and 34 of the Constitution. It should be noted that the law has been amended more than 60 times and examined in the Constitutional Court a couple of times²³⁵. Such changes in the legal regulation of the law reflect positive results - the institute of mayor has been established. Therefore, the elections of the members of the municipal council are accompanied by the election of the mayor. It is believed that the law will change more than once, as there is a heated debate on the mandatory establishment of elderships in municipalities, the need to legalize direct elections of elders and the strengthening of the status of sub-elder. The law also regulates the structure of municipal councils and other related issues. For example, the number of municipal members depends on the population of the municipality. In addition to economic potential, this is one of

²³⁰ Vaičaitis, A. V. (2017). Concept of contemporary constitutionalism. *Law*, No. 104, p. 90-105. (ISSN online 2424-6050 / ISSN print 1392-1274).

²³¹ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 230. (ISSN 1822-4520).

²³² Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, .19.07.1994, No. 60-1183.

²³³ The ruling of the Constitutional Court of the Republic of Lithuania of 28.06.2001. (See Section 15 of Part III).

²³⁴ Law on Elections to Municipal Councils of the Republic of Lithuania, (Lietuvos Respublikos Savivaldybių tarybų rinkimų įstatymas). Official Gazette, 13.07.1994, No. 53-996.

²³⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 09.02.2007;

The ruling of the Constitutional Court of the Republic of Lithuania of 11.05.2011. (See Section 11 of Part IV).

the criteria for classifying municipalities. Furthermore, it is considered that the importance of the law will only increase as certain of its provisions may be codified²³⁶.

*Law on Local Self-Government of the Republic of Lithuania*²³⁷. This law is one of the essential and most widely regulating procedures for the formation and operation of municipal institutions (defining the principles of local self-government, municipal institutions and their competence, functions, status of municipal council members, municipal economic and financial activities) in implementing the Constitution and the European Charter of Local Self-Government. At the same time, it has probably been changed the most times, especially between 2000 and 2008. The law is equated with the Code, and the principle “municipalities are not subordinated to state institutions” referred to in Part 2 of Article 52 thereof is considered to be declared alongside the first provisions of the law and inserted in the above-mentioned Section X of the Constitution²³⁸. The author agrees with this position, as this principle simultaneously expresses the principles of subsidiarity and decentralization enshrined in the European Charter of Local Self-Government, and gaps in its application are criticized at both national and international level.

*Law on Administrative Supervision of Municipalities of the Republic of Lithuania*²³⁹. It implements the provision of Part 3 of Article 123 of the Constitution: "The powers of a representative of the Government and the procedure for their exercise shall be established by law", which is treated by analogy in Article 1 of the Law: “This Law establishes the powers of the representatives of the Government of the Republic of Lithuania performing the administrative supervision of the activities of municipalities provided for in the Constitution of the Republic of Lithuania and the procedure for implementation of the powers”. Thus, a government representative is appointed to control the municipalities of one county, and his term of office coincides with the term of office of the municipal council (4 years). The activity of the representative of the government is based on the powers to receive information, submit claims, make decisions and apply to a court for recognition of acts adopted by municipalities as illegal. Compared to the laws on elections to local self-government or municipal councils, the law has been amended relatively rarely and has been examined by the Constitutional Court once, but on a

²³⁶ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 232. (ISSN 1822-4520).

²³⁷ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

²³⁸ Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 232. (ISSN 1822-4520).

²³⁹ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

significant issue - prohibiting a Government representative from being a member of a political party which is in conflict with the Constitution²⁴⁰.

*Law of the Republic of Lithuania on Temporary Direct Management in the Municipal Territory*²⁴¹. This law identifies cases of introduction of direct management in the territory of the municipality (detailed at the beginning of the work), regulates the procedure and implementation of direct management in the territory of the municipality. Thus, the law is derived from Part 4 of Article 123 of the Constitution and the general grounds for the protection of the constitutional order²⁴².

*Civil Code of the Republic of Lithuania*²⁴³, which, among other important aspects, contains specific provisions: “Public legal persons are legal persons established by the state or municipality, their institutions <...>, the purpose of which is to satisfy public interests (state and municipal enterprises, state and municipal institutions, public institutions <...>) (Pt. 2 of Art. 2.34); “The state, municipality and their institutions are participants in civil relations on an equal footing with other participants in these relations. States and municipalities acquire civil rights, assume civil obligations and implement them through the relevant <...> municipal management institutions” (Pt. 1, 2 of Art 2.36). The extensive legal regulation of local self-government by laws and other legal acts, as in this case by codifying specific provisions, objectively justifies the weight of the institute in the context of public administration.

*Land Law of the Republic of Lithuania*²⁴⁴. Although the law has been amended surprisingly many times, two versions of the law are relevant in the context of the topic under analysis. For example, the original wording of the law provides that: 1) “The rights of the owner of the land owned by the municipality are implemented by the municipal council. Municipal land may be disposed of by transferring it to state ownership free of charge, by transferring it to a right of trust, by selling, exchanging, leasing or transferring it for use free of charge <...>” (Pt. 2, 3 of Art. 14); 2) „By a decision of the municipal council, a land plot owned by a municipality may be exchanged for an equivalent land plot <...> owned by natural or legal persons or, if it is not possible to exchange for an equivalent, a land plot or other immovable differing in value by up to 5 per cent <...>“ (Pt. 5 of Art. 19). In the wording of 1 January 19th, 2010, the first provision was retained, but the word “exchanged” was deleted, and the second provision has been declared

²⁴⁰ The ruling of the Constitutional Court of the Republic of Lithuania of 14.04.2006.

²⁴¹ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

²⁴² Šileikis, E. (2014). Constitutional foundations of local self - government. *Bulletin of the Constitutional Court of the Republic of Lithuania*, Nr. 4 (36), p. 235. (ISSN 1822-4520).

²⁴³ Civil Code of the Republic of Lithuania, (Lietuvos Respublikos Civilinis kodeksas). Official Gazette, 18.07.2000, No. 74-2262; 200.

²⁴⁴ Law on Land of the Republic of Lithuania, (Lietuvos Respublikos Žemės įstatymas). Official Gazette, 05.06.1994, No. 34-620.

invalid. Such changes in the legal regulation somewhat narrowed the powers of municipalities, but at the same time highlighted the role of municipal councils. In addition to the above-mentioned rights, Articles 45 and 46 of the Law regulate the right of municipal councils to submit a request to the territorial unit of the National Land Service regarding the disposal of land for public needs. It should be noted that, despite the seemingly clear legal framework, the European Council noted in a recent report that municipalities are not yet full owners of land²⁴⁵.

*Law on the Structure of the Budget of the Republic of Lithuania, the purpose of which – “to determine the content of the state budget and municipal budget, the legal bases for the generation of revenue from these budgets and the use of appropriations, as well as the transparent provisions, procedures, impact on the whole government, duties, rights and responsibilities of appropriation managers”*²⁴⁶. This law is related to the Law on the Methodology for Determining Municipal Budget Revenues, already discussed in the work, which establishes the sources of municipal budget revenues and the procedure for calculating, approving and transferring state budget grants and funds allocated to municipal budgets²⁴⁷.

Preliminary analysis of the national legal acts regulating the fundamental provisions of the European Charter of Local Self-Government allows to state that the essential requirements of the Charter are reflected not only in the Constitution, but also at the level of ordinary law. At the level of the above-mentioned law, obviously the most significant is the Law on Local Self-Government, which is publicly equated to the “Code of Self-Government”, sub-paragraph listing the essential bases of municipal functions, powers, activities and institutional structure. The second chapter of the dissertation will include a detailed analysis of the incorporation of the provisions of the European Charter of Local Self-Government into national law.

In this context, it is important to emphasize that the concept of European local government is enshrined in the European Charter of Local Self-Government. The international agreement of the Council of Europe was signed in 1985 in Strasbourg, which is one of the most important legal acts that helped to establish the legal basis of local self-government in Lithuania. Article 2 of the European Charter of Local Self-Government states that: “The principle of local self-government must be recognized by the country's domestic laws and, where necessary, by the constitution”.

²⁴⁵ Council of Europe (2018). Congress of Local and Regional Authorities. Local Democracy in Lithuania. 35th SESSION. Report CPL35, 6 November 2018.

²⁴⁶ Law on the Structure of the Budget of the Republic of Lithuania, (Lietuvos Respublikos biudžeto sandaros įstatymas). Official Gazette, 31.08.1990, No. 24-596.

²⁴⁷ Law of the Republic of Lithuania on Methods for Determining Municipal Budgets Revenue, (Lietuvos Respublikos savivaldybių biudžetų pajamų nustatymo metodikos įstatymas). Official Gazette, 1997-07-23, Nr. 69-1743.

II. THE IMPLEMENTATION OF EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT TO THE NATIONAL REGULATORY FRAMEWORK AND IDENTIFICATION THE MAIN PROBLEMS OF THE REALIZATION OF THE RIGHTS OF POLITICAL MINORITY (OPPOSITION)

The analysis of the previous chapter of the thesis has revealed the essential features of regional politics of Lithuania, relevant - general legal framework, the place of local self-government in the State structure and interaction between local self-government and national government institutions, so this chapter of the thesis is going to continue this study in order to analyse the main necessary features of ensuring political opposition rights of local self-government. With this in mind, an empirical study was conducted in this chapter, which helped to identify the practical problems of the realization of opposition rights of municipal councils that are encountered in different Lithuanian cities.

2.1. Empirical research strategy and methodology

In this chapter, an empirical study is conducted, which consists of two parts: interview research (qualitative) and documentary research (quantitative). In order for research not to become a mere data collection tool, but to make a real contribution to improving municipal governance processes, the specifics of the research object oblige to choose both: both quantitative and qualitative research methods, whereas the solution of the problem formulated in the work requires the analysis of many variables, some of which are difficult to identify by theoretical - documentary means alone. Thus, in this chapter, using qualitative and quantitative data analysis, the aim was to reveal the most specific problematic aspects of the legal regulation of local self-government of the Republic of Lithuania, related to the exercise of the rights provided for in the Law on Local Self-Government and other legal acts by the municipal council to the minority (opposition).

S. Kvale²⁴⁸ visually illustrates two different methodological concepts about social reality and the resulting different approaches to knowledge creation using two metaphors: researcher – “miner” and researcher – “traveller”. In the case of the “miner's” metaphor, knowledge is understood as the “hidden metal” that the researcher needs to extract in the form of data or phenomena. In this case, the “excavated metal” remains constant in the research process. The metaphor of the researcher – “traveller” describes a researcher who has embarked on a journey

²⁴⁸ Kvale, S. (1996). *Interviews: An Introduction to Qualitative Research Interviewing*. The *American Journal of Evaluation*, Thousand Oaks, CA: Sage, p. 1-326 p. Doi: [10.1016/S1098-2140\(99\)80208-2](https://doi.org/10.1016/S1098-2140(99)80208-2).

during which he interacts with residents, learns about their lives from them, and then returns home and recounts what he has seen and heard. The meanings of the original narratives are conveyed through the interpretations of the “traveller”. In the case of the “miner’s” metaphor, knowledge is understood as the meanings inherent in the researcher’s oral interpretation. On the other hand, by communicating and interpreting, the researcher not only creates knowledge, by reflecting he exchanges them himself.

Proponents of the combination of qualitative and quantitative research suggest using qualitative research for discoveries²⁴⁹, and quantitative research for validating discovered laws, models, and theories. As both quantitative and qualitative approaches are present at all stages of research, therefore, it can reasonably be argued that these two approaches (qualitative and quantitative) complement each other.

Thus, the methodological assumptions chosen in the research are based on a post-positivist (quantitative and qualitative) approach, that is, qualitative methods (interviews) are used as a tool to collect data to validate a post-positivist view.

2.1.1. Survey of political opposition representatives of municipal councils (interview)

Analysing the problematic aspects of the legal regulation of local self-government of the Republic of Lithuania related to the realization of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self - Government and other legal acts, the following empirical research was performed. During the research, the method of interviews was used in order to identify, as precisely as possible, the problems of the realization of the rights of political minorities (opposition) in the whole Lithuanian municipality. It is the interview method that was chosen to ensure the interaction between the researcher and the respondent, which enables to obtain the widest and deepest possible information in identifying practical problems and also allows to collect the detailed data needed to solve the identified problems. The interview focused on the target group of respondents from many different Lithuanian municipalities, who are fully acquainted with the practical aspects of the realization of the minority rights of the council. All respondents are current or former opposition members of municipal councils. With the aim of maximizing practical benefits, as many as thirty respondents were interviewed in this research. The aim of this (subsection’s) empirical research is to identify the main problems of the realization of the rights of political minorities (opposition) in Lithuanian self-government with the help of respondents from different Lithuanian cities.

²⁴⁹ Krathwohl, D. (1993). *Methods of Educational and Social Science Research: An Integrated Approach*. Longman/Addison Wesley Longman, New York.

Strategy and methodology of the survey of opposition representatives of different Lithuanian municipal councils

The specifics of the research object oblige to choose qualitative research methods, because the solution of the problem formulated in the work requires the analysis of many variables, and some of them are difficult to identify by theoretical means alone. Qualitative methodology does not constrain the researcher with standardized procedures and allows to gather detailed information about the object of research necessary for solving the problem. Abundance of data does not necessarily mean quality of information. In terms of interactions, quantitatively based individual studies can provide useful insights based on an analysis of pre-existing relationships. However, the interaction itself is an ever-changing process. The qualitative approach is based on more flexible methods and provides better opportunities to predict the causal links between different processes and the perspectives of individuals' behaviour. The results of quantitative research usually only show the existence of problems. Quantitative research can help with hypothesis testing and statistical generalization²⁵⁰. It can be stated that the qualitative analysis would allow to fully understand the problems raised in the dissertation - for which data collected using quantitative methods signal - the causal links between the underlying processes and factors. In order to ensure that research does not become only a tool for data collection, but actually serves to improve municipal management processes, it is appropriate to combine elements of a quantitative methodology and a qualitative approach. The researcher using the qualitative research approach does not seek to gather as many facts as possible, the qualitative methodology allows to focus on a deeper analysis of the collected information.

In order to achieve practical benefits and novelty of the work, the possibilities of the qualitative approach to generate conclusions and recommendations that would be relevant and useful in decision-making should be emphasized. Therefore, supplementing the ongoing research with elements of a qualitative approach is particularly relevant.

Thus, in the qualitative research it was decided to additionally use the interview method. This method is used to gather a comprehensive understanding of the research object. To obtain important data based on the knowledge of competent persons who are fully acquainted with the practical aspects of the realization of the minority rights of the council in their activities. The interview method was chosen to ensure the interaction of the researcher and the informant, which enables to obtain wider and deeper information by detailing and asking additional questions, to

²⁵⁰ Tummers, L. (2011). Explaining the willingness of public professionals to implement new policies: a policy alienation framework. *International Review of Administrative Sciences*, No. 77 (3), p. 557. Doi: <https://doi.org/10.1177/0020852311407364>.

gather information useful for the research not only from theoretical knowledge provided by experts and scientists.

Most of the data required for the research are obtained by linguistically assessing the information provided directly in the statements (surveys) of the representatives of the municipal opposition. However, in order to maximize the reliability of the data obtained from the research, it is important to take into account the observations made by researchers that public administration research is too little focused on issues related to the culture of public sector organizations and the internal climate, and even applied research that provides recommendations for solving real problems rarely analyses how the internal culture and work atmosphere of a municipality have a significant impact on the implementation of public policy and the activities of organizations themselves²⁵¹. Therefore, when formulating the questionnaire and conducting the interview, it is necessary to pay attention to the fact that when interviewing respondents in a structured way, without direct contact and researcher intervention (e.g. questionnaire method), an important part of the aspects relevant to the research would go unnoticed. For example, adjustment of informants' thought process, attentive listening, voice intonation, and nonverbal behaviour during interviews. Therefore, the interview survey method provides an opportunity to assess the beginnings of understanding the phenomena that shape the management culture.

Thus, the researcher cannot know some details in other ways than by asking the respondents questions, which helps to better assess the beginnings of understanding the phenomena of organizational and management culture. The data obtained from the interviews can be divided into two groups²⁵²:

- 1) Things that can be considered as facts, and
- 2) Things that are inherently unconfirmable because they involve matters of self-knowledge. For example, the informant may provide specific examples and identify situations not described elsewhere due to statutory rules, and these will be indisputable facts that reflect reality. However, statements about the lack of legal regulation and the identification of its shortcomings and directions for improvement are already partly decisive in terms of internal beliefs and possible practical experience. This may lead to objections to the credibility of the interviewees' statements, as the informant is chosen as an authoritative source of information, however, his opinion cannot be accepted as a priori correct. Deciding which

²⁵¹ McNabb, D. E. (2017). *Research Methods in Public Administration and Nonprofit Management: Politics & International Relations, Research Methods*. 4th Edition. *Routledge*. New York, p 19-20. Doi: <https://doi.org/10.4324/9781315181158>.

²⁵² Gomm, R. (2008). *Social research methodology: a critical introduction*. Second edition. *Basingstoke*, New York: Palgrave Macmillan. P. 185. (ISBN-13: 978-0-230-22475-9).

information obtained during the interviews can be considered relevant data and evidence for the research is a crucial task. It is difficult for the researcher to prove that he or she does not invent the data and does not misrepresent the informant's opinion, so any research results must be critically evaluated, the validity of which becomes a closed circle.

Thus, the choice of technique to transform an interview into data should focus on epistemological issues and, in particular, on what should be considered as data from the researcher's perspective²⁵³, that is, it is important for what purpose and for what information the interview method is used, as well as how it is expected to logically integrate the obtained data into the overall set of data analyzed in the research and consistent interpretations of the studied phenomena. Thus, the main problem of scientific methodology can be identified as the organization of an efficient and effective process of scientific cognition²⁵⁴.

In this research, informants are interviewed in order to gather not only the knowledge about the object of the research obtained with the help of theoretical methods and document analysis, but also data that cannot be effectively collected in other ways. The object of the research can be conceptualized from various positions, therefore, it is crucial to approach the research questions more broadly from the aspects relevant to practical activities. Taking into account that there are 60 separate territorial administrative units (municipalities) in Lithuania, therefore, the application of the survey (interview) method will help to reveal the object of research more and will ensure the reliability of the data in interaction with the observation method applied by the author. In this context, it should be noted that the author of this research himself has been a member of the opposition of the municipal council for more than ten years.

In applying the above methods and in formulating the research strategy, the different research methods should be combined in the light of²⁵⁵:

- *Technical integration.* Data collected by different methods or from different sources must be identical or complementary in technical or procedural terms so that they can be easily combined and grouped, or in some way comparable.

- *Ontological integration.* Data must be ontologically compatible. In other words, they must be based on uniform, consistent or comparable assumptions about social existence and phenomena.

²⁵³ Mason, J. (2002). *Qualitative Interviewing: Asking, Listening and Intepreting*. Qualitative Research in Action. London: Sage Publications Ltd, p. 34, p. 76. Doi: <https://dx.doi.org/10.4135/9781849209656.n10>.

²⁵⁴ Gudelis, D. (2007). *Municipal activity measurement models and their implementation possibilities in Lithuania: doctoral dissertation*. Mykolas Romeris university, Vilnius, p. 106. Available: <https://www.lituanistika.lt/content/10767>.

²⁵⁵ Mason, J. (2002). *Qualitative Interviewing: Asking, Listening and Intepreting*. Qualitative Research in Action. London: Sage Publications Ltd, p. 14, p. 34. Doi: <https://dx.doi.org/10.4135/9781849209656.n10>.

• *Integration at the cognitive and evidence substantiation levels.* Includes questions of whether different methods and data derive from the same epistemological provisions or are at least epistemologically compatible, that is, must be based on the same or harmonized assumptions about the generation of knowledge and the validity of the evidence.

• *Integration at the level of explanation.* Also includes epistemological issues, but focuses on constructing explanations and generalizations. The data obtained using different methods should be useful for comprehensible and convincing reasoning to help solve difficult research questions.

A characteristic feature of the exploratory interview is that all the information is obtained orally. In that, it is fundamentally different from a questionnaire survey. There are more differences. For example, interviews provide wider opportunities to get to know the subject in more depth, whereas in a questionnaire survey such opportunities are very limited. On the other hand, interviews are less likely to cover more respondents than a questionnaire. The purpose of the exploratory interview method, according to L. Cohen and L. Manion, can be used in three ways²⁵⁶:

- 1) It can be used as a direct and basic means of obtaining the necessary information. For example, to find out what the respondent thinks, to find out what the person knows (knowledge information), what he likes and dislikes (values), what he thinks (attitudes).
- 2) As a tool to test a hypothesis. For example, to identify or refine the relationships between variables and a study event.
- 3) Can be used in conjunction with other research methods both to gather information and to evaluate other methods such as a questionnaire.

