Delimitation of competencies between the European Union and the Member States: a look from a candidate country

By Vilenas Vadapalas*

I. Competence without legal personality?

From the point of view of strict legal terminology it seems useful to clarify the meaning of "delimitation of competencies between the European Union and the Member States" since this meaning depends on the existence or nonexistence of legal personality of the Union itself.

Here one may find some analogies in the conclusions drawn by the International Court of Justice in its advisory opinion in the Reparation for Injuries (1949) case "Does the Organisation possess international personality? This is no doubt a doctrinal expression, which has sometimes given rise to controversy. But it will be useful here to mean that if the Organisation is recognised as having that personality, it is an entity capable of availing itself of obligations incumbent upon its Members. (...)

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their natures depend upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase of collective activities of States has already given rise to instances of action upon the international plane by certain entities that are not States. (...)

The Charter has not been content to make the Organisation created by it merely a centre "for harmonising the actions of nations in the attainment of these common ends" (Article 1, para. 4). It has equipped that centre with organs, and has given it special tasks. It has defined the position of the Members in relation to the Organisation...."((1)) It goes without saying, notwithstanding a terminology used, that neither the Communities, nor, moreover, the Union, are not a traditional international organisation which is governed by public international law. It is also clear that the European Communities and the Union should not be put on the same level with the United Nations. Within the framework and limits of Community law, the relations among Member States are no longer governed by international law. The conclusions made by the Court of Justice of the European Communities on this issue are well known.((2))

However, the development of the United Nations opened way to the above mentioned advisory opinion of the ICJ recognising legal personality of the UN, notwithstanding the fact that the UN Charter does not recognise it expressis verbis. Taking into consideration the development of the European Union through gradual modification of constitutional treaties of the Community and the Union, could it happen that the ECJ recognises legal personality of the Union even if the founders of the European Union did not endow it with legal personality in the Treaty on the European Union? Could its competence be meanwhile

implied? Did the Treaty of Nice change anything in traditional legal thinking on the Union not possessing legal personality, even an implied one?

As far as the competence of the European Community or Union is concerned, the main legal provision concerning this issue was embodied in Article 5 (ex Article 3b) of the EC Treaty: "The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein". Article 2 (ex Article B) of the Treaty on European Union assigns objectives to the Union; relevant special Treaty chapters specify the tools of action. At the same time, its Article 3 (ex Article C) stipulates that "the Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the acquis communautaire". In practical terms, I would conclude here that the Union exercises the competence of the Community through "a single institutional framework" plus attains the objectives in the fields of the second and third pillars under the TEU, and all this without having its own competence proprio motu. In order to avoid legalistic speculations, one may address the issue to the drafters of a future simplified Treaty, merging the EC Treaty and the TEU. This future task of simplification of Treaties seems very complicated since different methods of action (community, intergovernmental, national and regional) are used in exercising competences and attaining the objectives of the EC/EU.

At the very beginning, it could seem that the most simple way to examine the topic of the delimitation of competences (Kompetenzabgrenzung) would be to limit it to the analysis of powers (competence) of the European Community based, first of all, on the provisions of Articles 3-5 (ex Articles 3, 3a and 3b) and further relevant provisions of specific chapters of the EC Treaty. By way of simplification, one may also start from the point that under the Treaty of the European Union the second and third pillars ipso facto do not create the"competence of the Union" since the Community method was not used.

Logically, a question arises whether the Treaty of Nice has modified the competence of the Community and the objectives assigned to the Union. However, even from the point of view of traditional considerations on the division of powers within the Community according to the EC Treaty (i.e. discussions on expressly conferred or implied powers, supplementary competence, exclusive and non-exclusive competence, mixed or shared competence, etc.)((3)), the issue is not clear enough. When the Treaty does not entitle the Community with the power to legislate in some areas (health or culture, etc.), it could give it such implied power on the basis of other provisions (in order to eliminate distortions of competition by the provisions of national law, etc.). The demarcation field looks sometimes obscure, even if the Maastricht Treaty has expressly excluded any harmonisation in certain areas, such as education, vocational training, culture and public health. The ECJ has also constructed clearer frontiers of delimitation in the use of Community budgetary powers, shipments of waste, etc., as well as for the limits of "the implied powers" of the Community.

