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Jurisprudential Approach to the Relationship between Law and Politics in Lithuania

Abstract

The interaction between law and politics has been an object of discussion in many dimensions, including a legal theoretical perspective. This research is based on the methodology of theoretical work of M. Zamboni[4] who has classified various approaches of contemporary legal theories and introduced typical models of how law relates to politics. The following investigation provides substantive practical observations in accordance with M. Zamboni's methodological framework, further distinguishing aspects of 1) the relationship of law to politics (static aspect); 2) the relationship between law-making and political order (dynamic aspect); 3) the relationship of legal discipline to political material (epistemological aspect). The investigation concentrates on the national context – explicitly on the case of Lithuania, providing reflective practical indications and substantive outcomes about the relationship between law and politics. We argue that the relationship between law and politics should cover multidimensional aspects, including law-making, structural changes in the performance, interaction in the educational system.

Keywords

law and politics, interaction between law and politics

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1. Introduction

The relationship between law and politics has been a subject of research in various dimensions since the establishment of government[5]. The intensity and inevitability of connection of these two instruments reveals mostly through the reciprocal contact. It is acknowledged, that politics cannot exist without law, since the latter develops and maintains it within the operational limitations. The same way, law can't exist without politics, since politics gives to law substance, which law adapts to its autonomous framework and develops its final form, expressed in the specific normative manner[6]. It is also claimed, that interaction between law and politics might come either as partnership or as competitive relationship[7]. Regardless the type of interaction, currently there is no unified method in researches how to approach the subject of relationship between law and politics. Even more, the research has become a subject for discussion in a range of multiple dimensions. It covers fields of studies like legal and political theory[8], globalization[9], and international politics[10]. It also discusses issues at a level of European Union[11] or refers to national or federal contexts[12] and governance[13].

The interaction between law and politics is usually followed by concepts of 'judicialization of politics' and 'politicization of law'. Though 'judicialization' is considered to be a 'profound shift in power away from legislatures and toward courts and other legal

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5 See H.J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition.* Cambridge, Massachusetts: Harvard University Press. 1983, pp. 657; P. Dinzelbacher [Hrsg.]. Europäische Mentalitätsgeschichte. Hauptthemen in Einzeldarstellungen. Stuttgart: Alfred Kröner Verlag, 1993, Vilnius: Aidai, 1998, s. 429−484.

6 M. Cerar, 'The Relationship Between Law and Politics', 2009 *Annual Survey of international & Comparative Law*, no. 15, p. 23.

7 Ibid., p. 22.

8 See M. Zamboni, *Law and Politics. A dilemma for contemporary Legal Theory,* 2010, pp.1−146; V. Petev, 'Contributions of the Law to Political Deliberation. Comments on Peter Fitzpatrick's ``Consolations of the Law', 2001 *Ratio Juris,* no. 14, pp.406−414; C. Engel & A. Héritier, 'Linking Politics and Law',2003 *Common Goods: Law, Politics and Economic*, no. 9, pp. 7−22.

9 See Paulus, 'Law and Politics in the Age of Globalization', 2000 *European Journal of International Law,* no. 11, pp. 465−472.

10 See R. Hirsch, 'The Judicialization of megapolitics and the rise of political courts', 2008 *Annual Review of Political Science,* no. 11, pp. 93−118; M.Finnemore & S. J. Toope, 'Alternatives to 'Legalization': richer Views of Law and Politics', 2001 *International Organization,* no. 55, pp. 743−758.

11 See M. Everson & C. Joerges, 'Reconfiguring the Politics–Law Relationship in the Integration Project through Conflicts–Law Constitutionalism', 2012 *European Law Journal*, no. 18, pp. 644−666. M. Everson and C. Joerges argues, that 'conflict–law constitutionalism cannot solve Europe's many crises. However, it does represent a new paradigm of law within which relations between European law and European politics might be re-established—a vital step to overcoming crisis'.