Four types of interviews are possible in research practice²⁵⁷:

- 1) Structured (questions and the whole procedure are planned in advance and little is changed during the interview; in this case the situation is defined);
- 2) Unstructured (without a detailed plan, questioning in free form; the situation is open and able to change);
- 3) Non-imposed (the interviewer does not try to maintain the intended line of conversation, but gives in to the course of the interview imposed by the respondent);
- 4) Purposeful (the interviewer pays special attention to the respondent's subjective answers about the situation known to him, which he became acquainted with before

²⁵⁶ Cohen, L., Manion L., Morrison, K. (2000). *Research methods in education*. (5rd edition), London: Routledge. (ISBN 0-415-19541-1). Doi: <https://doi.org/10.4324/9780203224342>.

²⁵⁷ Kardelis, K. (2017). *Research methodology and methods*. *Science and Encyclopedia Publishing Center*, p. 260. (ISBN or code 9785420017715).

the interview; from the answers received, the researcher can decide whether his hypothesis has been confirmed or not). This type of interview was chosen for the survey of the representatives of the opposition of the municipal councils.

When researching the possibilities of realization of opposition rights of municipal councils (practical implementation) - interviewing selected local politicians is potentially useful due to the fact that the features that shape the practical content of the research phenomenon may differ radically from theoretically (both in legal regulation and research) defined assumptions and conclusions. And proper implementation of the rights of municipal opposition is one of the most important standards of good governance, therefore in order to objectively understand the established traditions of local government governance - the findings of the research need to be based not only on subjective beliefs, but also to integrate municipal opposition. However, this does not mean that the views of the interviewees must be considered unequivocally correct. Informants are interviewed in order to deepen the analysis, covering more questions, the interpretation of which would enable objective assumptions to be confirmed or refuted objectively. Therefore, the interview method aims to obtain data that:

- Reflect the practical possibilities for the realization of the rights provided by law to the municipal opposition at the national level;
- Would allow to identify, evaluate and understand specific problems of practical realization of the rights of the local opposition in separate Lithuanian municipalities;
- Would play a role in critically evaluating data collected by other methods;
- Would allow to decide on the prevailing views among the respondents on the importance of the analysed issue and the scale of relevance;
- Views would be reasoned, based on examples and reasonably explained;
- Would be useful (logically integrated) for a common objective understanding of the phenomena under research.

The survey of municipal opposition representatives can be named as a control method for scientifically objective knowledge of the researched phenomena. It can be stated that the *interview* method is used to refine and verify the data obtained by observation, document analysis and other *methods*.

It is advisable for the interviewer to try to take such a position as if he or she knew nothing about the situation under investigation, as if the most important and obvious aspects of the phenomenon under investigation are better understood²⁵⁸. However, such a proposal is more appropriate to accept when analysing data already collected and, of course, to avoid overwhelming the opinion of informants, without affecting the content of their statements. K.

²⁵⁸ Babbie, E. R. (2007). *The Practice of Social Research* (11th ed.). Belmont, CA: Thomson Wadsworth, p. 309.

Kardelis, the author of the textbook of scientific methodology, claims that the interview is one of the effective methods of qualitative research, which guarantees greater reliability than the questionnaire method or other survey methods, as the interview provides wider opportunities to get to know the subject in more depth, whereas in a questionnaire survey such opportunities are very limited²⁵⁹. During the interview, the researcher should be active enough to direct the conversation towards the information of interest. Therefore, in this case, the expert survey is conducted using the semi-structured interview method. The questions aim to reveal the views, assessments and reasoning of the opposition representatives of different municipalities not only about the object of research, but also about other phenomena, factors and assumptions raised in the theoretical part. Semi-structured interviews allow interviewees to express their views better than structured interviews and at the same time provides better comparability of responses than free-form interviews²⁶⁰. One of the main advantages of semi-structured interviews is the possibility to change the sequence of questions and refine the questions depending on the course of the interviews²⁶¹. The questions are guidelines that ensure the volume of data in the expert's statements that is adequate for the research to be obtained. The information obtained from the interviews with the experts is used both as independent data and as a means to ensure the reliability, relevance and validity of the conclusions obtained from the analysis of the documents. Expert evaluations influence the researcher's perception, therefore they help to interpret the data better, to see the object of the research more widely, and the integration of information gathered in different ways and from different sources ensures that the principles of objectivity are respected in the process of scientific knowledge.

Table No. 6²⁶². Preliminary interview questions.

<p>1. <i>The questions are intended to assess the attitude of the informants to the main goals of the political opposition of the self-government, practical problems, as well as to determine the need to improve and develop the legal framework.</i></p>	<p>2. <i>Questions showing the informants' attitudes towards possible solutions to the problems identified during the interviews by improving the legal framework.</i></p>
<p>1.1. What are the main goals and functions of</p>	<p>2.1. How do you assess the quality of the</p>

²⁵⁹ Kardelis, K. (2002). The module summary is prepared according to the textbook: Research methodology and methods. 2nd revised and supplemented edition, p. 98. Retrieved 04.04.2020 from: <https://verslas09.files.wordpress.com/2010/01/mtp.pdf>.

²⁶⁰ May, T. (2001). *Social Research: Issues, methods and process* (4th edition). Open University Press, Berkshire, p. 124.

²⁶¹ Bailey, C. A. (2007). *A Guide to qualitative field research* (2nd ed.). Thousand Oaks (Calif.): Sage Publications. P. 100. Doi: <http://dx.doi.org/10.4135/9781412983204>.

²⁶² The table is compiled by the author.

<p>the opposition activities of the municipal council?</p> <p>1.2. What are the most significant legal acts that you could identify in the activities of the municipal council (and the opposition)? (question in order to assess the respondent's legal perception)</p> <p>1.3. How do you assess the possibilities of the municipal council opposition to influence the decision-making process?</p> <p>1.4. In your opinion, what are the main obstacles to the realization of the opposition rights of the council? Are there no obstacles?</p> <p>1.5. In which areas are there the most problems in implementing the activities of the municipal council opposition?</p> <p>1.6. Control - additional questions.</p>	<p>current legal environment in the context of local government?</p> <p>2.2. What are the key factors to be considered in order to improve the legal framework in the context of ensuring the minority rights of the council?</p> <p>2.3. What specifically could you offer in order to achieve better legal regulation in the context of the realization of the opposition rights of the municipal council?</p> <p>2.4. Control - additional questions.</p> <p>Discussion.</p>
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2.1.2. Assessment of research data and results obtained through interviews

This interview research was conducted in collaboration with the Association of Local Authorities in Lithuania (ALAL), who, with the help of their database, helped to distribute the invitations to the target group of respondents, which greatly helped to increase the scope of the survey and to obtain more reliable data.

Thirty respondents from different Lithuanian municipalities participated in the research, and in particular: Vilnius city municipalities, Kaunas city municipalities, Klaipėda city municipalities, Šiauliai city municipalities, Panevėžys city municipalities, Neringa municipalities, Druskininkai municipalities, Trakai district municipalities, Širvintos district municipalities, Varėna district municipalities, Lazdijai district municipalities, Šakiai district municipalities, Molėtai district municipalities, Utena district municipalities, Kėdainiai district municipalities, Rokiškis district municipalities, Elektrėnai municipalities, Kazlų Rūda municipalities, Kaunas district municipalities, Skuodas district municipalities, Kelmė district municipalities, Kaišiadorys district municipalities, Raseiniai district municipalities, Anykščiai district municipalities.

It should be noted that all respondents²⁶³ are current or former members of municipal councils, chairmen of municipal control committees, ethics or anti-corruption commissions; therefore they are well acquainted with the topicalities of the researched issues in their practical activities. Among the interviewed respondents we can also find a number of current or former members of the Seimas of the Republic of Lithuania, as well as prominent scientists.

According to the data received from the respondents during the research, the (results) problems of realization of the rights of political minorities (oppositions) in the municipal councils of the Republic of Lithuania could be divided into three separate groups according to their nature (see Table No. 7).

Table No. 7²⁶⁴. (Results) the main problems of realization of the rights of political minorities (oppositions) of municipal councils of the Republic of Lithuania identified during the research are characteristic of the most undemocratic municipalities

1. According to technical possibilities	2. According to the management culture - established traditions	3. According to the legal and political environment
<p>1.1. Failure to provide information to members of opposition of the council.</p> <p>1.2. Artificial barriers are created for members of the council's opposition to make proposals.</p> <p>1.3. The municipal administration exclusively represents the interests of the majority of the municipality and the mayor. Acts exclusively biasedly and ignores members of the opposition.</p> <p>1.4. The municipal administration does not adequately serve the</p>	<p>2.1. In some municipalities, there is humiliation and belittling of members of the opposition in the eyes of the public. The media is often used for this purpose.</p> <p>2.2. There are cases where a local political majority of its members form a fake opposition with the aim of circumventing the Local Self-Government Act and appropriating posts guaranteed to the opposition.</p> <p>2.3. Division into own people and enemies. With the ruling majority not changing over time, there are a number of</p>	<p>3.1. The quality of administrative supervision is extremely poor, leading to frequent breaches of the hierarchy of legislation.</p> <p>3.2. By the provisions of the regulation of the activities of the municipal council, opposition rights are often unduly restricted.</p> <p>3.3. Perforated and insufficient legal regulation in appointing members of the opposition to positions guaranteed by law (the Control Committee; Ethics and Anti-Corruption Commissions).</p>

²⁶³ The list of representatives is attached as appendix no 6.

²⁶⁴ The table is compiled by the author.

<p>chairmen of the Control Committee and the Ethics-Anti-Corruption Commissions in opposition positions.</p> <p>1.5. Municipal public resources are often used to satisfy the majority of group political interests.</p> <p>1.6. Opposition members of the municipal council are technically prevented from participating in discussions during council meetings and are sometimes not allowed to speak at all.</p>	<p>cases where members of the opposition are persecuted for their political views. For example, obstacles to employment in municipal institutions or companies are created. This is especially true for smaller municipalities, where the municipalities themselves are the largest employers.</p>	<p>3.4. It is difficult and sometimes even impossible to initiate impeachment proceedings for a local politician who belongs to majority and has broken the oath. Practical makings to complete impeachment for majority politician are very complicated and there are only theoretical possibilities.</p>
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2.2. Analysis of the incorporation of the European Charter of Local Self-Government into the Lithuanian legal system in context of the protection political minorities (opposition) rights on municipal council

In the second subsection of this section, the research stage focused on the normative content of the research phenomenon is carried out, which aims to assess the problematic aspects of the national legal system that create preconditions restricting the realization of opposition rights of local municipal councils of the Republic of Lithuania, which, from a normative point of view, helps to better understand the content of the little-studied phenomenon in Lithuania. The documentary analysis performed in this subsection will also help to assess more systematically and in depth the data collected during the interviews and the legal environment in which the political minorities of Lithuanian municipal councils operate.

It should be noted that the European Charter of Local Self-Government, as an international treaty of the Council of Europe, was signed in 1985 in Strasbourg²⁶⁵. At present, all 47 member states of the Council of Europe have acceded to this international treaty, which aims to promote local democracy. Lithuania ratified the European Charter of Local Self-Government

²⁶⁵ European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

in 1999²⁶⁶, at the same time committing itself to implementing its provisions in the national legal system. According to Article 138 of the Constitution of the Republic of Lithuania²⁶⁷, ratified international agreements are part of the Lithuanian legal system. Considering that all the provisions of the Charter must be transposed into the Law on Local Self-Government of the Republic of Lithuania, the Constitution and other national legal acts, as well as taking into account that in the event of competition between national laws and the Charter, Lithuanian courts must follow the provisions of the Charter, which is why this subsection chooses to perform an analysis of the national legal framework through the prism of the Charter.

The manifestation of the principles enshrined in the Charter of Local Self-Government in context of the protection of the Political Minority (Opposition) Rights on municipality council (by paragraph).

Article 2 - Constitutional and legal foundation for local self-government²⁶⁸

The principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution.

The territorial administrative units of the Republic of Lithuania are counties and municipalities. Counties are formed from the territories of the municipalities characterized by common social, economic and ethno-cultural interests.

The Constitution of the Republic of Lithuania has a separate section on local government and its management – “Local self-government and governance” (Section X), which not only shows the importance of local self-government in the State context, but the principles of local self-government mentioned in the Constitution of the Republic of Lithuania also gain constitutional protection. The constitutional foundations of Lithuanian local self-government are also established in Articles 10, 11 and (pt.17) of 67 of the Lithuanian Constitution. There are 60 separate territorial administrative units (municipalities) in Lithuania, which are guaranteed by municipal law and implemented through municipal councils elected by secret elections. Under the Constitution of the Republic of Lithuania, the right of self-government is guaranteed only to municipalities - lower territorial administrative units, therefore Lithuania is classified as one-tier type self-government country. However, in addition to the lower (i.e. first-tier) units, there are higher (i.e. second-tier) administrative units where the government organizes

²⁶⁶ Official Gazette, 1999-10-01, Nr. 82-2418. Retrieved 04.02.2029 from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.48874>.

²⁶⁷ Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucija), Official Gazette, 30.11.1992, No. 220, 33-1014.

²⁶⁸ Article 2 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

the management. The fact that Section X of the Constitution enshrines at least two tiers (units) of administrative units, the Constitutional Court has also held.²⁶⁹

First article of the Law on Territorial Administrative Units and their Borders²⁷⁰ states that administrative units of the territory of the Republic of Lithuania are counties and municipalities. The county is a higher administrative unit of the territory of the Republic of Lithuania, where management is organized by the Government of the Republic of Lithuania in the manner prescribed by law (the second article of the same law).

The Constitution of the Republic of Lithuania does not enshrine the procedure for the designation of county administrative institutions or positions, their formation or the appointment and organization of their activities, therefore the legislator has a sufficiently wide discretion in formulating the county management policy.

The territory of the Republic of Lithuania currently comprises 10 counties and 60 municipalities. The majority of municipalities are divided into smaller territorial units – wards.

Based on the data of the Lithuanians enterprise Centre of Registers, on 1 February 2019, there were 103 cities/towns, 252 townships, 19 075 villages.

Article 3 - Concept of local self-government²⁷¹

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

The wording of Part 1 of Article 3 of the Charter on the right of self-government to conduct its public affairs under its full responsibility is enshrined in Article 120 of the

²⁶⁹ The ruling of the Constitutional Court of the Republic of Lithuania of 18.02.1998: : Regarding the amendment and supplementation of the Law on County Management of the Republic of Lithuania and the repeal of the Law on the Representative of the Government, the Law of the Seimas of the Republic of Lithuania of 1996 December 12 Conformity of the Resolution “On Supplementing the List of Positions of Level A Officials of the Public Administration Service of the Republic of Lithuania” with the Constitution of the Republic of Lithuania. Case No. 18 – 435.

²⁷⁰ Law on Administrative Units of the Territory of the Republic of Lithuania and Their Boundaries, (Lietuvos Respublikos Teritorijos administracinių vienetų ir jų ribų įstatymas). Official Gazette, 19.07.1994, No. 60-1183.

²⁷¹ Article 3 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

Constitution of the Republic of Lithuania, which establishes, that “Municipalities shall act freely and independently within the limits of the competence defined by the Constitution and laws”. This provision is also enshrined in Part 2 of Article 4 of the Law on Local Self-Government. Together with Article 3 of the Charter, which stipulates that the local government shall have the right and ability to handle and manage the major part of public affairs represented by freely elected councils, Article 120 of the Constitution provides for the election of local government decision-making bodies and the right to vote for citizens and other permanent residents of the administrative unit.

Part 1 of Article 19 of the Law on Local Self-Government stipulates that the Mayor shall be elected directly for the duration of the term cadence of the Municipal Council. Part 1 of Article 22 of the Law on Local Self-Government establishes that a member of the Municipal Council shall be a representative of the municipal community elected by permanent residents of the municipality in accordance with the procedure established by the Law on Elections to Municipal Councils.

In the 2019 municipal council elections in Lithuania, 1502 council members was elected in all sixty municipalities, the number of council members in each municipality was depend on population shown in the table.

Table No. 8²⁷².

Population	Number of municipal council members
Less than 5000 residents	15 members of the municipal council
Between 5000 and 10 000 residents	17 members of the municipal council
Between 10 000 and 20 000 residents	21 members of the municipal council
Between 20 000 and 50 000 residents	25 members of the municipal council
Between 50 000 and 100 000 residents	27 members of the municipal council
Between 100 000 and 300 000 residents	31 members of the municipal council
Between 300 000 and 500 000 residents	41 members of the municipal council
More than 500 000 residents	51 members of the municipal council

It is important to note, that after 2015 the first direct elections of mayors held in Lithuania on March 1 - even at sixteen municipalities (Birštonas municipality, Druskininkai municipality, Ignalina district municipality, Jonava district municipality, Kaunas district municipality, Lazdijai district municipality, Marijampolė municipality, Neringa municipality, Pagėgiai municipality, Palanga municipality, Pasvalys district municipality, Rietavas

²⁷² The table is compiled by the author.

municipality, Šakiai municipality, Šalčininkai municipality, Vilkaviškis district municipality, Vilnius district municipality)²⁷³ one of the political parties or political organizations (movements) in the municipalities of Lithuania won an absolute majority, which further emphasizes the importance of securing the rights of the minority (opposition). Moreover, after 2019 on March 3, the number of "one-party" municipalities in municipal elections increased to seventeen²⁷⁴.

Article 4 - Scope of local self-government²⁷⁵

- 1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.*
- 2. 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.*
- 3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*
- 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.*
- 5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.*
- 6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.*

The Constitution of the Republic of Lithuania does not directly define the powers and duties of local self-government bodies, thus leaving them to be established by law. The law defines in detail what functions each level of government should perform. Article 6 of the Law

²⁷³ See data available on the official website of the Central Electoral Commission. Retrieved 04.10.2018 from: http://www.vrk.lt/statiniai/puslapiai/2015_savivaldybiu_tarybu_rinkimai/output_lt/rezultatai_daugiamand_apygardo_se/rezultatai_daugiamand_apygardose1turas.html.

²⁷⁴ See data available on the official website of the Central Electoral Commission. Retrieved 06.06.2019 from: <https://www.vrk.lt/2019-savivaldybiu-tarybu/rezultatai?srcUrl=/rinkimai/864/1/1506/rezultatai/lt/rezultataiTarNariaiMeraiSavivaldybese.html>.

²⁷⁵ Article 4 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

on Local Self-Government lists autonomous functions of municipalities, such as: preparation and approval of the municipal budget; setting local tolls; management, use and disposal of land and other property owned by the municipality; maintenance, repair and construction of municipal roads and streets of local importance; the organization of road safety and many others (45 points in total). It should be noted that the list is not exhaustive, as Part 46 of Article 6 of the Law on Local Self-Government provides that other functions of autonomous municipalities may also be included other functions not attributed to public authorities.

Article 7 of the Law on Local Self-Government specifies the functions delegated by the State to municipalities, such as: registration of acts of civil status; fire safety; involvement in managing state parks; setting up social benefits and compensation; providing free meals to students, and many others (38 items in total). It should also be noted that the list is not exhaustive, as Part 39 of Article 7 of the Law on Local Self-Government provides that functions delegated by the State may include other functions delegated by law.

Part 1 of Article 8 of the Law on Local Self-Government states that the Municipality is responsible for the provision of public services to the population. Municipal institutions and administration do not provide public services, except as provided by law. They are provided by budgetary and public institutions, municipal companies, joint stock companies and other entities. Part 1 of Article 9 of the Law on Local Self-Government stipulates that the Municipality shall administer and ensure the provision of public services to residents, however, the Municipality shall establish new public service providers only in cases where other providers do not provide public services or they cannot provide them with good quality and at lower cost to the population. (Part 2 of Article 9 of the Law on Local Self-Government)

According to Part 1 of Article 9¹ of the Law on Local Self-Government, a new economic activity may be carried out when:

- 1) it is necessary to satisfy the general interest of the municipal community (and);
- 2) in the light of their commercial interests, other economic operators would not carry out, or would not carry out, such activities to the extent necessary to meet the general interest of the municipal community (and only);
- 3) unless such a decision favours or discriminates against individual entities or groups of entities.

Article 5 - Protection of local authority boundaries²⁷⁶

Changes in local authority boundaries shall not be made without prior consultation of the

²⁷⁶ Article 5 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

local communities concerned, possibly by means of a referendum where this is permitted by statute.