A lawyer from a candidate country, when speaking about the competence of the European Community and the European Union, would also refer to the Article 49 (ex Article 0) of the TEU using expressis verbis the terms of"membership" and "admission" to the Union.((4)) Europe Agreement concluded by Lithuania 12 June 1995 stipulates that the Parties thereto recognise "the fact that Lithuania's ultimate objective is to become a member of the

European Union" (Preamble) and sets forth that the objectives of the association include an aim "to provide an appropriate framework for the gradual integration of Lithuania into the European Union" (Article 1, para. 2). Accession to the European Union would inevitably mean a transfer of sovereign powers (competences) of State to the Communities and the Union. Here, inter alia, one should neither ignore the Charter of Fundamental Rights adopted in Nice, notwithstanding what kind of legal nature and validity it has since the European Union in fact intervened into classical exclusive competences of a State, its domaine reservé to define constitutional, i.e. fundamental rights and freedoms.

II. Does the Treaty of Nice change existing delimitation?

The main success of the Treaty of Nice lies not in the delimitation of competence of the EC/EU. As its Preamble proclaims, the High Contracting Parties are determined "to press ahead with the accession negotiations in order to bring them to a successful conclusion in accordance with the procedure laid down in the Treaty." No doubt, this goal was successfully achieved. At least from the Lithuanian perspective, institutional reform created an appropriate basis for its future accession.

On the other hand, an exercise of reading the Treaty and searching for more clarity in the area of delimitation of powers does not give such impression of satisfaction. National vetoes remain on taxation and social security, trade negotiations involving cultural and audio-visual issues, human health and educational services. The Commission will be forced to regularly consult with a committee of Member States' representatives when it is conducting international trade negotiations. There will be an extension of qualified majority voting, five years after the Treaty of Nice comes into force, on trade negotiations, certain aspects of visa, asylum and immigration policy. Majority voting will be used to decide structural spending for the poorest regions of the Union from 2007 only. Finally, defence and military issues did not move too far from the area of intergovernmental co-operation; except for a new initiative under the umbrella of Article 25 of the TEU, namely "the objective for the European Union [that] is to become operational quickly". From the perspective of a candidate country it seems that future enlargement and the needs of effectiveness of the Union should lead to increased competence of the EC/EU in the areas of direct taxation and social policy. The same goes with the CSFP, especially defence and military issues, provided that, at least now, it will rather develop in a framework of enhanced co-operation. This limited framework in the area of the CFSP looks inevitable, having in mind different interests, traditions and national policies involved. The Baltic States would be in favour of a much stronger development of the CSFP of the Union.

One should not underestimate the results of Nice as far as the strengthening of the competence of the EC/EU is concerned, having in mind the main aim of the IGC accomplished. One should not forget, inter alia, combating crime and facilitating co-operation through the European Judicial Cooperation Unit (Eurojust) (Articles 29, 31 and 31(2) of the TEU). There is a step towards further facilitating the exercise of the right of the EU citizens to move and reside freely (Article 18 of the EC Treaty), etc.

Enhanced co-operation after the Treaty of Nice might pose some additional questions. Groups of Member States will be able to launch new policies before other Member States

are ready or willing to join them. A decisionmaking process after the enhanced co-operation coming to reality would become more complicated. Consequently, a group of the most developed and interested Member States will use the EU institutional mechanism to adopt measures on behalf of the Union but with due respect to the Treaties, the Union's policies and exclusive competence of the remaining Member States.

At the same time, inevitable questions will arise about the traditional division between exclusive competence of the EC, "shared competence" and the exclusive competence of its Members, even if the Treaty of Nice has established the limits and rules of the machinery of the enhanced co-operation. An enhanced co-operation will look like an inevitable consequence of the enlargement, since the Union will not be able to function in the same way as it did before. The sense of searching for strict legal criteria of delimitation of powers of the EC/EU and its Member States is becoming rather weak. Instead of delimitation of exclusive EC/EU competence, "shared competence" and national competence, one should speak more about different levels of multigovernance in Europe (EC/EU, "enhanced co-operation", regional, national, etc.). Similarly, the discussion about federalism changes: traditional notions of constitutional or international law will become inapplicable in the Union; they develop in their own manners.