12 See B. Blair, 'Law and politics in Germany', 1976 *Political studies,* no. 26, pp. 348 -362; M. Accetto, 'On Law and Politics in the Federal Balance: Lessons from Yugoslavia', 2007 *Review of Central and East European Law*, no. 32, pp. 191−231.

13 See M. Wilkinson, 'Three conceptions of law: towards a jurisprudence of democratic experimentalism', 2010 *Wisconsin Law review,* no. 2, pp. 673−718.

institutions around the world'[14] we could depict that a lot of relative research concentrates upon the system of courts. Most of the research of *national cases* presents the politicization effect explicitly concerning Constitutional Court. It has either historical approach[15] (like the case of Yugoslavia or events in Thailand, Egypt and thereby further) either solely theoretical view[16], either portraits significant fragments out of Constitutional Court's practice[17] (cases of Germany, Brazil and thereby further). One may find that discussing relationship between law and politics mainly involves the role of courts.

We argue, that relationship between law and politics has a multidimensional aspects and shouldn't be focused only to the relationship between courts and political actors. This way the concept of law is narrowed to the most evident representatives and leaves out the other components. A narrow approach, concerning certain aspects (like system of courts), could only partially reflect the interaction between law and politics. Therefore one of the first challenges and essential thresholds in research is interdisciplinarity and a multi-layered nature of this topic. The following study overcomes this problem by referring to one of the disciplines – in this case – law, as a theoretical background and a methodology providing richer view to relationship between law and politics. Hence representative of legal theory – M. Zamboni – designed a well-grounded method for investigation of relationship between law and politics. Although the research was carried out referring to a field of legal theory, but one of its most valuable aspects was the transferable methodology. *The adoption of methodology was used only partially, while seeking to identify and clarify practical features of static, dynamic and epistemological aspects of the relationship of law and politics in Lithuania.* It enables to distinguish separate dimensions of relationship between law and politics likewise to implement research focusing not only to legal theory, but also to practical experience.

The geopolitical situation indicates that the research of relationship between law and politics becomes more relevant at both dimensions – theoretical and practical. Sudden and sharp changes of interaction of these two institutes might evolve even to the changes in the system of government. Accordingly there is a demand for well structured relevant studies at a national context. This study refers to the relationship between law

[14] J. Ferejohn, 'Judicializing politics, politicizing law', 2000 *Law and contemporary problems,* no. 65, p. 41.

[15] See M. Accetto, 'On Law and Politics in the Federal Balance: Lessons from Yugoslavia', 2007 *Review of Central and East European Law*, no. 32, pp. 191−231; B. Dressel, 'Judicialization of politics or politicization of the judiciary? Considerations from recent events in Thailand', 2010 *The Pacific Review,* no. 23, pp. 671−69; T. Moustafa, 'Law versus the State: The Judicialization of Politics in Egypt', 2003 *Law & Social inquiry*, no. 28, pp. 883−930.

[16] See V. Petev, 'Contributions of the Law to Political Deliberation. Comments on Peter Fitzpatrick's "Consolations of the Law"', 2001 *Ratio Juris,* no. 14, pp. 406−414.

[17] See B. Blair, 'Law and politics in Germany', 1976 *Political studies,* no. 26, pp. 348 -362; E. M. Q. Barboza & K. Kozicki, 'Judicialization of Politics and the Judicial Review of Public Policies by the Brazilian Supreme Court', 2013 *Diritto e questioni pubbliche,* no. 13, pp. 407−444.

and politics in Lithuania, especially since Lithuanian scholars of law carries out only fragmentary research between law and politics. However there were no attempts to investigate the holistic relationship between law and politics in a specific national context also using a well-balanced methodology. Therefore, 1) in the absence of detailed studies of the relationship between law and politics in Lithuania and 2) no practical application of M. Zamboni models, this investigation is a modest input towards comprehensive analysis of theoretical and practical aspects between law and politics.

We remain with the same approach to concepts as it was used and interpreted in a M. Zamboni's study[18]. According to M. Zamboni, the concepts 'Politics', 'political order' and 'political material' are assumed to have almost unique meanings in the different legal theories'[19] and used synonymously in his research. 'They all refer to the different aspects of the political phenomenon as seen from the perspective of the legal actors'[20].