The European Charter of Local Self-Government stipulates that changes in local authority boundaries should not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute. In line with this, the Law on Territorial Administrative Units and their Borders 1999, provides that, in determining the boundaries of a local authority, the Minister of the Interior must follow a strict procedure, including eliciting the views of the relevant local councils and conducting an opinion poll. This was made clear in the instructive Constitutional Court Case²⁷⁷ No. 9/2000, of 28 June 2001, in which the Constitutional Court of Lithuania ruled, that the Government had failed to follow this procedure.

In conclusion on this point, the laws of Lithuania are in accord with the Charter, but the responsible organ of the government had failed to follow the laws.

Article 6 - Appropriate administrative structures and resources for the tasks of local authorities²⁷⁸

- 1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.*
- 2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.*

These provisions are enshrined in Chapter Four of the Law on Local Self-Government, Municipal Authorities, their Formation and Powers (Articles 11-21), in which state that the structure of municipal administration, regulation of activities and financing are approved by the municipal council.

Under the Local Self-Government Law, a municipality may set up committees, commissions and other bodies itself, although some committees, such as control, budget and finance committees, are mandatory. There is no unified structure of municipal council committees - each municipality establishes a separate. For example, in Vilnius, the largest

²⁷⁷ The ruling of the Constitutional Court of the Republic of Lithuania of 28.06.2001. Resolution on the Establishment, Dissolution of Municipalities, Limits of their Territories and Establishment and Modification of Centers. Available: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta326/content>.

²⁷⁸ Article 6 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

municipality with 51 members of council, there are seven committees in the following areas: economic and financial affairs; social issues; urban development; health, hygiene and the environment; services and urban economy; culture, sports and education; municipal development and public security. Other smaller municipalities have only three or four committees.

Each municipal council shall, for the duration of its term of office, approve the Reglament of Procedure of the Municipal Council - the main internal legal act of the municipal council, which establishes the procedure and forms of activities of the municipal council, mayor, vice - mayor, council committees, commissions and individual council members in accordance with the Law on Local Self-Government of the Republic of Lithuania. It also establishes the procedure for reporting to the mayor, the director of the municipal administration, the municipal ombudsman for the billing council and residents, as well as the main forms and methods of communication with the residents.

Articles 14 and 15 of the Law on Local Self-Government of the Republic of Lithuania provide for exclusive minority (opposition) rights in order to ensure political democracy - freedom of opposition. For the duration of its cadence, the Municipal Council shall set up Ethics, Anti-Corruption Commissions and a Control Committee, whose Chairman's candidates are delegated by the opposition a racial suggestion.

Part 1 of Article 15 of the Law on Local Self-Government stipulates, that the Municipal Council must form an Ethics Commission and an Anti-Corruption Commission for the duration of its mandate. The municipal council appoints the chairmen of these commissions from the members of the council on the recommendation of the mayor. If a minority council (opposition) is declared, mayor shall nominate the chairmen of the Ethics and Anti-Corruption Commissions on the proposal of the minority (opposition) of the municipal council in accordance with the procedure established by the regulation.

Furthermore, the Law on Local Self-Government of the Republic of Lithuania provides for an exceptional procedure for the formation of the Control Committee, irrespective of the proportionality of the number of members of the council factions or council groups. It should be noted that Part 2 of Article 14 of the Law on Local Self-Government establishes the principle of equal representation of all groups and factions of the Council (irrespective of the majority or minority). While explaining the principle of proportional majority and minority representation in Part 2 of Article 14 of the Law on Local Self-Government, the College of Judges of the Supreme Administrative Court of Lithuania has noted, that its main objective is to secure the minority interests of the Council²⁷⁹. The Law on Local Self - Government of the Republic of Lithuania

²⁷⁹ 06th of May, (2014) Ruling of the Supreme Administrative Court of Lithuania, in case no. A-552-718/2014. *Administracinė jurisprudencija*, No. 27, p. 226-273.

provides that - the Control Committee shall consist of an equal number of delegated representatives of all factions of the Municipal Council and the group of Municipal Council members, if it consists of at least 3 Municipal Council members. At the same time, the legislator has enshrined in Part 3 of Article 14 of the Law on Local Self-Government the right of the opposition to nominate a candidate as Chairman of the Control Committee.

A systematic assessment of the above-mentioned legislation and relevant case-law, which include theoretical minority (opposition) rights, would suggest that there is a system of balancing between the majority of the council and the minority. However, it should be noted, that the legislature left the need for majority approval for each candidate proposed by a group or group of councillors. It is clear that the majority of the Council's opposing minority, without the support of their political opponents, are deprived of the opportunity to prove their candidacy, which, according to settled case-law, is the duty of the majority of the Council to approve. Such a gap in legal regulation not only creates a conflict situation between the principle of the free mandate of a municipal council member and the performance of his duties, but also leaves the legal uncertainty of the system of leverage and balance between the majority and minority of municipal councils. Such uncertainty provides a practical opportunity for the majority of councils to eliminate minority from the composition of the control committee, so the legislature's requirement for the municipal council to approve the opposition's nomination is restrictive and redundant of minority rights.

Existing regulatory issues need to be addressed by eliminating the need for majority approval of delegated representatives of council member groups or factions to the control committee, leaving it up to them to decide which member is best suited to fill the statutory posts on the control committee. In this case, the principle of separation of powers could also be followed, with different functions being delegated to different authorities, prohibiting the exercise of foreign functions.

Article 7 - Conditions under which responsibilities at local level are exercised²⁸⁰

- 1. The conditions of office of local elected representatives shall provide for free exercise of their functions.*
- 2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.*
- 3. Any functions and activities which are deemed incompatible with the holding of local*

²⁸⁰ Article 7 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

elective office shall be determined by statute or fundamental legal principles.

Article 120 of the Constitution states that municipalities shall act freely and independently within the limits of the competence defined by the Constitution and laws. This principle is also found in the Law on Local Self-Government, for example: Part 1 of Article 3.

Article 26 of the Law on Local Self-Government stipulates that the members of the Council shall be remunerated (paid) for their working time during the performance of the duties of a member of the Municipal Council. This salary shall be calculated on the basis of the published amount of the country average salary level, taking into account the time actually worked, the duration of which shall be fixed in accordance with the Regulation. The amount of remuneration for working time as a member of a municipal council shall be determined by the municipal council. Accordingly, remuneration for the activities of the Mayor and Deputy Mayor is enshrined in Article 19 of the Local Government law.

As regards the holding of functions deemed incompatible with elected office, the law prevents a person from being both a councilor and a member of the Seimas at the same time.

Article 8 - Administrative supervision of local authorities' activities²⁸¹

- 1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.*
- 2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.*
- 3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.*

The constitutional principle of a state under the rule of law involves many different interrelated imperatives, including the requirement of a hierarchy of legislation, from whence arises the rule of law over the secondary legislation²⁸². It means that the constitutional principle does not allow sub-statutory legal acts to establish such legal regulation that would compete with

²⁸¹ Article 8 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

²⁸² The ruling of the Constitutional Court of the Republic of Lithuania of 28.09.2011.

the one provided by the law. Sub-statutory legal acts may not change the law or create new general legal norms that compete with one another, as this would violate the supremacy of the laws enshrined in the Constitution of the Republic of Lithuania over sub-statutory legal acts²⁸³. A sub-statutory legal act must implement the norms of the law, therefore it must be adopted on the basis of law. A sub-statutory act is an act of application of the rules of the law, whether it is of one-time application or of permanent validity²⁸⁴.

The principle of municipal autonomy is not absolute and it does not relieve public administration entity (municipal councils) from the obligation to comply with all the principles of public law, including the principle of legality. Municipal councils, implementing the functions entrusted to them, has no discretion to establish legal regulation that does not comply with the provisions of higher-ranking legal acts²⁸⁵.

Under Part 1 of Article 123 of the Constitution of the Republic of Lithuania: "*In higher administrative units, the government shall organize the management in accordance with the procedure established by law.*" In accordance with the provisions of the second and third parts of Article 123 of the Constitution of the Republic of Lithuania and Municipal Administrative Supervision law²⁸⁶ - administrative supervision of municipalities is performed by state officials appointed by the Government - representatives of the Government. They supervise the compliance of municipalities with the Constitution and laws of the Republic of Lithuania or the implementation of Government decisions.

This way the control of the legality of administrative acts adopted by municipal administration entities is within the competence of the Government representative.²⁸⁷ Government representative oversees the municipalities' compliance with the Constitution and laws, or enforces government decisions, proposes (must propose) to repeal or amend unlawful legal acts of municipal administrative entities, and when the entities of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or execute the decision of the Government, apply (must apply) to the court.

Article 4 of the new version of the Law on Administrative Supervision of Local Governments of the Republic of Lithuania, which came into force on 01.07.2011, provides that representatives of the Government of the Republic of Lithuania shall be appointed on the

²⁸³ The ruling of the Constitutional Court of the Republic of Lithuania of 21.08.2004;
The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2005;
The ruling of the Constitutional Court of the Republic of Lithuania of 19.01.2005.

²⁸⁴ The ruling of the Constitutional Court of the Republic of Lithuania of 06.09.2010;
The ruling of the Constitutional Court of the Republic of Lithuania of 18.04.2012;
The ruling of the Constitutional Court of the Republic of Lithuania of 20.02.2013.

²⁸⁵ 19th of October, (2015) Ruling of the Supreme Administrative Court of Lithuania, in case no. A-737-552/2015.

²⁸⁶ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

²⁸⁷ 06th of December, (2010) Ruling of the Supreme Administrative Court of Lithuania, in case no. A662-1429/2010.

recommendation of the Prime Minister of the Republic of Lithuania. In this way, the tender procedure established for the position of the representative of the Government of the Republic of Lithuania was waived. The representative of the Government of the Republic of Lithuania has become a state of political trust, subordinate and accountable to the Government of the Republic of Lithuania. Because the Government itself is a political entity in which political parties play a major role²⁸⁸ - there is a clear risk that decisions related to administrative control in individual municipalities will be taken selectively, not by law-based arguments, but by political agreements. After the Seimas of the Republic of Lithuania adopted amendments to the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, also in the public space there are many fears that administrative supervision will be carried out in accordance with political decisions²⁸⁹, which could undoubtedly complicate the democratic process in the future. Article 123 of the Constitution states that - in cases and according to the procedure provided by law, Seimas may temporarily introduce direct administration in the territory of the municipality. In implementing that provision, Part 3 of Article 2 of the Law on Temporary Direct Management in the Municipality²⁹⁰ lists six rather narrowly defined situations in which temporary direct management may be introduced. These situations include cases where the integrity of the constitutional order is threatened by the local authorities, when no council meetings are convened, the relevant authorities are not formed or the results of the re-election to the municipal council or councils are invalidated. It should be noted, that in the history of independent Lithuania, temporary direct management has never been introduced, despite the fact, that in practice there have been several situations where the requirements of Part 3 of Article 2 of the Temporary Local Government law have not been properly implemented.

Article 9 - Financial resources of local authorities²⁹¹

- 1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.*
- 2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*

²⁸⁸ Šarkutė, L., (2006. Models of decision-making in governments of Lithuania: analysis of internal factors. *Public Policy and Administration*, No. 18, p. 99-115. (ISSN online 2029-2872 / ISSN print 1648-2603).

²⁸⁹ Reform of government representatives in counties: officials cut by half, will appoint without competition, (Vyriausybės atstovų apskrityse reforma: pareigūnų sumažinta perpus, skirs be konkurso). Retrieved 13.09.2018 from: <https://www.15min.lt/naujiena/aktualu/lietuva/vyriausybes-atstovu-apskrityse-reforma-pareigunu-sumazinta-perpus-skirs-be-konkurso-56-1029146>.

²⁹⁰ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

²⁹¹ Article 9 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

- 3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.*
- 4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.*
- 5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.*
- 6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.*
- 7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.*
- 8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*

Each municipality has a formally autonomous budget, which is drawn up and approved. The laws establishing budget financing and the tax system govern both the state budget and municipal budgets. Revenue from an approved municipal budget is intended for both autonomous and delegated functions, unless otherwise specified in the individual programs.

Granting of state budget grants is regulated by the Law on Methodology for Determining Municipal Budgets Revenue. Grants may be targeted or general²⁹². Targeted grants are awarded for the performance of state functions delegated to municipalities and for programs approved by the Seimas and the Government. General government budget grants are intended to compensate for differences in the revenue and expenditure structure of municipal budgets due to factors beyond local authority control. State budget grants, in particular targeted grants, are conditional on the realization of specific responsibilities and therefore constitute a means of controlling local governments. The volume of state budget grants - more than half - reflects the low degree of fiscal decentralization in the country.

²⁹² Law of the Republic of Lithuania on Methods for Determining Municipal Budgets Revenue, (Lietuvos Respublikos savivaldybių biudžetų pajamų nustatymo metodikos įstatymas). Official Gazette, 1997-07-23, Nr. 69-1743.

Item 1 of Part 1 of Article 2 of the Law on the Methodology for Determining the Revenue of Municipal Budgets states that part of the revenue of the local government budget should consist of revenue from local taxes. However, only a very limited part, about 10% to 15%, comes from local taxes set by local authorities, while central government grants and tax revenues account for the bulk.

Sources of revenue for municipal budgets: 1.) State budget grants 55%; 2.) tax revenue (mainly income tax) 33%; 3.) municipal income 12%²⁹³.

It should be noted that different municipalities have a different share of the personal income tax collected. This figure is adjusted by a factor taking into account the nine relevant indicators. Lithuania applies the principle of equalization of revenues between municipalities and implements it according to the formula established in the Law on Methodology for Determining Municipal Budgets Revenue.

Another aggravated problem relates to limiting the growth of municipal budgets' independent income. Lithuania has obligations to return any excess of own income to the state budget. Such income growth restrictions reduce the preconditions for municipalities to promote economic development, entrepreneurship, opportunities to meet growing economic needs and the need for co-financing of projects supported by EU funds.

Therefore, there is a need for a clear, transparent and agreed-upon policy of sharing taxes set and collected by the state with municipalities. This situation has also been criticized in independent expert monitoring reports²⁹⁴, expressing concern that new tasks are sometimes assigned to local authorities without adequate resources to implement them and recommending that the principle of accompanying funding be recognized by the Lithuanian authorities in their legislation. This principle states that, in order to maintain a balance between duties and the corresponding resources for their execution, each newly delegated function should be clearly linked to the corresponding financial resources. This should not hinder the progress of the Charter in Lithuania.

Article 10 - Local authorities' right to associate²⁹⁵

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

²⁹³ Davulis, T. (2009). Analysis of a situation on local taxes in Lithuania. *Intellectual Economics*, No. 1 (5), p. 21-29. (ISSN 1822-8038).

²⁹⁴ Loizidou, I., Mosler-Tornstrom, G., (2012). 22nd SESSION 21 March 2012 report of Monitoring Committee about Local and regional democracy in Lithuania.

²⁹⁵ Article 10 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Although the Law on Associations of the Republic of Lithuania²⁹⁶ does not directly provide for the right to join international self-government associations as required by Part 2 of Article 10 of the Charter. However, this possibility is provided in the European outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities (Madrid, 1980), ratified by Lithuania in 1997²⁹⁷. This is also mentioned in the Law on Local Self-Government and in the documents of the associations themselves.

Pursuant to Article 2 of the Law on the Basic Provisions of the Association of Local Authorities²⁹⁸, the Lithuanian Association of Local Authorities was established in 1995 as a national association representing the common interests of its members - municipalities in all state authorities. Registered as a non-profit organization, today ALAL has established itself as an active organization whose right to represent all 60 Lithuanian municipalities is respected by the Government and the Seimas. Its main functions include representing the interests of all 60 municipalities in the Government and the Seimas. The Law on Local Self-Government stipulates that draft laws relating to municipal activities shall be coordinated with the Association. The most important committee (in parliament) for the local government is the Seimas Committee on Public Administration and Municipalities consisting of 11 members. The experience of the Association of Municipalities shows that the usefulness and results of the Committee vary according to its members at the relevant time and their attitudes towards self-government.

Article 11 - Legal protection of local self-government²⁹⁹

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

²⁹⁶ Law on Associations of the Republic of Lithuania, (Lietuvos Respublikos Asociacijų įstatymas). Official Gazette, 14.02.2004, No. 25-745.

²⁹⁷ European outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities (Madrid, 1980), ratified by Lithuania (1997), Official Gazette, 1997-04-18, No. 33-816.

²⁹⁸ Law on the Basic Provisions of the Association of Local Authorities, (Lietuvos Respublikos įstatymas Dėl Lietuvos savivaldybių asociacijos pagrindinių nuostatų). Official Gazette, 12.04.1995, No. 31-702.

²⁹⁹ Article 11 of the European Charter of Local Self-Government. Strasbourg, 1985, No. 122.

Local authorities shall have the right to use judicial means to safeguard the right to exercise their powers unrestrictedly and to ensure respect for the principles of local self-government enshrined in the Constitution and in domestic law. Accordingly, Article 122 of the Constitution provides that municipal councils shall have the right to apply to the courts for violation of their rights.

The second important practical issue is that ALAL does not represent all municipalities in court proceedings. In order for the ALAL to represent a particular municipality, the cooperation of that municipality with the ALAL in each individual situation is necessary and a further decision of the municipal council is required. The real question of the representation of all sixty municipalities in the courts through the association remains open.

3.1. Logical summary of research strategy and generalization of results

The analysis of written sources and the practical realization of the rights provided for the minority (opposition) by the local municipal council of the Republic of Lithuania showed, that in order to know and understand the organization of public administration and the process itself, it is necessary to take a systemic approach based on the principles of holism. Municipal management processes cannot be understood in isolation from the practical context in reality, which in turn presupposes the need for methodological pluralism (integration of different sources of information and different research methods) in the research. The most important methodological problem of public administration is the integration of universal norms and practical experience formulated during the process of scientific cognition, that is, bridging the gap between the normative and descriptive perspective of research by accumulating knowledge that would serve as a guideline for shaping the content of public administration and operational (legislative change) strategies in the future. In order to provide normatively and practically harmonized conclusions and recommendations, including maintaining the logical consistency of research procedures, the research model was designed to maintain coherence between theoretical and empirical research methods, and empirical data are collected by assessing the worldview and behavioural aspects of experts (respondents).

Document analysis – this is the stage of the research focused on the normative content of the researched phenomenon, which sought to assess the problematic aspects of the national legal system, creating preconditions for restricting the exercise of opposition rights of local municipal councils of the Republic of Lithuania, which from a normative point of view helps to better understand the content of the phenomenon little studied in Lithuania.

Monitoring method – Monitoring method - applied systematically as a method of collecting primary information, which in interaction with other research methods helped to better understand and record phenomena related to practical and theoretical aspects of the implementation of the rights of local political minority (opposition) in the Republic of Lithuania. (The author of the research has accumulated many years of practical experience in the field of legal regulation of local self-government of the Republic of Lithuania, from 2011 to present, he is elected as member of the municipal council continuously for three consecutive terms).

The application of the *interview method* was directed to the councils of all Lithuanian municipalities (political minorities of the councils - oppositions). The statements of the respondents - practitioners are used to obtain data showing the practical aspects of the realization of the rights of political minorities (opposition) in the local government of the Republic of Lithuania, the compliance of practical processes with the theoretical basis (legal acts). Informants were selected from the target and narrow group according to practical work experience, direct relationship with the objects under consideration, participation in shaping the content of the phenomenon sought to be studied, by publicly distributing the invitation through the Association of Lithuanian Municipalities (ALAL).

Systematic, comparative and logical analysis was applied in order to obtain analytical results (interpretation, anticipation, practical recommendations), therefore it was used in a complex study of legal norms and relevant case law in the aspect of ensuring the minority rights of municipal councils. The juxtaposition of the phenomena of the research object, the connection of the elements and the gradually deepening analysis and synthesis, by systematically analyzing and comparing them with each other, allowed to reveal the relations of uniformity, difference, identity and similarity of the studied phenomena.

Summarization method was used to summarize the collected and analyzed research data and to formulate conclusions and suggestions.

The *reliability* of the research is determined by the properties of the research instruments, its quality, accuracy and precision. The stages of empirical research (observation, interview of different members of Lithuanian municipal councils by the method of interviews and analysis of documents) in the logical research scheme complement each other, as different methods provide information about the real state of factors forming the content of empirical research objects (Problematic aspects of the legal regulation of local self-government of the Republic of Lithuania related to the realization of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self-Government and other legal acts).