New developments in the field of delimitation of competences between the EC/EU depend on the future progress of the European Union itself. It is very difficult to predict the results of such a progress, especially if one takes into consideration the future enlargement of the EU towards 26 or more Member States. Debates concerning a movement towards strong federalism and constitutionalism have already started after the Maastricht Treaty and even before. Nevertheless, the IGC and the Treaty of Nice itself have shown another trend, i.e. a move towards "intergovernmentalism". The role of the Council and even more the one of the European Council increased whereas the role the Commission looks more modest. In practical terms, the delimitation of the EC/EU competencies appears to be a political rather than a legal task. The delimitation of powers between the Union and its Member States and the sharing of powers is the result of political processes and compromises, notwithstanding the fact that these developments finally take a certain legal form. As Ingolf Pernice pointed out:
"Provisions to limit the Community competencies in individual policy fields (such as limitation on the co-ordination and disciplining of the economic and financial policies of the member states, or granting incentive measures with exclusion of any kind of harmonisation in the field of culture) can be effective in protecting the member states' autonomy, combined with general principles like the subsidiarity principle and the principle of respect for the identity of the member states. The proper "federal balance" in the Union is not a product of static legal determination but can only be the result of a political process."((5))

III. Constitution of Lithuania, future accession and demarcation of the EC/EU competences: general remarks

Lithuania has regained its independence in 1990-1991 after fifty years of foreign occupation and annexation. From the Lithuanian perspective, sovereignty and independence are not only theoretical or historical questions with rather academic colours. With respect to Lithuania, the problem of delimitation of national and EC/EU competencies after its

accession to the Union would become of great importance.
It goes without saying that the Constitution of Lithuania does not contain so-called "Community clauses" providing for the transfer of sovereignty to the European Union, direct effect and supremacy of EU law over national law. Nevertheless, membership in the European Union calls for a transfer of a certain portion of the Member State's sovereignty to the Union. Federalist tendencies would lead to a situation where legislation is enacted mostly at EU level: 70, 80 or more percents of legal instruments having direct effect or being transformed by way of transposition. Undoubtedly, the transfer of sovereignty to the European Union also implies the exercise of sovereign powers of the Member States in common in the European Union. This is clearly reflected, for example, in Article 88-1 of the Constitution of France:

"Article 88-1
La République participe aux Communautés européennes et à 1'Union européenne, constituées d'Etats qui ont choisi librement, en vertu des traités qui les ont instituées, *d'exercer en commun certaines de leurs compétences*."(our emphasis added)((6)).

The membership in the European Union accords to every Member State a right to take part in adopting acts of the EU bodies and at the same time a possibility to protect its national interests. This applies, in particular, to the participation of the Member State in the adoption of the European Council of such binding legal acts as regulations. In connection with this, the legislative bodies of the Member State must be informed about the drafts (proposals of the new regulations and directives, etc.) in order to give a possibility to its national parliament to express its position on the adoption of such acts and on their contents, especially when these acts concern national interests. Because the interests of a Member State in the European Council are represented by the representatives of the government of this State, the government has a possibility to inform the parliament about the drafts (proposals) of binding acts. One may find modern constitutional provisions reflecting these issues, for instance, in Article 88-4 of the Constitution of the French Republic adopted on the basis of the Constitutional Law of June 25, 1992 (as amended after Amsterdam Treaty), which amended the Constitution of the French Republic with Title XV "On the European Communities and the European Union" in connection with the ratification of the 1992 Maastricht Treaty on the European Union. Article 88-4 of the Constitution of France sets forth:

"Article 88-4
Le Gouvernement soumet à 1'Assemblée Nationale et au Sénat, dès leur transmission au Conseil de 1'Union européenne, les projets ou propositions d'actes des Communautés européennes et de 1'Union européenne comportant des dispositions de nature législative. Il peut également leur soumettre les autres projets ou propositions d'actes ainsi que tout document émanant d'une institution de 1'Union européenne. Selon les modalités fixées par le règlement de chaque assemblée, des résolutions peuvent être votées, le cas échéant en dehors des sessions, sur les projets, propositions ou documents mentionnés a 1'alinéa précédent."((7))

Similar provisions are established in Article 23 (European Union), paragraph 3 of the German Constitution (Grundgesetz):

“Artikel 23 [Europäische Union] (extract)
(3) Die Bundesregierung gibt dem Bundestag Gelegenheit zur Stellungnahme vor ihrer Mitwirkung an Rechtsetzungsakten der Europäischen Union. Die Bundesregierung berücksichtigt die Stellungnahmen des Bundestages bei den Verhandlungen. Das Nähere regelt ein Gesetz.”((8))

Does the Constitution of the Republic of Lithuania prohibit the transfer of a part of State sovereignty and competences to the EC/EU? Article 1 of the Constitution declares:

“The State of Lithuania shall be an independent and democratic republic.”