The following investigation is focusing on national realm of activities therefore the *object of research* is the interaction between law and politics at theoretical and practical dimensions in national context of Lithuania. The primary aim of research is to reveal substantial elements of this relationship. The uniqueness of provided research lays in the methodology, which could be applied in practice (starting from Lithuania) in a wide range of researches at national levels, creating a 'barometer' of relationship between law and politics. Investigation of relationship between law and politics is developed using general scientific methods – analysis, synthesis and generalization.

2. Theoretical assumptions for interaction between Law and politics

Scientific research refers to the set of determinants that caused the convergence between law and politics. The reasons lay primarily in a modern society where high emphasis has been set on the relationship, which are based on juridical background. This tendency includes even low significance casual activity that usually doesn't require intervention of legal norms. Second reason unfolds with a vast expansion of the modern welfare state and increasing numbers of regulatory agencies, which have to go through the process of adoption of standardized legal norms. It follows with increased number

[18] The following definitions are: 1) politics (as perceived by legal world) is that it is a complex of values (of an economic, social or moral) as well as processes throughout which such values are then chosen to be implemented by the public authoritative apparatus into the community using the law-making 2) Political order – is a complex of actors, both in their institutionalized forms and in the looser form of interest groups, and their relationships interrelating in the production of politics' 3) 'Political material – is both the conceptual and ideological data shaped by the political actors, but also those created and used by scholars in order to understand, explain and criticize the values chosen and the processes that have led to their selection.

[19] M. Zamboni, *Law and Politics. A dilemma for contemporary Legal Theory,* 2010, p. 16.

[20] Ibid., p. 18.

of issues resolved in administrative courts whose decisions could directly generate an impact the implementation of the sate policy. And finally, judicial institutions are given the power to influence major policy issues (constitutional court), through the process of litigation. Judicial institutions are perceived as an effective decision making bodies[21]. Giving the contribution to active players of politics, one may also find the causes of rapprochement of law and politics lay in the increasing fragmentation of power within the political branches (fragmentation hypothesis). When political branches cannot act, people seeking resolution to conflicts will tend to gravitate to courts for solutions[22].

Despite the general trend of convergence, at the certain level there are stable elements of autonomy between two phenomena. M. Cerar provides a general division of autonomy of modern law into two groups, which follows the 'formal' and the 'material (substantive)' factors. 'The largely formal factors of autonomy of modern law are its specific formalism, abstract nature, generality, systematicity, specific linguistic expression (legal language), and the professionalization of its agents; in the material (substantive) sense the autonomy of law is ensured primarily by its own historically developed and consolidated values (legal tradition), which are distinguished as a relatively independent whole from the political, moral, customary, religious, and other values'[23].

Since the interaction between law and politics could be characterized to have a reciprocal nature, researchers tend to apply different approaches to their investigations. It covers both – national and international context, examining even the topic of judicialization of mega-politics. The latter covers a wide range of issues and controversies like electoral processes and outcome, core executive prerogatives, legitimacy of regime change, transitional justice, defining the nation via court[24]. Often the format of research depends on the field of science the scholar represents and the rage of investigation. The relationship between law and politics might be seen as a process of judicialization of politics, likewise – as a process of politicization of law. The judicialization of politics is characterized to have features like 'the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies'[25]. We have to agree that this is a two-way process: judicialization of politics tends to produce the politicization of courts while courts can make politically consequential deci-

[21] R. Hirschl, 'The Judicialization of Politics', in A. Gregory et al. (eds.), *The Oxford Handbook of Law and Politics, 2009*, pp. 119−128.

[22] J. Ferejohn, 'Judicializing politics, politicizing law', 2000 *Law and contemporary problems*, no. 65, p. 55.

[23] M. Cerar, 'The Relationship Between Law and Politics', 2009 *Annual Survey of international & Comparative Law*, no. 15, p. 24.