After evaluating the revealed problems of realization of the rights of political minorities in the municipal councils of the Republic of Lithuania by theoretical and monitoring methods,

initial open interview questions were prepared, divided into two groups, which focus on practical analysis of the most important features and solution of identified problems. The data of the empirical research are analyzed taking into account the assumptions raised in the analysis of written sources, which include the peculiarities of different municipalities, established management culture, organization of municipal council work, involvement of citizens in management processes and other significant characteristics. The systematic, comparative and logical nature of the analysis allows to integrate the data obtained by different methods and evaluate them against the background of theoretically defined (municipal management system) elements. This ensures the validity of the recommendations, as the summary of the findings covers the normative and practical aspects of municipal governance. Thus, the conclusions, results and recommendations of the research listed below are obtained by logically integrating theoretical knowledge about the studied phenomena and processed, interpreted empirical data.

- Although the fundamental principles of local self-government enshrined in the Charter have been incorporated into the national legal system of Lithuania in different ways, it could be argued that the incorporation (manifestation) of the provisions of the Charter into the national legal system is high, however the problem is noticeable in the practical application of the law, not all national legislation works (*imperfection of national legislation*).

- As the Government of Lithuania itself is a political entity in which political parties play a major role, there is a clear risk that decisions relating to *administrative control* in individual municipalities can be (and in some municipalities there are) taken selectively, not through legitimate arguments, but through political agreements, it is therefore necessary to depoliticize the procedure for appointing Lithuanian Government representatives to address the current problem.

- Clearer legal regulation of the exercise of political minority rights and the establishment of a counterweight mechanism between municipal political majority and minority in national law is becoming increasingly relevant and necessary to maintain a democratic model of governance.

Existing issues need to be addressed by eliminating the need for majority approval of delegated representatives of council member groups or factions to the control committee, leaving it to them to decide which member is best suited to fill statutory positions on the *control committee* (as well as with *ethics and anti-corruption commissions*). In this case, the principle of separation of powers could also be followed, with different functions being delegated to different authorities, prohibiting the exercise of foreign functions.

- It is difficult and sometimes even impossible to initiate *impeachment proceedings* for a local politician who belongs to majority and has broken the oath. Practical makings to complete

impeachment for majority politician are very complicated and there are only theoretical possibilities.

In order to ensure equal responsibility of all local politicians for breaking the oath, it is necessary to create a special legal condition to minority of the local council for the initiation of impeachment proceedings against majority politicians. Also, the approval of the conclusion of the Supreme Administrative Court of Lithuania in the municipal council should be refused, because it is a manifestly excessive requirement, which reduces the power to enforce court decisions, exceeds the competence of the municipal council and finally contradicts the constitutional principle of separation of powers. Moreover, it creates the conditions for political influence to avoid responsibility for the gross breaking of an oath.

- As there are sixty separate territorial administrative units (municipalities) in the Republic of Lithuania, in which there is a different demographic and political situation, different regulation of municipal councils, composition of municipal councils, therefore different management traditions are formed in them. In the absence of a sufficient definition of political minority rights of municipal councils, which ensure the possibilities of opposition activities, the medium develops into oligarchic tendencies. The poor control of decisions taken by municipal councils and administrative actions as well as a flawed legislative framework make it possible to form situations in which the democratic values and the protection of individual rights and freedoms are threatened.

III. THE PRACTICAL SETTLEMENT OF ISSUES FOR LEGAL REGULATION OF LOCAL SELF-GOVERNMENT OF THE REPUBLIC OF LITHUANIA IN CONTEXT OF ENSURING POLITICAL MINORITY (OPPOSITION) RIGHTS

Taking into account the problematic aspects of the legal regulation of local self-government of the Republic of Lithuania identified by the empirical research conducted in the second chapter of the dissertation, related to the realization and protection of the rights provided for the minority (opposition) of the municipal council in the Constitution of the Republic of Lithuania³⁰⁰, the Law on Local Self-Government of the Republic of Lithuania³⁰¹, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁰², the Law on Temporary Direct Management in the Municipality of the Republic of Lithuania³⁰³ and other legal acts – this chapter presents, in different sections, innovative solutions to the problems identified. In order for the results of the empirical study to be of benefit to the improvement of the national legal framework and to maximize practical applicability, the aim of this chapter is to submit as specific proposals as possible to the legislator, which would ensure the protection of the rights of local government political minorities (oppositions) at the local government level of the Republic of Lithuania.

3.1. National legal acts review in the context of ensuring political minority rights (opposition) of the municipal council

The council of each municipality approves the regulations of the activities of the municipal council - the main internal legal act of the municipal council, for the term of office, which, in accordance with the valid Law on Local Self-Government of the Republic of Lithuania, establishes the procedure and forms of activities of the municipal council, the mayor, the deputy mayor, council committees, commissions and individual council members. The procedure for the accountability of the mayor, the director of the municipal administration, the municipal ombudsman to the council and the population, as well as the council and the individual members of the council to the population and the main forms and methods of communication with the population are also established.

³⁰⁰ Constitution of the Republic of Lithuania, (Lietuvos Respublikos Konstitucija), Official Gazette, 30.11.1992, No. 220, 33-1014.

³⁰¹ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

³⁰² Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

³⁰³ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

In order to guarantee political democracy - the freedom of the opposition, Articles 14 and 15 of the Law on Local Self-Government of the Republic of Lithuania provide for exclusive minority (opposition) rights³⁰⁴. The municipal council shall form an Ethics Commission, an Anti-Corruption Commission and a Control Committee for the term of office, the chairpersons of which shall be nominated by the legislature on the proposal of the minority (opposition) of the municipal council in accordance with the regulation.

Part 19 of Article 3 of the Law on Local Self - Government of the Republic of Lithuania defines the minority (opposition) of the municipal council as “A faction of the members of the municipal council and/or a group of members of the municipal council, at the first or next meeting of the municipal council, by a public statement served on the chairman of the meeting, declaring that they are not nominating their candidate for the formation of the municipal executive body, have not delegated their candidates for the position of Deputy Mayor and have submitted their activities.”As the research conducted in the second chapter of the dissertation showed - such wording provided for in the Law on Local Self-Government of the Republic of Lithuania, under certain circumstances (having an absolute majority in the council),provides a practical opportunity for the majority of the municipal council to eliminate unfavourable members of the opposition from the statutory minority (opposition) chairpersons of the council (Ethics, Anti-Corruption Committees and Control Committee), creating a self-loyal “majority opposition” that is identical both ideologically and in decision-making for the majority.

Contrary to the Statute of the Seimas of the Republic of Lithuania³⁰⁵, The Law on Local Self-Government of the Republic of Lithuania does not impose any more requirements for declaring a minority of the council (opposition) than provided for in Part 19 of Article 3 of the Law on Local Self-Government of the Republic of Lithuania. It follows that any group or faction of the members of the council (i.e. at least three members of the council) may declare itself an opposition group at any time. An example could be the extraordinary situation in Druskininkai municipality³⁰⁶, when all positions guaranteed by law to the opposition are held by the representatives of the majority.

³⁰⁴ Bakaveckas A. (2004). Who controls local government an how?. *Savivaldybių administracinė priežiūra // Savivaldybių žinios*, No. 15 (269), p. 8-9.

³⁰⁵ More specifically: Part 1 of Article 41 of the Statute of the Seimas of the Republic of Lithuania provides: “*Factions of members of the Seimas or their coalitions that do not agree with the Government's program may declare themselves in opposition*”; Part 2 of Article 41 of the Statute of the Seimas of Republic of Lithuania provides: “*Opposition factions are those factions or their coalitions whose political declarations issued in the Seimas set out the provisions that distinguish them from the Seimas majority.*”; Part 3 of Article 41 of the Statute of the Seimas of the Republic of Lithuania provides: “*Opposition factions or coalitions announce alternative government programs.*”.

³⁰⁶ After March 1st, 2015municipal elections, for the 2015 – 2019 term of office of Druskininkai Municipal Council, 25 members of the council were elected, divided according to the number of votes received in the municipal elections into three political parties: Representatives of the list of the Lithuanian Social Democratic Party - 18 seats, Liberal Movement of the Republic of Lithuania - 4 mandates, Homeland Union-Lithuanian Christian Democrats - 3

It is clear that in situations where the majority of the municipal council *de facto* holds both managerial positions (decision-making and implementation) and opposition positions (control and supervision) – there is a real threat to the democratic order in such municipalities. The imperfection of legal acts creates preconditions for political groups to abuse the right of self-government guaranteed by the Constitution of the Republic of Lithuania.

In this case, the intervention of a higher authority, i.e. the entity performing the administrative supervision of municipalities (representative of the Government of the Republic of Lithuania) is necessary.

The Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁰⁷ establishes the powers of the representatives of the Government of the Republic of Lithuania performing the administrative supervision of the activities of municipalities provided for in the Constitution of the Republic of Lithuania. There are three forms of implementation of the activities of a representative of the Government:

- 1) Reasoned submission;
- 2) Written request;
- 3) Going to court.

A reasoned submission is written when municipal institutions adopt legal acts that are in conflict with the Constitution, laws or decisions of the Government; a written request is written when the requirements of the adopted law or the decision of the Government are not implemented; going to court when laws are not implemented, normative legal acts that are in conflict with the Constitution, laws or decisions of the Government are not repealed or the public interest is violated³⁰⁸.

In view of the relevant legislation listed above and the circumstances discussed, this chapter is divided into three subsections, which discuss, in detail, the totality of national legal

seats. However, as many as five factions were formed, three of which declared themselves opposition. With the list of the ruling majority (Social Democrats) on the municipal council, the council members formed as many as three separate factions, one of which declared itself in opposition. In this way, members of the minority who are unfavorable to the majority are eliminated, and all the statutory posts for the opposition (chairmen of the Ethics, Anti-Corruption Committees and the Control Committee) are *de facto* granted to the majority. Moreover, the establishment of five factions circumvents the principle of proportional representation of the Control Committee provided for in Part 2 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania. A similar situation occurred after the elections on March 3rd, 2019, when at the first meeting of the newly elected municipal council with the list of the majority (mayoral) candidates in the municipal council, the politicians declared themselves to be in opposition and occupied all positions guaranteed to the opposition in the Law on Local Self-Government of the Republic of Lithuania, thus eliminating real opposition to full margins.

³⁰⁷ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

³⁰⁸ Bakaveckas, A. (2004). Administrative Supervision of Municipalities: Development, Legal Regulation and Problems. *Jurisprudence*, No. 57 (49), p. 31. (ISSN 1392-6195).

acts that significantly affect the protection of the rights of local government political minorities (oppositions) in Lithuania, and specifically:

1) Control Committee: its importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation;

2) Ethics Commission and Anti-Corruption Commission: their importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation;

3) The role of the representative of the Government of the Republic of Lithuania in the aspect of ensuring the minority rights of the municipal council.

It is noted that only a systematically concentrated holistic approach to the entire Institute of Local Self-Government of the Republic of Lithuania would allow solving the problems identified in the empirical research conducted in the second chapter of the dissertation, and would allow to offer the most optimal model of local self-government of the Republic of Lithuania, which would ensure democracy by creating a mechanism of checks and balances in the decision-making processes of municipal councils.

3.1.1. Control Committee: its importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation

The importance of the control committee is noted by the legislator:

1) Part 2 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania, which imperatively states that a Control Committee *must* be formed in each municipality;

2) The exclusive competence of the municipal council is provided for in Item 6 of Part 2 of Article 16 of the Law on Local Self-Government of the Republic of Lithuania – “formation of municipal council committees, commissions, other structures necessary for the organization of the work of the municipality and other commissions provided for by law and approval of their provisions”;

3) The powers of the Control Committee are determined by the municipal council taking into account Part 4 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania; Part 4 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania provides an exhaustive list of the functions of the Control Committee, enabling the minority (opposition) of the Council to function effectively, specifically - *Control Committee*:

3.1.) submits conclusions to the municipal council regarding the results of the activities of the municipal control and audit service;

- 3.2.) proposes that the municipal council dismiss the municipal ombudsman when the grounds for dismissal from the civil service are specified in the law;
- 3.3.) considers the draft activity plan of the municipal control and audit service for the next year and submits proposals for supplementing or amending the draft plan, in accordance with the procedure established by the regulation, returns this draft plan to the municipal ombudsman for approval by November 5th of the current year;
- 3.4.) assesses the appropriations required for the implementation of the activity plan of the municipal control and audit service for the coming year and submits a conclusion regarding them to the municipal council;
- 3.5.) considers the report on the implementation of the activity plan of the municipal control and audit service, on the basis of which prepares and submits to the municipal council conclusions on the legality, expediency and efficiency of the use of municipal assets and funds and the activities of the municipal control and audit service;
- 3.6.) proposes to the municipal council to perform an independent audit of the use of municipal assets and funds and the activities of the municipality, presents its conclusions on the results of the audit;
- 3.7.) periodically (once a quarter) considers the implementation of the activity plan of the municipal control and audit service, on municipal control and audit services or on its own initiative, hears the heads of institutions, establishments and companies regarding the elimination of deficiencies or violations of legal acts identified during the financial and operational audit performed by the municipal control and audit service, if necessary, applies to the director of the municipal administration or the municipal council regarding the fulfilment of the requirements of the municipal control and audit service;
- 3.8.) works in accordance with the activity program approved by the municipal council and reports to the municipal council on its activities at the beginning of each year in accordance with the procedure established by the regulation; the municipal council approves the activity program of the Control Committee within one month from the formation of the Control Committee, and when the Control Committee is formed, within one month from the beginning of the calendar year;
- 3.9.) examines the notifications and statements received from persons regarding the activities of the municipal administration, enterprises, institutions and their managers and submits proposals regarding them to the municipal administration and the municipal council or forwards them to the competent authorities or bodies for consideration.
- 4) Article 123 of the Constitution of the Republic of Lithuania and Item 3 of Part 3 of Article 2 of the Law on Temporary Direct Management of the Municipality of the

Republic of Lithuania³⁰⁹ provide that direct management may be temporarily introduced in the territory of the municipality if the municipal council fails to form the Control Committee within the time period specified in the Law on Local Self-Government of the Republic of Lithuania.

Peculiarities of formation of a control committee

The Law on Local Self-Government of the Republic of Lithuania provides for an exclusive procedure for the formation of the Control Committee, regardless of the proportionality of the number of members of the council factions or council groups. It should be noted that Part 2 of Article 14 of the Law on Local Self-Government enshrines the principle of equal representation of all groups and factions of the council (regardless of whether it is a majority or a minority). The Chamber of Judges of the Supreme Administrative Court of Lithuania, interpreting the principle of proportional representation of the majority and the minority enshrined in Part 2 of Article 14 of the Law on Local Self-Government, has noted that that its main purpose is to safeguard the interests of a minority in the council³¹⁰. The Law on Local Self-Government of the Republic of Lithuania stipulates that “The Control Committee includes an **equal** number of delegated representatives of all factions of municipal council members and groups of municipal council members, if it consists of at least 3 members of the municipal council”. At first sight, only in theory can the above-mentioned legal norm give the first impression that the above-mentioned legal norm establishes counterweights to the minority of the council and from the point of view of democracy ensures the freedom of the opposition to perform its essentially basic function – in opposition, to control the validity and transparency of most decisions taken. However, it should be borne in mind that without the approval of the majority of the Board, the Control Committee cannot be definitively formed.

Moreover, in Part 3 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania, the legislator established the right of the opposition to nominate a candidate for the chairman of the Control Committee, and the Kaunas Regional Administrative Court has clarified that “The activities of municipalities and their institutions, including the Council, fall within the scope of public law, and the rules of public law are mandatory and enforceable for all participants in the legal relationship, so only the action specified in the legislation is possible. <...>In this case, the legislator grants the option to nominate one or another candidate to the Control Committee to factions and groups of members of the municipal council, and to nominate

³⁰⁹ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

³¹⁰ 06th of May, (2014) Ruling of the Supreme Administrative Court of Lithuania, in case no. A-552-718/2014. *Administracinė jurisprudencija*, No. 27, p. 226-273.

the opposition as the chairman of the Control Committee to the opposition, whereas, in the meantime, the Council, as an institution and an individual member of the Council, is required (obligated) to nominate candidates.”³¹¹ The same interpretation was upheld in this part by the Supreme Administrative Court of Lithuania³¹².

The Supreme Administrative Court of Lithuania has also noted that factions of the municipal council (both majority and minority), as collective associations of members of the municipal council seeking to implement the political orientation of their members, are free to submit their desired candidacies to committees or commissions, to which its representatives may be delegated *ex lege*³¹³.

Moreover, the presence of a functional opposition in every municipal council is not only a normative phenomenon, but also a necessary expression of democracy, so in the presence of legal regulation that does not guarantee the rights and functioning of the political opposition, there are potential threats to democratic and constitutional values. In order to curb the possible arbitrariness of local government and maintain the constitutional model of government, it is necessary to properly ensure the implementation of the rights of the political minority (opposition) provided by law. The possible oppression of the opposition by the parliamentary majority (ignoring the legal principle of equality) has been identified as one of the difficulties facing modern democracy in applying the majority principle³¹⁴.

The Constitutional Court of the Republic of Lithuania³¹⁵ has also emphasized the minimum requirements for the protection of the political opposition and the fact that the recognition of the parliamentary opposition is a necessary element of a pluralistic democracy. In the jurisprudence of the Constitutional Court of the Republic of Lithuania, the recognition of the parliamentary opposition and the obligation to defend it to ensure pluralist democracy are to be noted as one of the main essential elements of democracy³¹⁶. The term pluralist democracy in the current jurisprudence of the Constitutional Court of the Republic of Lithuania is not only related to the diversity of opinions, but has been mentioned more broadly: in the political, ideological and cultural context³¹⁷.

³¹¹ 18th of May, (2016) Judgment of the Kaunas Regional Administrative Court, in case, no. eI-1676-554/2016.

³¹² 28th of February, (2018) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-7-822/2018.

³¹³ 08th of December, (2015) Ruling of the Supreme Administrative Court of Lithuania, in case no. eAS-1232-602/2015.

³¹⁴ Beinoravičius, D. (2007). Obstacles to democracy and the possibilities of overcoming them. *Jurisprudence*, No. 10(100), p. 7-14. (ISSN 1392-6195).

³¹⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 26.11.1993; The ruling of the Constitutional Court of the Republic of Lithuania of 25.01.2001.

³¹⁶ Ragauskas, P. (2016). The reflections of the principle of democracy in the jurisprudence of the Constitutional court of Lithuanian Republic. *Law Institute of Lithuania*, p. 1-86. (ISBN online 978-9986-704-38-6).

³¹⁷ *Ibid.*

Systematic assessment of the above-mentioned legal acts and relevant case law which provide for the rights of theoretical minorities (opposition), it could be argued that there is a formal system of balances between the majority and the minority of the council. However, it should be noted, that the legislature has left the need for a majority approval for each candidature proposed by a group or group of members of the council. It is clear that a minority opposing the majority of the council loses the opportunity to assert its proposed candidacy without the consent of the political opponents (the majority of the council), which, according to established case law, has a duty to approve the majority. Such a gap in legal regulation not only creates a conflicting situation between the principle of free mandate and performance of duties of a member of a municipal council, but also leaves a legal uncertainty in the system of checks and balances between the majority and the minority of the council. Such uncertainty makes it a practical possibility for the majority of the board to exclude disadvantaged minority members from the composition of the control committee, therefore, it is considered that the requirement of the legislator to approve the candidacy proposed by the opposition by the majority of the municipal council is excessive in terms of ensuring the rights of the minority.

The current problem of legal regulation is solvable by eliminating the need for delegated representatives of groups of council members or factions to form a member of the control committee, leaving them free to decide which member is most suitable to hold statutory positions in the control committee. In this case, the principle of separation of powers could also be followed, where different functions are delegated to different authorities, prohibiting the acquisition of foreign functions.

Threat of the introduction of temporary Direct Management in the municipality without the establishment of a Control Committee

Article 123 of the Constitution of the Republic of Lithuania and Item 3 of Part 3 of Article 2 of the Law on Temporary Direct Management of the Municipality of the Republic of Lithuania provide that direct management may be temporarily introduced in the territory of the municipality if the municipal council does not form a Control Committee within the time period established by the Law on Local Self-Government of the Republic of Lithuania.

Part 6 of Article 11 of the Law on Local Self-Government of the Republic of Lithuania provides, that within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor, committees of the municipal council *must be* formed and the chairmen of these committees appointed.

Part 2 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania provides that a Control Committee must be set up in each municipality. The same legal act stipulates that the Control Committee includes an equal number of delegated representatives of all factions of municipal council members and groups of municipal council members, if it consists of at least three members of the municipal council.

Assessing both linguistically and systematically, this provision of the law presupposes that the Control Committee is considered to be formed from the moment when delegated representatives of all factions of municipal council members and groups of municipal council members (consisting of at least three municipal council members) are appointed to the Control Committee.