Accession to the European Union and transfer to its bodies of a portion of State sovereignty does not at all mean that this State loses its independence or features of its democratic system. The Member States of the European Union remain the players of international relations and the members of international organisations((9)). On the other hand, under the Treaty on European Union, by the implementation of its common foreign and security policy the Union might ensure common defence of its members (Articles 2 (ex Art. B) and 24 (ex Art. J.4) and in this way protect the independence of its members; “the Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy” (Article 6 (ex Art. F), paragraph 2).
Accession to the European Union does not mean loss of independence or its limitation; it means delegation of a part of one’s State competence to the EU bodies along with the consent to transfer one’s sovereign rights in certain areas defined in the treaties establishing the Communities and the Union. Reference to Articles 2 and 3 of the Constitution is relevant at this point:

“Article 2
The State of Lithuania shall be created by the People. Sovereignty shall be vested in the People.

Article 3
No one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the People. The People and each citizen shall have the right to oppose anyone who encroaches on the independence, territorial integrity, or constitutional order of the State of Lithuania by force.”

Analogous or similar provisions were established in the constitutions of France, Italy, Spain, Portugal and some other States but they have not prevented those countries from becoming members of the European Communities, and subsequently of the European Union.((10))
The above mentioned and similar constitutional provisions do not mean prohibition of transfer of certain issues of state competence to international organisations; they point to the source of sovereignty – the people – and prohibit usurpation of sovereignty in the hands of individuals or groups. The above provisions were not an obstacle for Lithuania when in 1991 it became a member of the United Nations; one of the bodies of the UN, the Security Council is empowered to adopt resolutions for the maintenance of international peace and security which are binding on UN Member States (Article 24 of the United Nations Charter); nor were those provisions an obstacle when in 1995 Lithuania ratified the European

Convention for the Protection of Human Rights and Fundamental Freedoms which provides that judgements of the European Court of Human Rights are binding on the High Contracting Parties and that the Committee of Ministers of the Council of Europe shall supervise their execution (Article 46 of the Convention).

Of course, the essential distinction should be made between "traditional" international organisations, such as the United Nations, its specialised agencies (ILO, ICAO, etc.), the Council of Europe, etc., in which Lithuania is a Member State, on the one hand, and the European Union, on the other hand. Membership in the UN does not require the transfer of sovereign powers to organs of the United Nations, not even to the Security Council, whereas membership in the European Union means membership in a supranational organisation since the legislative powers in large areas are delegated by the States to the institutions of the Union. The same concerns the competence and jurisdiction of the International Court of Justice, on the one hand, and the competence and jurisdiction of the Court of Justice of the European Communities, on the other hand. The competence of the ICJ is to adjudicate, on the basis of public international law, the disputes between States; its jurisdiction is optional. The ECJ is competent to adjudicate cases that from the traditional point of view of public international law would be within the exclusive jurisdiction of State, its domaine reservé. Nevertheless, the membership in the European Union is a membership in an international organisation, even supranational. In this respect it should be noted that the Constitution of the Republic of Lithuania contains special a provision dealing with the accession of Lithuania to international organisations.

Article 136 stipulates:
"The Republic of Lithuania shall participate in international organisations provided that they do not contradict the interests and independence of the State."

As a matter of principle, the constitutional principles and objectives of the Community and the Union do not contradict the principles and objectives of the Lithuanian constitutional system. Moreover, in most cases they could beregarded as corresponding and coinciding. With regard to independence, anadditional argument could be found in favour of making the conclusion that after the accession to the EU Lithuania would not lose its independence according to public international law. It seems that the Member States of the EU still possess traditional customary international law qualifications of theStates which have been already codified in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States:

"The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States".

The transfer of sovereignty to the Union in the areas defined by the EC and EU treaties does not deprive the Member States of such traditional elements of statehood in international relations. This is a matter of transfer of certain sovereign powers, rather than the loss of control of the Government over population and territory. Free movement of persons in the Community has nothing to do with the existence of "a permanent population" of a Member State. The same concerns the citizenship of the Union: by introduction of the citizenship of the Union there was no intention to replace national

citizenship
of a nation-State. Citizenship of the Union is limited only to those who have the nationality of one or the other of the Member States and that Member States retain full powers to define conditions of their nationality. The Union does not possess its own territory or power to change "a defined territory" of the Member States. As for "government", the institutions of the Union, such as the Council and the Commission, acting within the powers conferred to them by the EC and EU treaty, do not substitute the governments of the Member States. Here, in addition, the principle of sovereignty is applicable.