After a wide analysis of the application of the above-mentioned legal norms in practice, it should be noted, that in situations when the municipal council did not form the Control Committee and did not appoint the chairman of the Control Committee within the term provided by law, temporary direct management in the territory of the municipality during the history of independent Lithuania was not introduced. Moreover, the Government of the Republic of Lithuania takes the position that the introduction of temporary direct management in the territory of the municipality, in which the Control Committee is not established as provided for in Part 6 of Article 11 and Parts 2 and 3 of Article 14 of the Law on Local Self-Government, would not be a proportionate measure. Again, an example could be the extraordinary situation in Druskininkai municipality, when the Control Committee was not formed during the 2015-2019 term of the Municipal Council (without the approval of the candidates proposed by the majority) for more than two years³¹⁸.

Such uncertainty of Part 2 of Article 2 of the Law of the Republic of Lithuania on Temporary Direct Management in the Territory of the Municipality³¹⁹ creates preconditions for the majority of the municipal council to grossly abuse the right of the majority, eliminating the minority of the municipal council from its vital positions, performing the essential functions of the municipal opposition and not to have any consequences for this. The current problem of legal regulation should be solved by enshrining the introduction of direct management in the Law on Temporary Direct Management in the Municipality of the Republic of Lithuania if the Control

³¹⁸ By the April 19th, 2018 letter No. S-1254 of the office of the Government of the Republic of Lithuania it was refused to submit a proposal to the Seimas of the Republic of Lithuania regarding the introduction of temporary direct management in the territory of Druskininkai municipality, whereas the Government considers that the introduction of temporary direct management in this particular case would not be a proportionate means of resolving the situation, although it was acknowledged in the same letter that the Control Committee of the Druskininkai Municipal Council was not formed in accordance with Part 6 of Article 11 and Parts 2 and 3 of Article 14 of the Law on Local Self-Government. (See the July 25th, 2018 decision of the extended panel of judges of the Supreme Administrative Court of Lithuania, in a case No.eI-24-822/2018).

³¹⁹ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

Committee and the Ethics and Anti-Corruption Commission are not fully formed in the municipality within the time specified in the Law on Local Self-Government of the Republic of Lithuania. Such amendments to the law would ensure the democracy of the activities of the municipal council, based on the principle of separation of powers recognized by the Constitution and the philosophy of the rule of law.

3.1.2. Ethics and Anti-Corruption Commissions: their importance in ensuring the rights of the opposition of the municipal council and the peculiarities of its formation

Peculiarities of formation of ethics and anti-corruption commissions

Part 1 of Article 15 of the Law on Local Self-Government provides that the Municipal Council form an Ethics Commission and an Anti-Corruption Commission for the term of office. These commissions are formed in accordance with the principle of proportional representation of the majority and minority of the municipal council. The composition of the commissions, maintaining the principle of proportional representation of the majority and minority of the municipal council, must be changed no later than within 2 months after the change of the majority and minority of the municipal council. The chairman of the Ethics Commission and the Anti-Corruption Commission is delegated from the members of these commissions - members of the municipal council - by the opposition of the municipal council in writing, signed by more than half of all members of the municipal council opposition and served on the chairman of the municipal council. The chairmen deputies of these commissions are appointed by the municipal council from among the members of these commissions - members of the municipal council - on the proposal of the mayor. If the opposition of the municipal council does not delegate the chairmen of the Ethics Commission and the Anti-Corruption Commission within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor or delegates members of the municipal council who do not meet the requirements established in Article 15¹ of the Law on Local Self-Government of the Republic of Lithuania, or if the opposition of the municipal council has not been announced, the chairpersons of the ethics commission and the anti-corruption commission shall be appointed by the municipal council on the proposal of the mayor from among the members of these commissions - members of the municipal council. The duties of the executive secretaries of the commissions shall be performed by civil servants appointed by the director of the municipal administration, and these functions shall be entered in their job description.

The Supreme Administrative Court of Lithuania has stated in its case law, that the powers of the minority (opposition) of the municipal council are also reflected in the formation of the Ethics Commission regulated by Article 15 of the Law on Local Self-Government - although it is not *ex lege* that the Ethics Commission must include members of all factions or groups of the municipal council, a minority of the municipal council (opposition) has the exclusive right to nominate the chairman of the Ethics Commission in accordance with the said Article³²⁰. However, the realization of this right of the minority (opposition) of the municipal council is not discussed in more detail in the law.

It is important to note that the Supreme Administrative Court of Lithuania stated that the appointment of the Chairmen of Ethics and Anti-Corruption from the composition of the commissions already approved by the Municipal Council is not in conflict with the Law on Local Self-Government of the Republic of Lithuania³²¹. This means that when delegating its members to commissions, the opposition should anticipate which of them will be nominated as chairman.

Insufficient legal certainty in the procedure for appointing the chairmen of Ethics and Anti-Corruption, the implementation of the minority (opposition) rights of the municipal council may be complicated. As mentioned above, there are cases where there are several minorities (opposition) in the municipal council, including a fictitious opposition created by the majority with the aim of eliminating unfavourable political opponents in the opposition from their statutory positions. This problem has already been noticed by the legislators, who registered the draft amendment³²² to the Law on Local Self-Government of the Republic of Lithuania on 02.11.2018, which provides for the nomination of the chairmen of Ethics and Anti-Corruption by a written proposal of a minority (opposition) signed by more than half of all members of the opposition of the municipal council. However, the law does not separately establish an obligation for the municipal council to approve the candidacy proposed by the minority (opposition), this follows only from the imperative nature of the law and the jurisprudence formed by the courts, but does not work in practice because the administration of justice, i.e. litigation takes too long.

The importance of the ethics commission in the realization of the rights of the opposition

Part 3 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania provides an exhaustive list of the functions of the Ethics Commission, enabling the minority (opposition) of the Council to function effectively, and specifically the Ethics Commission:

³²⁰ 08th of December, (2015) Ruling of the Supreme Administrative Court of Lithuania, in case no. eAS-1232-602/2015.

³²¹ 28th of February, (2018) Ruling of the Supreme Administrative Court of Lithuania, in case no. eA-53-415/2018.

³²² Comparative version of the draft law on local self-government. No. I-533. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/8d791920de6f11e8995fb8ded8eb97ff>.

1) Supervises the compliance of the members of the municipal council with the requirements of this Law, the Code of Conduct for State Politicians, the Law on the Coordination of Public and Private Interests, regulations and other legal acts regulating the activities and conduct of the members of the municipal council;

2) Analyses the reasons for the non-participation of the members of the municipal council in the meetings of the municipal council, committees and commissions and the failure to perform the duties established by this Law;

3) Investigates and makes decisions regarding the compliance of the activities of the members of the municipal council with the provisions of this Law, the Code of Conduct for State Politicians, the Law on the Coordination of Public and Private Interests, regulations and other legal acts regulating the activities and behaviour of members of the municipal council;

4) Examines the proposals and remarks of the members of the municipal community, state institutions, communities of residential areas or community organizations regarding the transparency of the activities of the members of the municipal council;

5) Submits to the Central Electoral Commission a proposal regarding the termination of the term of office of a member of the municipal council if this member of the council has missed three consecutive meetings of the municipal council without a justifiable reason;

6) The members of the council, the mayor, on their own initiative, make recommendations to the members of the council on the implementation of the provisions of the Law on the Coordination of Public and Private Interests³²³.

The importance of the Anti-Corruption commission in realizing the rights of the opposition

Part 4 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania contains an exhaustive list of the functions of the Anti-Corruption Commission, which enables the minority (opposition) of the Council to function effectively, and specifically the Anti-Corruption Commission:

1) In accordance with the procedure established by the regulation, participates in the anti-corruption assessment of draft legal acts prepared by municipal institutions on the initiative of the municipal council or the mayor;

2) Participates in the preparation of anti-corruption programs and submits conclusions to the municipal council on these programs and their implementation;

³²³ Law on the Coordination of Public and Private Interests (Lietuvos Respublikos Viešųjų ir privačių interesų derinimo įstatymas). Official Gazette, 16.07.1997, No. 67-1659.

3) Examines the proposals and remarks of the members of the municipal community, state institutions, communities of residential areas or community organizations regarding the implementation of anti-corruption measures;

4) Informs the public about its activities, measures taken to prevent corruption in the municipality, as well as about the results of the fight against corruption;

5) For the purposes of preventing corruption, it analyses public procurements carried out by the municipal administration, budgetary and public institutions owned by the municipality, and enterprises managed by the municipality, and informs the municipal council and the competent authorities or bodies about possible cases of corruption. The chairman and members of the Anti-Corruption Commission have the right to access all information on the procurements under analysis;

6) Performs other functions established in other legal acts related to the state policy implemented in the municipality in the field of corruption prevention.

In addition, it should be noted that the importance of the Ethics Commission and the Anti-Corruption Commission in realizing the rights of the opposition manifests itself not only within the competencies provided for in Part 3 of Article 15 and Part 4 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania, but also through procedural issues. According to the established practice and the regulations of the commissions approved by the municipal councils, the municipal commissions are represented by the chairman, which means that it is up to the sole chairman of the commission to appeal (or not appeal) against decisions taken by other entities on behalf of the commission.

Moreover, Part 10 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania enshrines the right of both the chairman of the ethics commission and the anti-corruption commission to receive all information from state or municipal institutions, establishments and state or municipal enterprises. Thus, by ensuring proper legal regulation and ensuring that the representatives of the ethics commissions and anti-corruption commissions are not artificially appointed by the majority, this would solve another practical problem identified in the second chapter of the dissertation, when municipal administrations formed on the basis of political trust and subordination, maliciously, do not provide information to members of the opposition.

3.1.3. The role of the Representative of the Lithuanian Government in context of ensuring political minority (opposition) rights of the municipal council

The constitutional principle of a state under the rule of law includes many different interrelated imperatives, including the requirement of a hierarchy of legal acts, from which the principle of the supremacy of laws over by-laws derives³²⁴. This means that the constitutional principle does not allow the establishment of such legal regulation by by-laws that would compete with the one provided by law. By-laws may not change the law or create new legal norms of a general nature that would compete with each other, as this would violate the supremacy of laws over the by-laws enshrined in the Constitution of the Republic of Lithuania³²⁵. The norms of the law must be implemented by a by-law, therefore it must be adopted on the basis of the law. A by-law is an act of application of the norms of law, regardless of whether the act is of single application or of permanent validity³²⁶.

In accordance with the provisions of Parts two and three of Article 123 of the Constitution of the Republic of Lithuania and the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³²⁷, administrative supervision of municipalities is performed (i.e. supervises whether municipalities comply with the Constitution and laws of the Republic of Lithuania or implement Government decisions) by state officials appointed by the Government³²⁸. The regulations of the activities of the municipal council are approved by the municipal council, the representatives elected by the local community (by a majority vote of the council), therefore, by regulating the legal norms enshrined in the Law on Local Self-Government of the Republic of Lithuania, there is a possibility to restrict the rights of political competitors - the minority of the council, which oppose the majority. Representatives of the Government (must perform) play an important role in this place, supervising whether the legal acts of the municipal collegial and non-collegial administrative entities do not contradict the laws, Government resolutions and other legal acts adopted by central state administrative entities related to law enforcement.

The principle of independence of municipalities is not absolute and it does not release the entity with the rights and duties of public administration (municipal council) from the obligation to comply with all the principles of public law, including the principle of legality. The municipal

³²⁴ The ruling of the Constitutional Court of the Republic of Lithuania of 28.09.2011.

³²⁵ The ruling of the Constitutional Court of the Republic of Lithuania of 21.08.2002; The ruling of the Constitutional Court of the Republic of Lithuania of 13.12.2004; The ruling of the Constitutional Court of the Republic of Lithuania of 19.01.2005.

³²⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 06.09.2007; The ruling of the Constitutional Court of the Republic of Lithuania of 09.03.2010; The ruling of the Constitutional Court of the Republic of Lithuania of 18.04.2012; The ruling of the Constitutional Court of the Republic of Lithuania of 20.02.2013.

³²⁷ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

³²⁸ Bakaveckas A. (2004). Who controls local government and how?. *Savivaldybių administracinė priežiūra // Savivaldybių žinios*, No. 15 (269), p. 8-9.

council, in implementing the functions assigned to it, has no discretion to establish legal regulation that does not comply with the provisions of higher legal acts³²⁹.

It should be noted that a member of the municipal council, according to the law, does not have the right to individually defend the interests of the municipality in court and at the same time challenge the decisions of the municipal council as a collegial body. The same interpretation is consistently followed by the Supreme Administrative Court of Lithuania, which according to Part 1 of Article 15 of the Law on Administrative Proceedings of the Republic of Lithuania³³⁰ forms a uniform practice of administrative courts in the interpretation and application of laws and other legal acts³³¹.

The Supreme Administrative Court of Lithuania has repeatedly stated³³², that the Law on Local Self-Government of the Republic of Lithuania, which establishes the exhaustive list of rights and obligations of a member of a municipal council³³³, does not provide for the right or obligation to apply to a court for annulment of decisions adopted by the municipal council. All the more so as according to the Law on Administrative Proceedings of the Republic of Lithuania,³³⁴ a member of a municipal council is not granted such a procedural right.

Thus, the control of the legality of legal acts adopted by municipal administrative entities, according to the legislator, is assigned only to the competence of the representative of the Government³³⁵. The representative of the Government, while supervising the observance of the Constitution and laws by the municipalities or the implementation of the decisions of the Government, proposes (must propose) to repeal or amend the illegal legal acts of the municipal administrative entities, and when the subjects of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or implement the decision of the Government, they apply (must apply) to the court.

The powers of the representative of the Government of the Republic of Lithuania are defined in Article 7 of the Law on Administrative Supervision of Municipalities of the Republic

³²⁹ 19th of October, (2015) Ruling of the Supreme Administrative Court of Lithuania, in case no. A-737-552/2015.

³³⁰ Law on Administrative Proceedings of the Republic of Lithuania, (Lietuvos Respublikos Administracinių bylų teisenos įstatymas). Official Gazette, 03.02.1999, No. 13-308.

³³¹ 26th of April, (2004) Ruling of the Supreme Administrative Court of Lithuania, in case no. A7-282/2004; 18th of June, (2004) Ruling of the Supreme Administrative Court of Lithuania, in case no. A4-535/2004; 07th of May, (2010) Ruling of the Supreme Administrative Court of Lithuania, in case no. AS822-339/2010; 05th of August, (2011) Ruling of the Supreme Administrative Court of Lithuania, in case no. AS-492-576/2011. 15th of January, (2014) Ruling of the Supreme Administrative Court of Lithuania, in case no. AS-556-26/2014.

³³² Ibid.

³³³ Section V of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo V skirsnis). Official Gazette, 20.07.1994 No. 55-1049.

³³⁴ Law on Administrative Proceedings of the Republic of Lithuania, (Lietuvos Respublikos Administracinių bylų teisenos įstatymas). Official Gazette, 03.02.1999, No. 13-308.

³³⁵ 06th of December, (2010) Ruling of the Supreme Administrative Court of Lithuania, in case no. A662-1429/2010.

of Lithuania³³⁶. A representative of the Government of the Republic of Lithuania has a duty to supervise whether municipalities comply with the Constitution and laws or implement Government resolutions:

1) To check whether the legal acts of the municipal administration entities do not contradict the laws, Government resolutions and other legal acts adopted by the central state administration entities related to the implementation of the laws;

2) When the subjects of municipal administration do not comply with the Constitution and laws, do not comply with the resolutions of the Government, in accordance with the procedure established by this Law, demand that the Constitution be observed, the laws are implemented and the resolutions of the Government are complied with;

3) To propose to repeal or amend possibly illegal legal acts of municipal administrative entities in accordance with the procedure established by the Law on Administrative Supervision of Municipalities of the Republic of Lithuania;

4) When the subjects of municipal administration do not agree to repeal or amend the disputed legal act, refuse to implement the law or implement the resolution of the Government, the representative of the Government of the Republic of Lithuania must apply to the court.

The representative of the Government shall, in accordance with the procedure established in Part 3 of Article 8 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, carry out preliminary supervision of draft legal acts prepared by municipal collegial administrative entities. After the representative of the Government has established that a transaction has been concluded on behalf of the municipality in accordance with the legal act of the municipal administration entity, which may not comply with the Constitution and laws, and that transaction may violate the public interest, as well as other grounds for invalidity of transactions, the representative of the Government has the procedural right to bring an action before a court of general jurisdiction for the protection of the public interest in accordance with the procedure established by the Code of Civil Procedure of the Republic of Lithuania³³⁷.

Also, if the representative of the Government has established that legal acts or actions (inaction) adopted by a municipal administrative entity may violate the public interest, regarding such legal acts or actions (inaction), in accordance with the procedure established by the Law on

³³⁶ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

³³⁷ Code of Civil Procedure of the Republic of Lithuania, (Lietuvos Respublikos Civilinio proceso kodeksas). Official Gazette, 28.02.2002, No. 36-1340.

Administrative Proceedings of the Republic of Lithuania³³⁸, the representative of the Government must apply to the administrative court with a statement to protect the public interest.

In case of doubt, whether a normative administrative act (or a part thereof) adopted by a municipal administrative entity complies with a law or a Government resolution, the representative of the Government, in accordance with the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania³³⁹, has the procedural right to apply to the administrative court with an abstract statement to investigate the legality of a normative administrative act of the self-government.

When a proxy of the Government applies to a representative of the Government in the cases prescribed by the Law on Temporary Direct Management of the Municipality of the Republic of Lithuania³⁴⁰, the representative of the Government, having established that the legal acts adopted by the administrative entities of the municipality may not comply with the Constitution, laws or resolutions of the Government of the Republic of Lithuania, applies to the court for the repeal of these legal acts.

If the administrative units of the municipality have adopted legal acts on the basis of which transactions contrary to the public interest may be concluded, or if the administrative units of the municipality have adopted legal acts which may violate the public interest, the representative of the Government shall, in accordance with the procedure established in Part 4 of Article 8 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, suspend the execution of legal acts of such municipal administrative entities and the signing of transactions. It should be noted that the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁴¹ stipulates that the representative of the Government does not examine complaints of natural and legal persons regarding the inaction of municipal administrative entities or the adoption of individual legal acts, the procedure for appeal of which is established by the Law on Administrative Proceedings or laws regulating a specific area. Also, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁴² stipulates that the representative of the Government does not evaluate legislation and draft legislation in terms of political or economic expediency.

³³⁸ Law on Administrative Proceedings of the Republic of Lithuania, (Lietuvos Respublikos Administracinių bylų teisenos įstatymas). Official Gazette, 03.02.1999, No. 13-308.

³³⁹ Law on Administrative Proceedings of the Republic of Lithuania, (Lietuvos Respublikos Administracinių bylų teisenos įstatymas). Official Gazette, 03.02.1999, No. 13-308.

³⁴⁰ Law of the Republic of Lithuania on Temporary Direct Management in the Municipality, (Lietuvos Respublikos Tiesioginio valdymo savivaldybės teritorijoje įstatymas). Official Gazette, 12.04.1995, No. I-830.

³⁴¹ Pt. 8 of Seventh Article of the Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

³⁴² Pt. 9 of Seventh Article of the Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

The new wording of Article 4 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁴³, which entered into force on 01.07.2019, provides that the representatives of the Government of the Republic of Lithuania are appointed on the proposal of the Prime Minister of the Government of the Republic of Lithuania. In this way, the tender procedure provided for in the position of the representative of the Government of the Republic of Lithuania valid until then was abandoned. The representative of the Government of the Republic of Lithuania has become exclusively a citizen of political confidence, subordinate and accountable to the Government of the Republic of Lithuania and the Prime Minister. Because the government itself is a political entity in which political parties³⁴⁴ play a particularly important role, there is a clear risk that decisions on administrative control in individual municipalities will be taken selectively, not on the basis of legal arguments, but through political agreements. Following the adoption by the Seimas of the Republic of Lithuania of amendments to the Law on Administrative Supervision of Municipalities of the Republic of Lithuania, as well as in public sphere³⁴⁵, many experts feared that administrative supervision would be carried out in accordance with political decisions, which will undoubtedly further complicate the implementation of minority rights in municipal councils in the future.

In the second section of the dissertation, an interview study found that the identified fears were confirmed in some municipalities, and specifically, the author of the dissertation identified during the interview with the members (respondents) of the opposition of Klaipėda City Municipality Council, that the item of the activity regulation³⁴⁶ of Klaipėda City Municipality Council establishing the rights of the opposition in forming the municipal control committee and proposing the chairman is clearly in conflict with the norms of the Law on Local Self-Government of the Republic of Lithuania and the jurisprudence formed by the Supreme Administrative Court of Lithuania. In view of this, the author of the dissertation wrote to the Office of the Representatives of the Government of the Republic of Lithuania on 24.02.2021 regarding the conflict situation and on 25.03.2021 received a reply³⁴⁷ from the mentioned

³⁴³ Law no. XIII-1477 new wording. Retrieved 01.07.2019 from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.56962/RDHKiKRsuK>.

³⁴⁴ Šarkutė, L., (2006. Models of decision-making in governments of Lithuania: analysis of internal factors. *Public Policy and Administration*, No. 18, p. 99-115. (ISSN online 2029-2872 / ISSN print 1648-2603).

³⁴⁵ Reform of government representatives in counties: officials cut by half, will appoint without competition, (Vyriausybės atstovų apskrityse reforma: pareigūnų sumažinta perpus, skirs be konkurso). Retrieved 13.09.2018 from: <https://www.15min.lt/naujiena/aktualu/lietuva/vyriausybes-atstovu-apskrityse-reforma-pareigunu-sumazinta-perpus-skirs-be-konkurso-56-1029146>.

³⁴⁶ Klaipėda City Municipality Council 2016-06-23 Decision No. T2-184 “On the Approval of the Regulation of the Activities of the Klaipėda City Municipal Council”, (Klaipėdos miesto savivaldybės tarybos 2016-06-23 d. sprendimas Nr. T2-184 „Dėl Klaipėdos miesto savivaldybės tarybos veiklos reglamento patvirtinimo“).

³⁴⁷ 25th March, (2021) Conclusion No. S4-42 (5.28Mr) of the Representatives of the Government of the Republic of Lithuania “On the Activity Regulation of Klaipėda City Municipality Council”, (LR Vyriausybės atstovų įstaigos 2021-03-25 išvada Nr. S4-42 (5.28Mr) “Dėl Klaipėdos miesto savivaldybės tarybos veiklos reglamento”).

authority, which concludes that Sub-item 25.1³⁴⁸ of the Regulation on the Activities of Klaipėda City Municipal Council does not comply with the provisions of Part 3 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania.

Thus, it is obvious that the representative of the Government of the Republic of Lithuania, in the specific case mentioned above, did not properly perform the duty enshrined in Article 7 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania³⁴⁹ - to check whether the legal acts of the municipal administration entities are not in conflict with the law and for a number of years they have tacitly tolerated the situation when the provisions of the municipal council activity regulation ensuring the opposition rights of the municipal council contradict the law.

A detailed assessment of the practical situation and the legal framework leads to a reasonable conclusion, that the administrative supervision of municipalities is implemented differently in Lithuania due to political selectivity (including legal imperfection), as a result of which the principle of the rule of law is often ignored, and in particular: in some municipalities, real situations arise when by-laws issued at the municipal level create such legal regulation that contradicts Lithuanian laws and slightly restricts the exercise of the opposition rights of the municipal council.

In order to address the existing problems and to ensure impartial and administrative supervision of municipalities by law and not by political agreement, the representative of the Government of the Republic of Lithuania should not be a public official of political confidence. Also, the Law on Administrative Supervision of Municipalities of the Republic of Lithuania must provide the Government Representative with specific and proportionate disciplinary liability for improper performance of duties.

³⁴⁸ Sub-item 25.1 of the Regulation provided that “The Chairman of the Control Committee, by a written proposal of the opposition of the Council, signed by more than half of all members of the opposition of the Council, as well as the Deputy Chairman of the Control Committee on a proposal from the mayor, from the members of the committee, shall be appointed by the Council. The mayor shall, not later than 10 working days before the meeting of the Council, write to the Chairman of the Opposition of the Council regarding the nomination of the Chairman of the Control Committee. The proposal of the opposition of the Council must be submitted in writing not later than 5 working days before the meeting of the Council. If the opposition of the Council does not nominate the chairman of the Control Committee or if there is no opposition to the Council, the chairman and vice-chairman of the Control Committee shall be appointed by the Council on a proposal from the mayor. The opposition of the Council may nominate the same candidate not more than twice. If, for the second time in a row, the Council does not approve the same candidature proposed by the Council opposition, the Council opposition shall propose another candidate.”

³⁴⁹ Law on Municipal Administrative Supervision of the Republic of Lithuania, (Lietuvos Respublikos Administracinės priežiūros įstatymas). Official Gazette, 03.06.1998, No. 51-1392.

3.2. Problematic aspects of Lithuanian legal regulation of impeachment procedure to a member of local municipal council from the point of view of the political minority (opposition) rights

Although members and mayors of municipal councils are not included in the list of persons (like: the President of the Republic; members of the Seimas; judges of the Constitutional, Supreme and Appeal Courts) who may be subject of impeachment proceedings under the Constitution, however a peculiar variant of the institute of impeachment is the procedure of premature loss of authority of a mayor or a member of the local municipal council, which is established in Part 1 of Article 25 of the Law on Local Self-Government of the Republic of Lithuania³⁵⁰ (below in the text - Impeachment procedure). It should be noted that both: the member of the municipal council and the mayor are subject to the same procedure for loss of mandate. This procedure is applied in respect of actions of local politicians in the performance of the duties of a member (or a mayor) of a municipal council, contrary to the Constitution and/or laws of the Republic of Lithuania. In a democratic system, it is vitally important that every local politician who takes an oath takes full responsibility, regardless of whether he works in the majority or minority of the municipal council and/or to which political force he belongs.

In second chapter of this dissertation identified the problematic situation is that the procedure for premature termination of authority due to breach of the oath may be initiated by a group of at least 1/3 of the members of the municipal council, bearing in mind that even in 17 out of 60 Lithuanian municipalities one political party or political movement has an absolute majority³⁵¹. The municipal council, after considering the conclusion submitted by the commission formed by the municipal council, must make a decision by the majority of votes or apply to the Supreme Administrative Court of Lithuania with a request for a conclusion - whether the municipal council member (mayor) has broken the oath or laws³⁵². If the Supreme Administrative Court of Lithuania concludes that the member of the municipal council (or the mayor) of the municipality has not broken the oath and has duly exercised the powers established for him/her by the Constitution and other Lithuanian laws, the impeachment procedure for the

³⁵⁰ Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymas). Official Gazette, 20.07.1994 No. 55-1049.

³⁵¹ See data available on the official website of the Central Electoral Commission. Retrieved 06.06.2019 from: <https://www.vrk.lt/2019-savivaldybiu-tarybu/rezultatai?srcUrl=/rinkimai/864/1/1506/rezultatai/lt/rezultataiTarNariaiMeraiSavivaldybese.html>.

³⁵² Pt. 7 of Article 25-1 of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo 25-1 str. 7 dalis). Official Gazette, 20.07.1994 No. 55-1049.

member of the municipal council (or the mayor) must be terminated³⁵³. However, if the Supreme Administrative Court of Lithuania concludes that a member of the municipal council (or a mayor) has broken the oath and/or failed to comply with the requirements of Lithuanian law, in order to terminate his/her mandate, the local municipal council must make an additional decision, with no less than 3/5 votes of all local municipal council members. If such decision is not adopted by 3/5 of all the members of the municipal council, it is considered that the municipal council did not approve the loss of the powers of the municipal councillor or a mayor and regardless of the unfavourable conclusion of the Supreme Administrative Court of Lithuania - a member of the municipal council or a mayor may continue to exercise his/her powers³⁵⁴. *Summa Summarum* the problematic situation could be named that in order to initiate the impeachment proceedings for a politician who belongs to the majority and has broken the oath is very complicated and there are minimum practical possibilities to complete it, such possibilities remain only theoretical and very poorly feasible.

In this context should be noted, that the Supreme Administrative Court of Lithuania was established on September 19th, (2000) by Law No. VIII-1928, as the final instance administering justice in administrative cases and became operational on January 1st, (2001). During this period, a total of eleven cases³⁵⁵ concerning the submission of a court opinion (conclusion) were examined.

3.2.1. Status of a member of the municipal council in context of other elective politicians

The Lithuanian Constitutional Court has held that the Constitution provides for three types of National elections: the elections of the Seimas, the President of the Republic, and municipal councils³⁵⁶. The principles of the election of the members of the Seimas are consolidated in Part 1 of Article 55 of the Lithuanian Constitution, and the legal relations in

³⁵³ Pt 9 of Article 25-1 of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo 25-1 str. 9 dalis). Official Gazette, 20.07.1994 No. 55-1049.

³⁵⁴ Pt. 10 of Article 25-1 of the Law on Local Self-Government of the Republic of Lithuania, (Lietuvos Respublikos vietos savivaldos įstatymo 25-1 str. 10 dalis). Official Gazette, 20.07.1994 No. 55-1049.

³⁵⁵ 17th of May, (2016) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-15-822/2016; 17th of June, (2016) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-17-438 / 2016; 07th of July, (2016) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-19-143/2016; 16th of June, (2017) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-16-442/2017; 28th of February, (2018) Conclusion of the Supreme Administrative Court of Lithuania, in case no. I-7-822/2018; 30th of May, (2018) Conclusion of the Supreme Administrative Court of Lithuania, in case no. eI-15-556/2018; 12th of June, (2018) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-21-525/2018; 13th of June, (2018) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-20-1062/2; 13th of June, (2018) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-19-438/2018; 25th of July, (2018) Conclusion of the Supreme Administrative Court of Lithuania, in case no. eI-24-822/2018; 26th of November, (2018) Conclusion of the Supreme Administrative Court of Lithuania, in case no. eI-29-415/2018.

³⁵⁶ The ruling of the Constitutional Court of the Republic of Lithuania of 11.07.1994.

connection with the election of the President of the Republic and municipal council members are regulated, respectively, in Part 2 of Article 78 and Part 2 of Article 119 of the Constitution; under the Constitution - a members of the Seimas, the President of the Republic, and municipal council members are elected by direct suffrage, however, the Impeachment possibility is not constitutionally enshrined only for the members of municipality. In the constitutional case of impeachment, the subjects against whom impeachment may be carried out are named by Article 74 of the Constitution of Lithuania - that is, the President of the Republic; Chairs and judges of the Constitutional, Supreme and Appeal Courts; also Members of the Parliament (Seimas).

A peculiar and very similar option of the institute of Impeachment is the procedure of premature loss of authority of a mayor or a member of the local municipal council³⁵⁷, which is established in Part 1 of Article 25 of the Law on Local Self-Government of the Republic of Lithuania. For both - the members of the Seimas and the President of the Republic, the basis for initiating impeachment proceedings arises if a person grossly violates the given oath³⁵⁸, as well as for members (or mayors) of municipal councils.

Part 1 of Article 119 of the Constitution provides that the right to self-government is guaranteed to the administrative territorial units of the State, which are provided by law; this right is implemented through the respective municipal councils.

Interpreting, *inter alia*, the provisions of Part 1 of Article 119 of the Constitution, the Constitutional Court has noted the following:

State governance and local self-government are two systems of public authority, which are consolidated in the Constitution; local self-government is self-regulation and self-action by the communities of the territorial administrative units of the State provided for by law, i.e. territorial communities that are composed of permanent residents of these units (citizens of the Republic of Lithuania and other permanent residents) in accordance with the competence defined by the Constitution and laws; such a local public authority system, operating on the grounds of self-action, is not directly subordinate to State authority institutions, is not considered equivalent to State governance, and is formed and functions on other constitutional grounds than State power³⁵⁹.

³⁵⁷ Andrikiienė - Pūraitė, D. (2019). Objects and subjects of the powers of Constitutional court to give conclusions: Problem of legal regulation and the possibilities of their solution. *The Law Institute of Lithuania*, p. 42. (ISBN 978-9986-704-62-1).

³⁵⁸ Bacevicius, V. (2008). Impeachment in the context of Constitutional responsibility: Problem aspects. *Jurisprudence*, Vol. 111, No. 9, p. 101. (ISSN 1392-6195).

³⁵⁹ *Inter alia*: The ruling of the Constitutional Court of the Republic of Lithuania of 18.02.1998; The ruling of the Constitutional Court of the Republic of Lithuania of 30.05.2003; The ruling of the Constitutional Court of the Republic of Lithuania of 11.02.2004; The ruling of the Constitutional Court of the Republic of Lithuania of 09.02.2007.

The right to self-government is implemented through democratic representation; municipal councils are institutions through which the right of respective communities to self-government is implemented; municipal council members are representatives of the respective territorial community³⁶⁰.

In this context, it should be noted, that among other things, the principles of the election of municipal council members are consolidated in Part 2 of Article 119 of the Constitution; an investigation into the compliance of the impugned legal regulation, *inter alia*, with this part is requested by the petitioner.

Under Part 2 of Article 119 of the Constitution, members of municipal councils are elected for a four-year term, as provided for by law, from among the citizens of the Republic of Lithuania and other permanent residents of the respective administrative units, by the citizens of the Republic of Lithuania and other permanent residents of these administrative units, on the basis of universal, equal, and direct suffrage by secret ballot.

Interpreting, *inter alia*, the provisions of Parts 1 and 2 of Article 119 of the Constitution, the Constitutional Court revealed, among other things, the following specific features in relation to the constitutional status of municipal council members³⁶¹:

- 1) Under the Constitution, municipal council members may not be unequal in terms of their legal status;
- 2) Under the Constitution, municipal council members have no immunities granted to the President of the Republic, the members of the Seimas, the members of the Government, and judges for performing functions assigned to them under the Constitution in order to implement state power, i.e. municipal council members have no inviolability of their person, and no special procedure applies to municipal council members for holding them criminally and/or administratively liable.

In this context, it should be noted that the Constitution, *inter alia*, Article 119, does not provide for any specific status of a municipal council member who holds the office of mayor.

It should be noted, that under the Constitution, *inter alia*, Part 2 of Article 119, the status of elected municipal council members, as representatives of the respective territorial community, has certain specificities compared to the status of other persons who hold no mandate of any territorial community; however, municipal council members are not granted any immunities established for persons who perform certain functions while implementing state authority; *inter*

³⁶⁰ *Inter alia*: The ruling of the Constitutional Court of the Republic of Lithuania of 30.05.2003; The ruling of the Constitutional Court of the Republic of Lithuania of 31.03.2010.

³⁶¹ *Inter alia*: The ruling of the Constitutional Court of the Republic of Lithuania of 24.12.2002; The ruling of the Constitutional Court of the Republic of Lithuania of 30.05.2003.

alia, no special procedure applies to municipal council members for holding them criminally liable.

3.2.2. Overview of the national legal basis on special impeachment procedure to a member (or the mayor) of municipal council

First of all, the legal status of a member of municipal council (or a mayor) is discussed in the context of premature loss of authority (impeachment) procedure. Part 1 of Article 22 of the Law on Local Self-Government provides that - *the powers of a member of a newly elected municipal council shall begin and the previous term of office of a member of the local municipal council shall end on the day the new elected municipal council convenes for the first meeting and the members of council takes the oath*. This provision clarifies that the beginning of the authority of a council member (or a mayor) is linked to the oath of the local council member (or a mayor). When interpreting this legal norm, it must be concluded that the powers and oath of a council member cannot be independent institutes, and a council member (a mayor) has no choice to swear or not to swear, therefore it is clear that only a council member (a mayor) swears when a council member (a mayor) acquires his/her powers, which he/she exercises through the rights and duties of a council member. As well as other elective politicians – the members of the Seimas and the President of the Republic of Lithuania.

Part 2 of Article 22 of the Law on Local Self-Government enshrines the same text of the oath to a local council member and mayor - *I swear to respect and implement the Constitution and laws of the Republic of Lithuania, to conscientiously perform all the duties of a member of the municipal council and to refrain from actions that violate the rights and public interests of the residents*. Thus, a linguistic assessment of the text of the oath shows that a member of the council (a mayor) is granted not only rights but also duties. Article 23 of the Law on Local Self-Government lists the duties of a member of the council which must be observed. The non-observance of these duties may be related to the breach of an oath:

- 1) Participate in the meetings of the municipal council;
- 2) Be a member of one committee (without the Control Committee);
- 3) Participate in the meetings of the committee of which he/she is a member;
- 4) In accordance with the procedure laid down in the Council Regulation, to inform the mayor and/or members of the council or other persons who are jointly involved in the preparation, consideration or decision-making of the existing conflict of interest, to declare resignation and, if the resignation has been accepted, not to participate in any further preparation, deliberation or making a decision;

5) To communicate regularly with the voters and report to the voters at least once a year in accordance with the procedure established by the Council Regulation.

The procedure of deprivation of the power of a member (a mayor) of the municipal council (impeachment procedure), is one of the forms of public democratic control. This is the most critical self-protection measure of civil society against members of municipal councils who disregard the law and the Constitution. Members of the municipal council who have broken their oath by improperly exercising their powers to follow the law and act in the interests of the communities that elected them may be subject to impeachment proceedings, after which, council member (mayor) may be deprived of his or her mandate. An oath, in any sense, obliges the sworn person to behave as the written in text of the oath. An oath, like a promise or commitment, presupposes a certain duty, and since they are given of free will, this forms a moral imperative to carry out an accepted duty.

In order for the public protection measures in question to be put into practice, it is essential that the legislation governing the implementation of impeachment proceedings be properly functioning. It is very important that all municipal council members (mayors) are equal before the law, regardless of whether they are in the political majority or minority of the municipal council.

When discussing the impeachment procedure of a municipal council member, it is important to note that at least 1/3 of the municipal council members have the right to submit to the municipal council the procedure for deprivation of the municipal council member or the mayor. Such a request to initiate the procedure for deprivation of the powers of a member of a municipal council or the mayor is possible when at least one of the following grounds exists:

- 1) He or she has broken his or her oath;
- 2) He does not exercise the powers established by law.

The submission to initiate the procedure for deprivation of the powers of a member of the municipal council or the mayor must be set out in writing and signed by all persons forming a group of at least 1/3 of the members of the municipal council. The submission must be submitted to the local municipal council no later than within one month from the day of the discovery of the breach of the oath or violation of the law. It should be noted that according to the established case law precedent, non-observance of the term precludes impeachment proceedings³⁶².

The application to initiate the procedure for deprivation of the powers of a member of the council (or a mayor) shall specify the concrete person; proposals to initiate the procedure on at least one of the grounds specified therein, arguments, evidence and sources substantiating these proposals. Upon receipt of the submission to initiate the procedure for deprivation of the powers

³⁶² 16th of June, (2017) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-16-442/2017.

of a member of the municipal council or the mayor, the municipal council at the next municipal council meeting, but not later than within one month from receipt of the submission, makes a decision to form a commission to investigate the submitted facts and set a term by which the commission must submit a conclusion. The Commission shall be composed of representatives of all the political groups in accordance with the principle of proportionality.

The local municipal council, after considering the conclusion submitted by the commission, makes one of the following decisions:

- 1) To apply to the Supreme Administrative Court of Lithuania with a request to submit a conclusion as to whether a member of the municipal council (or the mayor) has broken his oath and/or has not properly exercised the powers specified in the law (specified in the request);
- 2) There is no reason to apply the procedure of deprivation of the powers of a member of the municipal council or the mayor.

The municipal council, having decided to apply to the Supreme Administrative Court of Lithuania, submits the application to this court not later than within 6 months from the date of clarification of at least one of the grounds established in the law and appoints the municipal council member(s) to represent the municipal council in court. It should be noted that according to the established case law precedent, non-observance of the term precludes impeachment proceedings³⁶³.

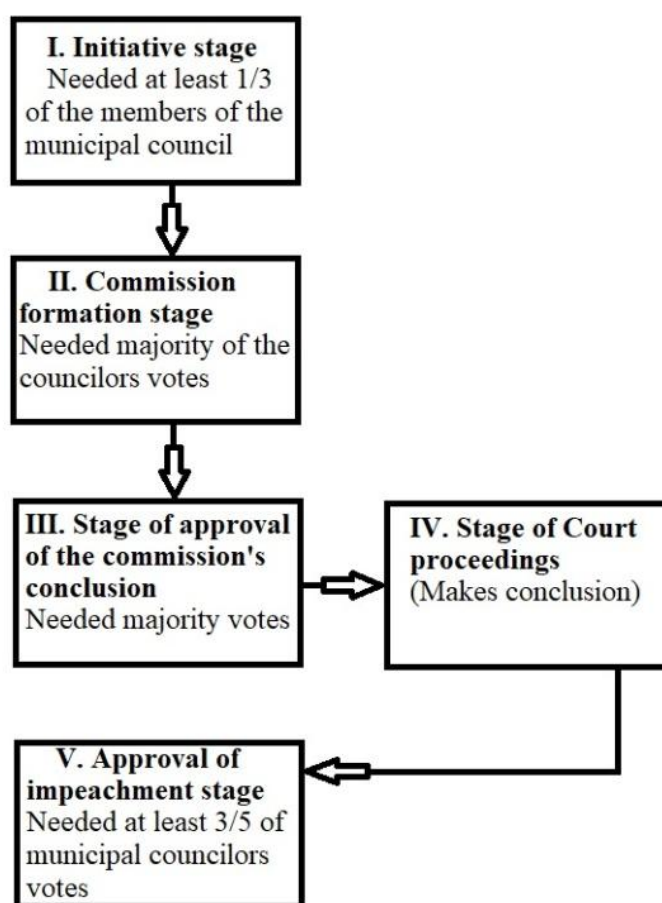
If the Supreme Administrative Court of Lithuania concludes that a member of the municipal council or the mayor has not broken the oath and/or has duly exercised the powers established for him/her by law, then the procedure for loss of powers of the municipal councillor or mayor shall be terminated.