Finally, the "capacity to enter into relations with other States" could be linked to the question of external relations of the European Community, where, according to and in the limits of the EC treaty, the Communities have exclusive competence (common commercial policy, common fisheries policy and, to some extend, competition) or shared competence with its Member States (transport, research and technological development, environment, development and assistance policy, protection of intellectual property, etc.). There is authority for the view that shared competence is the general rule, and exclusive Community competence the exception; besides, certain provisions of the treaties expressis verbis provide that the existence of Community competence does not prejudice the competence of the Member States to negotiate in international bodies and to conclude international agreements (Articles 111 (5), 174 (4), 181, etc.).((11)) Membership in the Union does not deprive a State of its general capacity to enter into relations with other States, i.e. of an element of its international legal personality, including capacity to conclude international treaties, to be admitted into international organisations and to bring international claims.((12))

The above analysis shows that the Constitution of the Republic of Lithuania does not prohibit accession of Lithuania to the European Union and does not create obstacles for respect of the obligations which Lithuania would assume in connection with its membership in the European Union. It may also be presumed that under the provisions of Article 138 of the Constitution and Article 11 of the 1999 Law on the International Treaties, such legal acts of direct application as regulations and decisions passed by the bodies of the EU would become a part of the legal system of the Republic of Lithuania because this would stem from the treaties ratified by the Seimas (Art. 138 of the Constitution) and would even have supremacy over Lithuanian laws and other legal instruments (Art. 11 of the 1999 Law). However, this legal presumption is hardly a sufficient ground for solving this fundamental issue. The problem of transfer of sovereignty could arise with regard to the interpretation of Articles 4 and 5 of the Constitution:

"Article 4
The People shall exercise the supreme sovereign power vested in them either directly or through their democratically elected representatives.

Article 5
In Lithuania, the powers of the State shall be exercised by the Seimas, the President of the Republic and Government, and the Judiciary. The scope of powers shall be defined by the Constitution. (...)"

First of all, since Articles 4 and 5 provide for the exercise of the supreme sovereign power and the powers of the State directly, through democratically elected representatives, by the Seimas, the President, the Government and the Judiciary, the exercise even of a part of these powers to the EU institutions could raise the questions about the constitutionality of such transfer. It would necessitate the amendment of the Constitution with the provision devoted to the transfer of sovereignty or State competence to the European Union. In preparing for the membership in the EU, the Republic of Lithuania also has to make a provision in its Constitution that the binding legal acts adopted by the bodies of the European Union are directly applicable in the legal system of the Republic of Lithuania and have precedence when the laws and other legal acts of the Republic of Lithuania are contrary to them.

IV. Drafting constitutional amendments with the "Community clauses" in Lithuania

On the 7th of January 1998, the Chancellery of the Seimas (Lithuanian Parliament) established a working group which was asked to draft necessary legal acts for the accession of Lithuania to the European Union. The author of this paper was a rapporteur of the working group. On the 15th of September 1998, this working group submitted to the Chancellery the first draft consisting of the project of draft amendments to Articles 135 and 138 of the Constitution of the Republic of Lithuania. In its scope this draft was limited to so-called "Community clauses" which, in the opinion of the working group, should be introduced into the Constitution of Lithuania, i.e. the transfer of a part of State competence to a supranational international organisation, internal procedures concerning proposals of Community measures, the principles of direct effect and supremacy of the Community measures, etc.((13)) At the same time, it should be noted that this draft, in comparison to the drafts referred to below, did not concern some special provisions of the Constitution which could give rise to the questions on their compatibility with the acquis communautaire, i.e. acquisition of land property (Article 47 of the Constitution) and local elections (Article 119). The draft of September 15, 1998 was discussed in the Committee of European Affairs of the Seimas, however, without any follow up.

The issue of the conformity of the Constitution with Community law was further discussed during the seminar-workshop "Constitution of the Republic of Lithuania and accession to the European Union" organised by the European Law Department of the Government of Lithuania together with SEIL/PHARE Project in Vilnius on the 28th of July 2000. The participants of the seminar-workshop have discussed draft proposals prepared by the author of this paper.((14))

The drafting of proposals of the constitutional amendments related with the future accession of Lithuania was also included into the Action Plan for the Implementation of the Programme of the Government of the Republic of Lithuania (1999/2000). Under this Action Plan, on the 23rd of October 2000, the European Law Department of the Lithuanian Government has submitted to the Government the draft, which was prepared to take into consideration the opinions and comments of Lithuanian and foreign experts and the experience of previous travaux préparatoires. The Government has preliminary approved this draft and submitted it to the Seimas (Parliament).((15)) However, under the constitution of Lithuania the government is not empowered to initiate constitutional amendments.

Constitutional amendments can be initiated only by a group of members of the Seimas consisting of not less than one fourth of the MP's, or a constitutional referendum initiative of 300 000 citizens. Thus, the process of constitutional amendments has not even started.

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1) ICJ Reports 1949, p. 178-179

2) The pioneer and ground-breaking case was Van Gend and Loos (26/62) when the Court made the conclusion that "the Community constitutes a new legal order of international law", [1963] ECR 1.

3) See e.g. Lanaerts, Koen/Van Nuffel, Piet, Constitutional Law of the European Union, London:Sweet and Maxwell, 1999, pp. 88-98.

4) Article 49 (ex Article 0) of the TEU provides for (extract): "Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union".

5) Pernice, Ingolf, Which institution for what kind of Europe? Proposals for the Reform of the European Union in the Year 2000. Berlin, May 1999, p. 4. (In: http://www.rewi.huberlin.de/whi/english/papers/proposalseu2000/ index.htm).

6) English translation: "Article 88-1
The Republic shall participate in the European Communities and in the European Union constituted by States that have freely chosen, by virtue of the treaties that established them, to exercise some of their powers in common." (our emphasis added)

7) English translation: "Article 88-4 The Government shall lay before the National Assembly and the Senate any drafts of or proposals for instruments of the European Communities or the European Union containing provisions which are matters for statute as soon as they have been transmitted to the Council of the European Union. It may also lie before them other drafts of or proposals for instruments or any document issuing from a European Union institution. In the manner laid down by the rules of procedure of each assembly, resolutions may be passed, even if Parliament is not in session, on the drafts, proposals or documents referred to in the preceding paragraph."

8) English translation: "Article 23 [European Union] (extract) (3) The Federal Government shall give Bundestag opportunity to state its opinion before it takes part in drafting the European Union laws. The Federal Government shall take account of the opinion of the Bundestag in the negotiations. Details shall be the subject of a law."

9) See Macleod, I./Hendry, I. D./Huett, S., The External Relations of the European Communities. Oxford: Clarendon Press, 1998, pp. 195-206.

10) See Kriauinas, D., Konstitucines Lietuvos narysts Europos Sajungoje problemos – Lietuvos integracija Europos Sajung: bkles, perspektyv ir pasekmistudija. Vilnius: Europos integracijos studij centras, 1997, p. 167-168.

11) MacLeod, I./ Hendry, I.D / Hyett, S., The external relations of the European Communities,Oxford: Clarendon Press, 1996, p. 64, 235, etc.

12) As the International Court of Justice stated in its advisory opinion in the Reparation for Injuries (1949) case: "What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims". - ICJ Reports 1949, p. 179.

13) See Stojimas Europos Sajung Konstitucija. Seminaro mediaga 1999 06 29-30. Vilnius: Eugrimas, 200, pp. 125-161; Vadapalas. V., Independence and Integration - Constitutional Reform in Lithuania Preparing its Accession to the European Union", in: Verfassungrechtliche Reformen zur Erweiterung der Europäischen Union. Forum Constitutionis Europae - Band 2. Baden-Baden: Nomos, 2000. S.9-22.

14) See Vadapalas, V., "Questions concerning National Level in Lithuania", in: The Constitutional Impact of Enlargement at the EU and National Level. Reader: Provisional reports and documents. Colloquium on European Law. Millenium Session XXX. The Hague, 20-23 September 2000, pp. 139-140.

15) Draft (Unofficial translation, extract, draft amendments in bold letters) REPUBLIC OF LITHUANIA LAW ON THE AMENDMENT OF ARTICLES 47, 119 AND 136 OF THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA :
"Article 136
(1) The Republic of Lithuania shall participate in international organisations provided that they do not contradict the interests and independence of the State.
(2) With the view of taking part in European integration and common European affairs, as well as the assuring security of the Republic of Lithuania and welfare of its citizens, the Republic of Lithuania shall participate in the European Union and transfer to the European Union a competence of the State institutions in the spheres defined by the constitutional treaties of the European Union and the European Communities in order to exercise the competence in these spheres together with other States Members of the European Union.
(3) Binding rules of law of the European Union shall be constituent part of the legal system of the Republic of Lithuania and shall have supremacy over the rules established by the laws and other legal acts of the Republic of Lithuania."