Finally, if the Supreme Administrative Court of Lithuania concludes that a member of the municipal council or the mayor has broken the oath and/or failed to comply with the requirements of Lithuanian law, the local municipal council must to make an additional decision not less than 3/5 votes of all local municipal council members in order to lose his or her mandate. If such a decision is not adopted not less than 3/5 of all the members of the municipal council, it is considered that the municipal council did not approve the loss of the powers of the municipal councillor or mayor and regardless of the unfavourable conclusion of the Supreme Administrative Court of Lithuania - a member of the municipal council or the mayor may continue to exercise his or her powers.

The special impeachment procedure to a member (or the mayor) of municipal council can be divided into five stages:

³⁶³ 16th of June, (2017) Ruling of the Supreme Administrative Court of Lithuania, in case no. eI-16-442/2017.

Figure No. 6³⁶⁴.



Problematic Aspects (Discussion)

First of all, it is important to note that the institute of deprivation of the mandate (impeachment) of a member of the Municipal Council (or the mayor) is not directly enshrined in the Constitution; therefore it does not fall within the jurisdiction of the Constitutional Court. Constitutional impeachment is a special procedure when the issue of the constitutional liability of the highest State officials specified in Article 74 of the Constitution is resolved. Elected State politicians and top officials can only be removed from office through impeachment proceedings. It is this definition of impeachment that prevails in the official doctrine of the Constitutional Court of the Republic of Lithuania. The purpose of impeachment proceedings is not only to remove the offending public official (politician) from office, but to increase the responsibility of public officials towards society and thus contribute to ensuring the principle of separation of powers³⁶⁵.

³⁶⁴ The figure is compiled by the author.

³⁶⁵ Rasiukevicius, O. (2017). The Following Impeachment: Concept, Advantages and Disadvantages. *Law review*, No. 1(15), p. 62. (ISSN 2029-4239).

Although the impeachment is intended to prevent public officials from shirking responsibility, this institute has a number of loopholes. One of them is the separation (elimination) of members and the mayors of municipal councils from the doctrine of impeachment. In this way, members of the local municipal council (mayors) who broke the oath, avoid from the real responsibilities and avoids being banned from running for the same post or other positions in which the oath must be taken.

We already have such situations in practice, for example: In spite the fact that a member of the Klaipeda Municipal Council broke the oath, he was re-elected to the same position in the municipal elections³⁶⁶. It is also interesting that - if a person resigns on his own initiative during the impeachment proceedings, the person does not suffer any negative consequences at all, because the impeachment proceedings (administrative law) are simply terminated. Comparing this practical situation with President Rolandas Paksas³⁶⁷, who was removed from office by the way of impeachment proceedings (Constitutional), the differences are obvious – Rolandas Paksas still has no opportunities to run for any elected office³⁶⁸. Similarly, due to the gross breaking of the oath, the Central Electoral Commission of Lithuania banned a member of the Seimas who broke the oath to participate in the elections to the Republic of Lithuania in 2020³⁶⁹.

With regard to the procedure for the removal (impeachment) of a member of the municipal council (or the mayor), it is important to note that the process itself is very difficult to implement and does not ensure real prevention of breaking the oath. After analyzing the stages of the procedure of removal (impeachment procedure) of a member of the municipal council (or the mayor), we see that without the final vote of 3/5 of the members of the municipal council, it is impossible to remove the oath-breaking politician. Which presupposes an obvious political element and does not correspond to the purpose and essence of the institute of impeachment³⁷⁰. Moreover, in practice, we have cases where impeachment proceedings are brought against the minority (opposition) politicians of the council as a means of coping against criticism of the local

³⁶⁶ Voters' decision in Klaipeda: Titov, who has broken his oath, returns to the city council, (Rinkėjų sprendimas Klaipėdoje: priesaiką sulaužęs Titovas grįžta į miesto tarybą). Retrieved 04.03.2019 from: <https://www.delfi.lt/news/daily/lithuania/rinkeju-sprendimas-klaipedoje-priesaika-sulauzes-titovas-grizta-i-miesto-taryba.d?id=80519465>.

³⁶⁷ European Court of Human Rights: Case of Paksas v. Lithuania – Application no. 34932/04 (2011).

³⁶⁸ Another election in which Mr Paksas will not run: how was his impeachment, what has Europe never seen before?, (Dar vieni rinkimai, kuriuose R. Paksui dalyvauti neteks: kaip vyko jo apkalta, kokios Europa dar nebuvo mačiusi?). Retrieved 05.07.2020 from: <https://www.15min.lt/naujiena/prenumerata/ivykiai/r-pakso-apkalta-ereliu-i-politikos-olimpa-kilusio-politiko-sparnus-pakirpo-1226-1311016>.

³⁶⁹ The VRK did not register candidates for the Seimas Venckienė, (VRK neregistravo kandidatės į Seimą Venckienės). Retrieved 08.09.2020 from: <https://www.delfi.lt/news/daily/lithuania/vrk-neregistravo-kandidates-i-seima-venckienes.d?id=85177959>.

³⁷⁰ Šileikis, E. (2012). In Search for Conceptual Comprehension of the Institute of Impeachment. ISSN 1392-6195, Jurisprudence, No. 19 (3), p. 960. (ISSN 1392-6195).

government³⁷¹. The procedure of removal (impeachment) of a member (or the mayor) of a local municipal council itself is also idle because the majority votes of the council are required to initiate and obtain a Conclusion of the Supreme Administrative Court, therefore, politicians working in opposition of the council do not have a real chance of even initiating impeachment proceedings against a majority politician who has broken the oath, even presuming that his oath would be clearly violated.

For example, in the United States of America (Seattle example), the council itself makes the decision to remove the mayor from office by impeachment³⁷², but the final decision is still up to the Court. In the United States of America, there are a number of cases where local politicians, who have been removed from the council by impeachment³⁷³, are returned back to the previous positions by the Court. The final Court decision does not have to be approved by a vote of the council like in Lithuania. It is considered, that the procedure for the loss of the mandate of a member of a local municipal council (or the mayor) in Lithuania, is in conflict with the Constitution and violates the principle of separation of powers, when the vote of the local council is placed above the Conclusion submitted by the Supreme Administrative Court of Lithuania.

In summarizing this subsection, a few key points can be made:

Firstly: The institute of deprivation of the mandate of a member of a municipal council or the mayor (impeachment institute) is not directly enshrined in the Lithuanian Constitution, therefore local politicians who have broken the oath do not face constitutional responsibility and subsequently have no negative consequences to run for elective positions again, what obviously negatively affects the prevention of breaking the oath.

Secondly: The procedure of losing the mandate of a member of a local municipal council (or the mayor) in Lithuania is very poorly regulated legally; in some aspects it is even unconstitutional, when the decision of the local municipal council is placed higher than the Conclusion of the Supreme Administrative Court.

³⁷¹ Druskininkai rulers seek to remove five members of the opposition from the council, (Druskininkų valdantieji siekia iš tarybos pašalinti penkis opozicijos atstovus). Retrieved 23.04.2018 from: <https://kauno.diena.lt/naujienos/lietuva/politika/druskininku-valdantieji-siekia-tarybos-pasalinti-penkis-opozicijos-atstovus-860645>.

³⁷² The removal of the Mayor by the City Council is governed by Article V, Section 10 of the Seattle City (USA) Charter, which reads: *The Mayor may be removed from office after a hearing, for any willful violation of duty, or for the commission of an offense involving moral turpitude, upon written notice from the City Council at least five days before the hearing. He or she shall have the right to be present, to the aid of counsel, to offer evidence and to be heard in his or her own behalf. Upon the affirmative vote of two-thirds of all the members of the City Council, acting as a court of impeachment, the office shall become vacant.* Legal acts library of Seattle Government. Retrieved 22.09.2020 from: https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=THCHSE_ARTVEXDE_S10REMA.

³⁷³ The New York Times. How Does It Feel to Be Impeached? These Mayors Can Tell You All About It. Retrieved 05.10.2019 from: <https://www.nytimes.com/2019/10/04/us/impeached-mayors.html>.

Thirdly: It is difficult and sometimes even impossible to initiate impeachment proceedings for a local politician who belongs to majority and has broken the oath. Practical makings to complete impeachment for majority politician are very complicated and there are only theoretical possibilities.

Fourthly: In order to ensure equal responsibility of all local politicians for breaking the oath, it is necessary to create a special legal condition to minority of the local council for the initiation of impeachment proceedings against majority politicians. Also, the approval of the conclusion of the Supreme Administrative Court of Lithuania in the municipal council should be refused, because it is a manifestly excessive requirement, which reduces the power to enforce court decisions, exceeds the competence of the municipal council and finally contradicts the constitutional principle of separation of powers. Moreover, it creates the conditions for political influence to avoid responsibility for the gross breaking of an oath.

CONCLUSIONS AND SOLUTIONS

Hypothesis Assessment Summary. The research hypothesis was confirmed. A detailed analysis of both the theoretical content and practical implementation of the Lithuanian Institute of Local Self-Government has shown that the legal relations between municipalities are only partially properly defined and regulated in the national legal system, and the application of the norms of national law in some municipalities of the country remains formal and is not sufficiently effective to the extent necessary to ensure the protection and functioning (activities) of the minority (opposition) rights of the municipal council. The legal acts (laws) regulating the activities of municipalities remain rather laconic, only partially detailing the rights of the minority (opposition) of municipal councils, their scope and the mechanism of realization based on the principle of “checks and balances”, therefore, the abuse of the right of the majority of municipal councils in municipalities creates favorable conditions for the formation of manifestations of autocratic governance.

Taking into account the results of the research, their analysis and conclusions, it is recommended to improve the regulation of legal relations of the municipalities comprising the Lithuanian Institute of Local Self-Government:

I.) Ensuring the effective implementation of the protection of the rights of the minority (opposition) of the municipal council provided for in the Law on Local Self-Government of the Republic of Lithuania;

II.) Improving the procedure for early termination of the term of office (impeachment) of a member of a municipal council, so that all members of municipal councils or mayors who have broken the oath would answer equally before the law, regardless of whether they are in the majority or in the minority of the municipal council (opposition);

III.) Streamlining administrative oversight of municipal activities based on the principles of the rule of law, legality and proportionality, rather than on the basis of agreements between political parties and individual interests.

I. Conclusions and suggestions regarding the provision of positions guaranteed to the opposition by the municipal council in the Law on Local Self-Government of the Republic of Lithuania.

1. Conclusion: As there are sixty separate administrative units (municipalities) of the territory in Lithuania with different demographic, economic and political situation, different work regulations of municipal councils, composition of municipal councils, therefore, they have different traditions of local governance and decision-making. The insufficient definition of the

rights of the minority (opposition) in the municipal council, which ensures the opportunities for the participation of the minority (opposition) in the management of municipal public affairs, creates an environment for the formation of autocratic tendencies in municipal governance. Poor control over the decisions taken by municipal councils and the actions of the administration, as well as a flawed legal framework, create conditions for the formation of situations where there is a real threat to democratic values and the protection of individual rights and freedoms.

In order to effectively ensure the implementation of the rights guaranteed to the minority (opposition) by the municipal council in the Law on Local Self-Government of the Republic of Lithuania and to maintain the balance of the constitutional model of public power, it is proposed:

1. Suggestion: The requirement of the legislator to approve the minority (opposition) candidacy for the members or chairmen of the Control Committee proposed by the majority of the municipal council is excessive in terms of ensuring the minority (opposition) rights of the municipal council. The existing gap in the legal regulation is to be solved by eliminating the need for the approval of the majority of the municipal council for the representatives appointed by the minority (opposition) of the municipal council to the Control Committee from the Law on Local Self-Government of the Republic of Lithuania, leaving it to the minority (the opposition) to decide which candidate is best placed to hold the statutory posts on the Control Committee, *specifically*, by reformulating Part 3 of Article 14 of the Law on Local Self-Government of the Republic of Lithuania as follows:

"The chairmen and vice-chairmen of committees, other than the Control Committee, shall be appointed by the committees from among the members of the committee on the proposal of the mayor. The chairman of the control committee shall be appointed from among the members of the committee by the opposition of the municipal council in writing, signed by more than half of all members of the opposition of the municipal council and publicly served on the chairman of the municipal council meeting, the chairman of the Control Committee shall then be deemed to take up his duties without the additional approval of the majority of the municipal council. When the opposition appoints the chairman of the Control Committee in writing, the votes of the members of the municipal council elected to the municipal council with the majority list or lists shall not be counted. The vice-chairman of the Control Committee is appointed by the Municipal Council from among the members of the Committee on the proposal of the Mayor. If the opposition of the municipal council does not appoint the chairman of the Control Committee within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor, or appoints a member of the municipal council who does not comply with the requirements set out in Article 15¹ of this Law, or if no opposition of the municipal council has been announced, the chairman

of the Control Committee shall be appointed by the municipal council from among its members on the proposal of the mayor. The chairman of the committee, on the proposal of the mayor, loses his powers prematurely by a decision of the committee (except for the Control Committee) if he does not meet the requirements set out in Article 15¹ of this Law. The chairman of the Control Committee on the grounds set out in this paragraph shall lose his powers before the term, on the proposal of the mayor by a decision of the municipal council, and if the chairman of the Control Committee was appointed by the opposition of the municipal council, – if he is revoked in writing by the opposition, signed by more than half of all members of the municipal council and served on the chairman of the next municipal council meeting. If at the next meeting of the municipal council the opposition of the municipal council does not revoke in writing its appointed chairman of the Control Committee and does not appoint another member of the municipal council or appoints a member of the municipal council who does not meet the requirements of Article 15¹ of this Law, the decision on the loss of the powers of the Chairman of the Control Committee and the appointment of a new Chairman of the Control Committee on the proposal of the mayor shall be made by the municipal council, however, this does not deprive the opposition of the right to subsequently remove the chairman of the Control Committee approved by the mayor's proposal."

2. Suggestion: To nominate (approve) the candidates for the chairmen of the Ethics and Anti-Corruption Committees by a written proposal of the minority (opposition) of the municipal council, signed by more than half of all members of the minority (opposition) of the municipal council without additional approval of the majority of the council, *specifically*, by reformulating Part 1 of Article 15 of the Law on Local Self-Government of the Republic of Lithuania as follows:

“The Municipal Council shall establish an Ethics Commission and an Anti-Corruption Commission for the term of office. These commissions are formed in accordance with the principle of proportional representation of the majority and minority of the municipal council. The composition of the commissions, maintaining the principle of proportional representation of the majority and minority of the municipal council, must be changed no later than within 2 months after the change of the majority and minority of the municipal council. The chairman of the Ethics Commission and the Anti-Corruption Commission is appointed by the opposition of the municipal council from among the members of these commissions - members of the municipal council - signed in writing by more than half of all members of the municipal council opposition and publicly served on the chairman of the municipal council meeting, then the chairmen of the Ethics Commission and the Anti-Corruption Commission shall be deemed to take up their duties without the additional approval of the majority of the municipal council.

When the opposition appoints the chairmen of the Ethics and Anti-Corruption Commissions in writing, the votes of the members of the municipal council elected to the municipal council with the majority list or lists shall not be counted. The vice-chairmen of these commissions are appointed by the municipal council from among the members of these commissions - members of the municipal council - on the proposal of the mayor. If the opposition of the municipal council does not appoint the chairmen of the Ethics Commission and the Anti-Corruption Commission within two months from the date of convening the first meeting of the newly elected municipal council or from the date of taking the oath of office of the directly elected mayor or appoint members of the municipal council who do not meet the requirements set out in Article 15¹ of this Law, or if the opposition of the municipal council has not been announced, the chairmen of the ethics commission and the anti-corruption commission shall be appointed by the municipal council on the proposal of the mayor from among the members of these commissions - members of the municipal council, however, this does not deprive the opposition of the right to later remove the chairmen of the Ethics Commission and the Anti-Corruption Commission approved by the mayor's proposal. The duties of the executive secretaries of the commissions shall be performed by civil servants appointed by the director of the municipal administration, and these functions shall be entered in their job description.”

3. Conclusion: The uncertainty of Part 2 of Article 2 of the Law on Temporary Direct Management in the Territory of the Republic of Lithuania creates preconditions for the majority of the municipal council to abuse the majority right, to eliminate the minority (opposition) of the municipal council from positions guaranteed by the Law on Local Self-Government (i.e. Ethics Commission, Anti-Corruption Commission, Control Committee) and not to receive any consequences for it.

3. Suggestion: To establish the mandatory introduction of direct management in the Law of the Republic of Lithuania on Temporary Direct Management in the Territory of the Municipality and in the event that the Control Committee, the Ethics Commission and/or the Anti-Corruption Commission are not fully formed within the time period specified in the Law on Local Self-Government of the Republic of Lithuania, and ***specifically*** by reformulating Part 2 of Article 2 of the Law on Temporary Direct Management in the Territory of the Republic of Lithuania as follows:

“Article 2. Basis and duration of introduction of direct management in the territory of the municipality

2. Direct management in the territory of a municipality may be introduced by a resolution of the Seimas of the Republic of Lithuania if:

1) The acts or omissions of the municipal council endanger the constitutional order of the state or the integrity of the territory;

2) The municipal council does not appoint the deputy mayor(s), the director of the municipal administration, the deputy director(s) of the municipal administration within the time specified in the Law on Local Self-Government or does not fully form the Control Committee, Ethics or Anti-Corruption Commissions;

3) No meetings of the municipal council have been held for 6 consecutive months;

4) The Central Electoral Commission of the Republic of Lithuania declared the results of the re-elections to the municipal council invalid;

5) The municipal council may not exercise its powers due to circumstances related to the introduction of a state of emergency or martial law in the territory of the municipality;

6) The director of the municipal administration does not perform the functions specified in the Law on the Military Status of the Republic of Lithuania or performs them regardless of the needs of the armed forces and the municipal council, upon receipt of a proposal to dismiss the director of the municipal administration from the subjects specified in the Law on the State of War, does not dismiss him.”

II. Conclusions and suggestions on amendments to the term of office of a member of a municipal council before the term (impeachment institute).

4. Conclusion: The institute of deprivation of the mandate of a member of a municipal council or the mayor (impeachment institute) is not directly enshrined in the Lithuanian Constitution, therefore local politicians who have broken the oath do not face constitutional responsibility and subsequently have no negative consequences to run for elective positions again, what obviously significantly affects the prevention of breaking the oath.

4. So, a specific suggestion to amend Section X (Local Self-Government and Governance) of the Constitution of the Republic of Lithuania by adding a new article, that" In the event of a gross violation of the Constitution or a breach of the oath by a member of a municipal council and/or the mayor, as well as if it becomes clear that a person has committed a criminal offense, impeachment procedure shall be instituted in accordance with the law".

5. Conclusion: the procedure of losing the mandate of a member of a local municipal council (or the mayor) in Lithuania is very poorly regulated by Law on Local Self-Government; in some cases it is even unconstitutional, when the decision of the local municipal council is placed higher than the Conclusion of the Supreme Administrative Court.

5. Suggestion: the approval of the conclusion (decisions) of the Supreme Administrative Court of Lithuania in the municipal council should be refused, because it is a manifestly excessive requirement, which reduces the power to enforce court decisions, exceeds the competence of the municipal council and finally contradicts the constitutional principle of separation of powers. Moreover, it creates the conditions for political influence to avoid responsibility for the gross breaking of an oath. Thus, the specific suggestion to amend Part 3 of Article 25 of the Law on Local Self-Government of the Republic of Lithuania by reformulating it as follows:

"A member of a municipal council shall lose his powers before the term in accordance with the procedure established by this Law if the Supreme Administrative Court of Lithuania submits a conclusion that a member of the municipal council and/or mayor has broken his oath and/or fails to exercise powers under this or other laws."

6. Conclusion: It is difficult and sometimes even impossible to initiate impeachment proceedings for a member of the municipal council (or a mayor) who belongs to majority and has broken the oath. Practical makings to complete impeachment for majority politician of the municipal council are very complicated and there are only theoretical possibilities to do that.

6. Suggestion: In order to ensure equal responsibility of all members of the municipal council for breaking the oath, it is necessary to create a special legal provisions (mechanism) to minority of the of the municipal council for the initiation of impeachment proceedings against majority of the municipal council. Thus, the specific suggestion to amend Article 25-1 of the Law on Local Self-Government of the Republic of Lithuania by reformulating it as follows:

"1. The procedure for deprivation of the powers of a member of a municipal council or a member of a municipal council by a decision of the municipal council shall be applied by the municipal council to the members of the municipal council or a member of the municipal council - the mayor, in respect of their actions contrary to the Constitution and laws, performed as a member of the municipal council or the mayor of the municipal council, in order to resolve the issue of liability of such persons.

2. At least 1/3 of the members of the municipal council, or the opposition of the municipal council in writing signed by at least half of all members of the opposition of the municipal council, have the right to submit to the municipal council the procedure for deprivation of the powers of a member of the municipal council or a member of the municipal council.

3. The submission of the procedure for deprivation of authority of a member of a municipal council or a member of a municipal council - the mayor, is possible when at least one of the following grounds exists:

- 1) He broke his oath;
- 2) He does not exercise the powers conferred on him by this or other laws.

4. The submission to initiate the procedure for deprivation of authority of a member of a municipal council or a member of a municipal council - the mayor, must be set out in writing and signed by all persons forming at least 1/3 of the group of members of the municipal council or by a letter of opposition from the municipal council signed by at least half of all members of the opposition of the municipal council. The submission must be submitted to the municipal council no later than within one month from the date of clarification of at least one of the grounds specified in Part 3 of this Article.

5. The submission for initiation of the procedure for deprivation of authority of a member of the council or a member of the municipal council – the mayor, shall specify the specific person, proposals to initiate the procedure on at least one of the grounds specified in Part 3 of this Article, the arguments, evidence and sources supporting these proposals.

6. Upon receipt of the submission, to initiate the procedure for deprivation of the authority of a member of the municipal council or a member of the municipal council – the mayor, the municipal council, at the next meeting of the municipal council, but not later than within one month from the day of receipt of the submission, shall make a motivated decision to form a commission to investigate the submitted facts and set a term by which the commission must submit a conclusion. The Commission shall be composed of representatives of all the political groups in accordance with the principle of proportionality. The Commission shall include an equal number of delegated representatives of all factions of the members of the municipal council and groups of members of the municipal council if they consist of at least three members of the municipal council.

If the majority of the municipal council refuses to make a decision to form a commission to investigate the submitted facts, then such decision must be motivated and may be appealed directly to the Supreme Administrative Court of Lithuania. A complaint may be submitted to the court by a representative of the Government of the Republic of Lithuania and a member(s) of the municipal council, which the court must examine no later than within ten working days.

7. The municipal council, after considering the conclusion submitted by the commission, makes one of the following decisions:

- 1) To apply to the Supreme Administrative Court of Lithuania with a request to submit a conclusion whether a member of the municipal council or a member of the municipal council - the mayor, has broken the oath and/or has not exercised the powers specified in this and other laws;

2) There is no basis for applying the procedure for deprivation of the authority of a member of a municipal council or a member of a municipal council – the mayor.

7.1. If the commission concludes that a member of the municipal council or a member of the municipal council - the mayor, has broken the oath and/or has not exercised the powers specified in this and other laws (specified in the application), then the deliberation of the municipal council is not necessary, and the commission itself must apply directly to the Supreme Administrative Court of Lithuania, by submitting a request to this court not later than within 6 months from the date of clarification of at least one of the grounds set forth in Part 3 of this Article and appointing the member(s) of the commission to represent the commission in court.

8. The municipal council, having decided to apply to the Supreme Administrative Court of Lithuania, shall submit a request to this court not later than within 6 months from the date of clarification of at least one of the grounds specified in Part 3 of this Article and appoint a member(s), who will represent the municipal council in court in the examination of this application.

9. If the Supreme Administrative Court of Lithuania concludes that a member of the municipal council or a member of the municipal council - the mayor has not broken the oath and/or duly exercised the powers provided for in this and other laws, the procedure for deprivation of the powers of the member of the municipal council or a member of the municipal council - the mayor, shall be terminated.

10. If the Supreme Administrative Court of Lithuania concludes that a member of the municipal council or a member of the municipal council - the mayor has broken the oath and/or has not exercised the powers provided for in this and other laws, then the member of the municipal council or a member of the municipal council - the mayor is considered to have lost his powers.”

III. Conclusions and suggestions on the improvement of the administrative supervision of the municipalities of the Republic of Lithuania

7. Conclusion: Due to the pre-political selectivity and gaps in the legal acts regulating the activities of municipalities, the administrative supervision of municipal activities in Lithuania is implemented differently, as a result of which the principles of the rule of law, democracy and respect for human rights and the state are often ignored, and specifically: in some municipalities, practical situations arise when by-laws issued by the local government create such legal regulation that contradicts Lithuanian law.

7. Suggestion: In order to ensure impartial and rule-of-law administrative supervision of the activities of municipalities, it is expedient to envisage an active, rather than passive, role of

the representative of the Government of the Republic of Lithuania in supervising the compliance of the activities of municipalities with the provisions of local self-government enshrined in the Constitution and the constitutional segment of the division of powers. Also to change the procedure for appointing a representative of the Government of the Republic of Lithuania by establishing that representatives of the Government shall be appointed through a public competition and not on the basis of political trust, thus, the **specific suggestion** to amend Articles 2, 4 and 10 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania by reformulating them as follows:

“Article 2. Representatives of the Government

1. A representative of the Government is a non-political public official appointed by public competition, performing administrative supervision of the activities of municipalities, that is, supervising whether municipalities comply with the Constitution and laws or implement Government resolutions.

2. A representative of the Government acts on behalf of the Government and is subordinate to and accountable to the Government.

3. Upon the recommendation of the Prime Minister of the Republic of Lithuania, another representative of the Government appointed by the Government may replace the representative of the Government or hold the office of a representative of the Government when a representative of the Government has not been appointed.

Article 4. Appointment of government representatives

The Government is organizing a public competition to fill five seats of the Government Representatives, one Government Representative each:

- 1) In Vilnius and Alytus counties;
- 2) In Kaunas and Marijampolė counties;
- 3) In Panevėžys and Utena counties;
- 4) In Klaipėda and Tauragė counties;
- 5) In Šiauliai and Telšiai counties.

Article 10. Termination of the powers of a representative of the Government

1. The powers of a representative of the Government shall end when:

- 1) The term of office expires;
- 2) He resigns;
- 3) The representative is convicted by a court;
- 4) He dies;

5) He is in serious breach of his duties. The Labor Code of the Republic of Lithuania shall apply *mutatis mutandis* in determining whether a serious violation of work duties has been committed;

6) He does not comply with the requirements set out in Part 1 of Article 3 of this Law or does not comply with the restrictions referred to in Part 1 of Article 5, or does not comply with the requirements set out in Part 3 of Article 6;

~~7) he loses the trust of the Government.~~

2. In the cases specified in Paragraph 1 of this Article, except for Item 4 of Paragraph 1 of this Article, the decision regarding the dismissal of a representative of the Government shall be made by the Government on the proposal of the Prime Minister.

3. With the consent of the representative of the Government, in the cases specified in Items 1 and 2 of Part 1 of this Article, the representative of the Government shall hold office until a new representative of the Government is appointed, but for no longer than 3 months.

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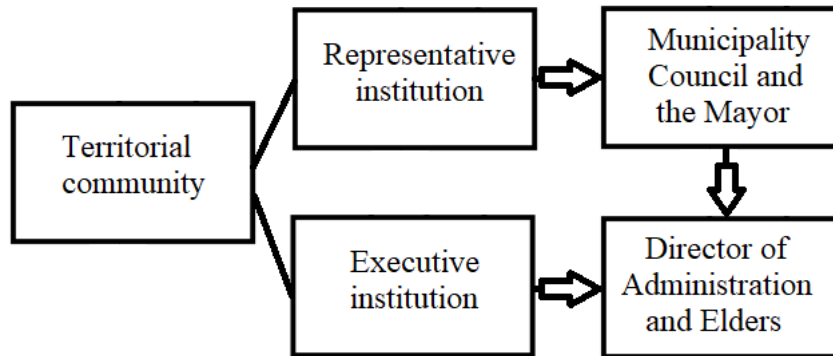
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APPENDICE

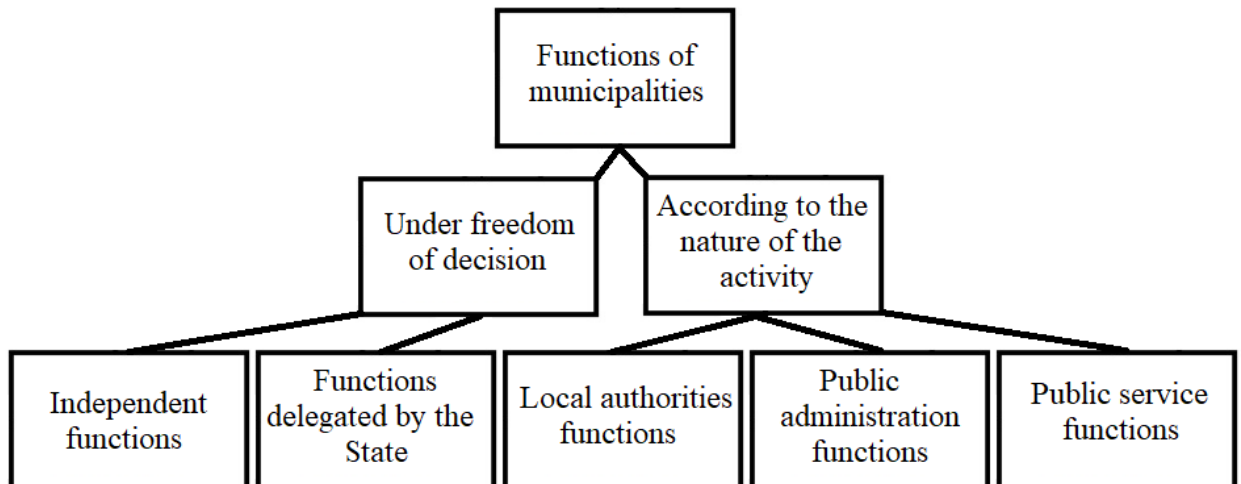
Appendix 1

Institutional framework of local self-government

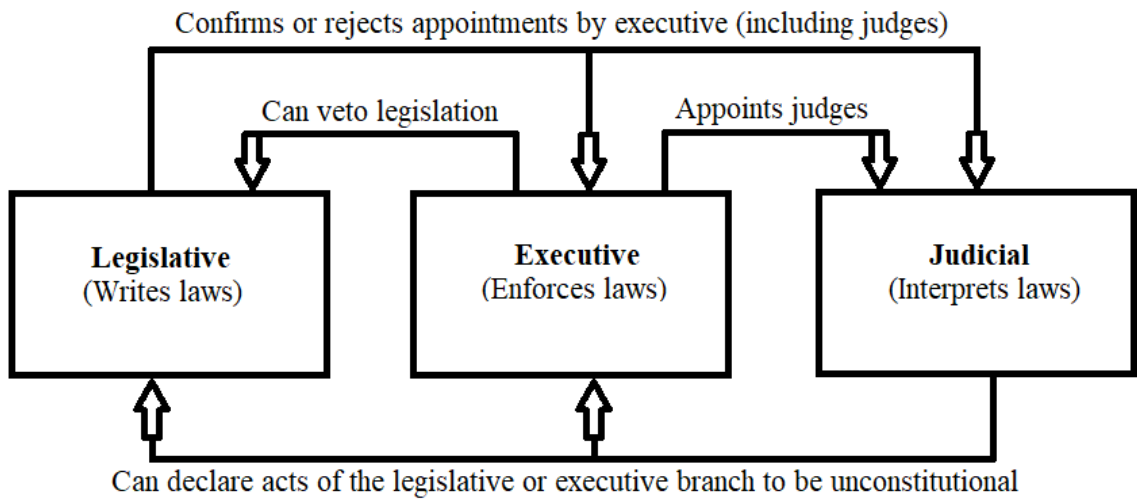


Appendix 2

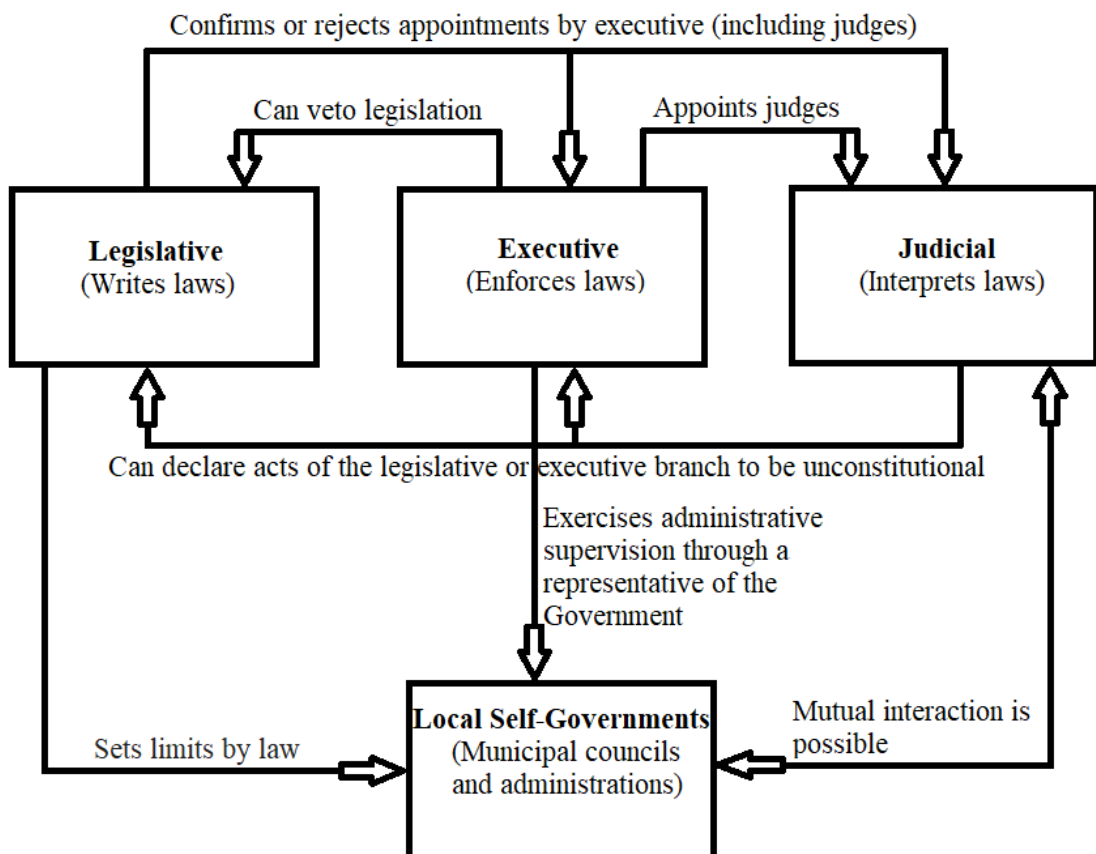
Functions performed by municipalities



Checks and Balances system (State level model)

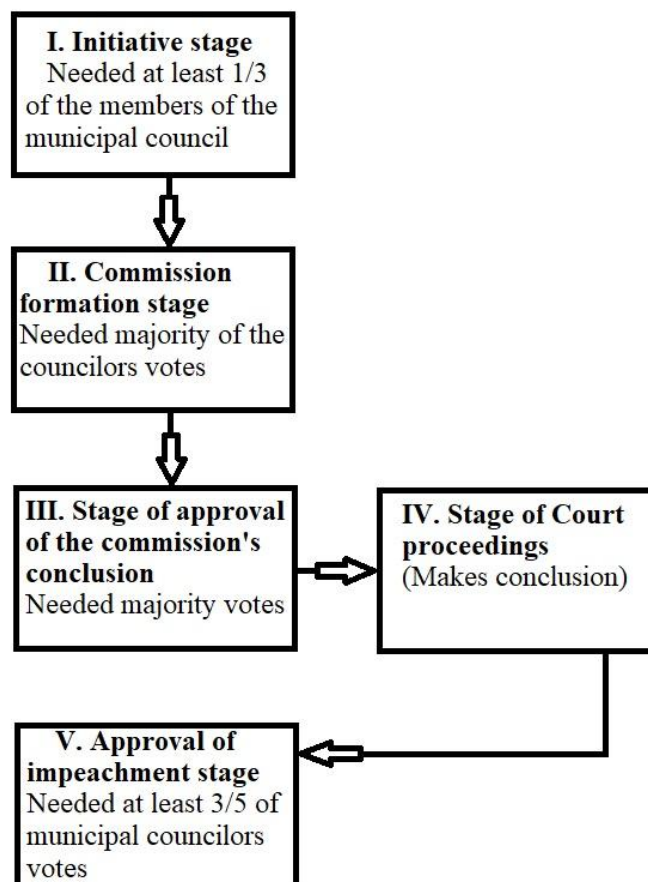


The place of self-government in the State structure



Appendix 5

Stages of the special impeachment procedure to a member (or the mayor) of municipal council



Appendix 6

List of opposition representatives (respondents) of the municipalities that participated in the interview survey

1. Algis Čaplikas, a member of the Vilnius municipal council, ex. Minister of Health, ex. Vice-Speaker of the Lithuanian Seimas.
2. Andrius Bagdonas, a member of the Seimas of Republic of Lithuania, ex. Member of the Neringa municipal council.
3. Gema Umbrasienė, a member of the Panevėžys municipal council, leader of the Panevėžys council's opposition, ex. Mayor of the Panevėžys city.
4. Mantas Leliukas, a member of the Panevėžys municipal council.
5. Daiva Juodelienė, a member of the Panevėžys district municipality council. Chairman of the Control Committee.
6. Dr. Juozas Šarkus, a member the Druskininkai municipal council.
7. Konstantinas Rečkovas, a member the Druskininkai municipal council.

8. Antanas Balkė, a member the Druskininkai municipal council.
9. Antanas Nedzinskas, a member of the Trakai district municipal council, ex. Member of the Seimas of Republic of Lithuania.
10. Virgilijus Šarpauskas, a member of the Širvintos municipal council.
11. Marius Juškevičius, a member of the Varėna district municipal council, ex. Vice mayor of Varėna city.
12. Dainius Žukauskas, ex. Member of the Lazdijai district municipal council.
13. Martynas Šiurkus, a member of the Šiauliai municipal council.
14. Andrius Kupčinskas, a member of the Seimas of Republic of Lithuania, ex. Mayor of Kaunas city.
15. Mindaugas Tarnauskas, a member of the Šakiai district municipal council, ex. Chairman of the Control Committee.
16. Prof. Dr. Vytautas Nekrošius, a member of the Molėtai district municipal council. Chairman of the Ethics Commission.
17. Sigitas Mecelita, a member of the Utena municipal council.
18. Karolina Štelmokaitė, a member of the Kėdainiai municipal council.
19. Algis Čepulis, a member of the Rokiškis district municipal council.
20. Stasys Meliūnas, a member of the Rokiškis district municipal council. Chairman of the Anti-Corruption Commission.
21. Alina Velykienė, a member of the Klaipėda municipal council.
22. Nina Puteikienė, a member of the Klaipėda municipal council.
23. Jūratė Balčiūnaitė, a member of the Elektrėnai municipal council. Chairman of the Control Committee.
24. Aidas Vaišnora, a member of the Kazlų Rūda municipal council, ex. Mayor of Kazlų Rūda city.
25. Alfonsas Klimas, a member of the Kazlų Rūda municipal council.
26. Donatas Jankauskas, a member of the Kaunas district municipal council. Chairman of the Control Committee, ex. Member of the Seimas of Republic of Lithuania.
27. Tomas Seikalis, a member of the Vilnius municipal council. Chairman of the Ethics Commission.
28. Ignas Jonušas, a member of the Skuodas ditrict municipal council, leader of the Skuodas council's opposition.
29. Kęstutis Bilius, a member of the Kelmė municipal council, ex. Vice mayor of Kelmė city.
30. Darius Ulickas, a member of the Raseiniai district municipal council, ex. Member of the Seimas of Republic of Lithuania.

I, Karolis Kaklys, the author of this paper hereby testify with my signature that I have compiled this doctoral thesis independently and have provided references for all information sources used herein.

Signature

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