[24] R. Hirsch, 'The Judicialization of megapolitics and the rise of political courts', 2008 *Annual Review of Political Science*, no. 11, pp. 93−118.

[25] R. Hirschl, 'The Judicialization of Politics', in A. Gregory et al. (eds.), *The Oxford Handbook of Law and Politics, 2009*, p. 119.

sions. Politicizing courts reveals through politically motivated judicial decisions and partisan contention to the appointments[26] and certainly a role in legislature. J. Ferejohn distinguishes at least three ways in which courts have taken on new and important roles relative to legislatures. Firstly, setting limits and regulating the exercise of parliamentary authority. Secondly, becoming a place where substantive policy is made. Third, willingness to regulate the conduct of political activity itself by constructing and enforcing standards of acceptable behavior for interest groups, political parties, and both elected and appointed officials[27]. Rising above 'judicial' perspective, we could more explicit approach, seeing the interaction of law and politics functioning in three basic aspects, namely as a 'goal', a 'mean' or an 'obstacle'[28].

3. The application of theoretical assumptions of relationship between law and politics in Lithuania

3.1. Static aspect of relationship between law and politics in Lithuania

Despite the assumption that law cannot be completely independent upon politics most scholars of law theory agree that there must be a certain point where they stand apart. It means that 'the content of law is separate from or identified with politics only to a certain extent'[29]. M. Zamboni's study focuses on weather law theories 'explicitly embrace the idea that law and politics has to be studied as two different phenomena, as two similar phenomena or as two intersecting phenomena'[30]. In order to reveal a 'static' aspect of relation between law and politics in a context of national practice, we are looking for an answer if law could be characterized either as 'flexible' or 'rigid' to politics. The central question is whether the law, as perceived by legal actors, changes its shape and manner of functioning in accordance to the values the political actors aim[31]. In principle it means answering a question if the law is adapting forms and mechanisms according to political substances it carries. There are several features that correspond to addressed issue:

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[26] J. Ferejohn, 'Judicializing politics, politicizing law', 2000 *Law and contemporary problems,* no. 65, p. 65−66.

[27] Ibid., p. 41.

[28] M. Cerar, 'The Relationship Between Law and Politics', 2009 *Annual Survey of international & Comparative Law*, no. 15, p. 19.

[29] M. Zamboni, *Law and Politics. A dilemma for contemporary Legal Theory,* 2010, p.6.

[30] Ibid., p. 5.

[31] Ibid., p. 7.

3.1.1. Preferences in law making

The flexibility between law and politics could be revealed by investigating the range of prioritized state governing spheres. Preferences in law making could be carried out firstly by making changes to the content of legal regulation and, as equally important, by choosing various forms and frequency of legislation for that purpose. That way law could be capable to make changes in its shape and manner according to political demand. In this case the political actors are focusing and updating legal framework according to political predetermination. Furthermore, they also use a wide range hierarchy of legal norms. It should be presumed that any significant imbalances in law-making enables to state that there is flexibility between law and politics. On the other hand, inconsiderably larger or smaller scale of disproportions in legislation could be a natural functioning of legislative. To be more accurate, significant imbalances uncovers in a high concentration of legislation in specific field of social life and that is done without any considerable reason (like military threat, economic crisis or etc.) In this case law is being used as a tool for the purposes of political actors and fulfils requirements determined by external sources. Following this idea the relationship between law and politics in Lithuanian legislation could be characterized as more flexible than rigid ones. We are able to observe disproportions in legislation which could be identified as outcomes of intensive political interference. For example in the period or 2008−2011 Lithuania's parliament enacted approximately 76 legal acts in a field of finance, while in the municipality sphere it was improved only 14 times, similarly the environmental protection questions resolved in 10 legal acts[32]. Another example – in the period of 2010−2011 legislation in the field of military protection exceeded seven times (in numbers) the field of education, science and culture matters combined all together. It is obvious that these priorities do not reflect a balanced regulation of state matters, but rather an exceptionally high preferences in law making.

3.1.2. Prioritized spheres of law

Certain flexibility of law to politics is also reflected in a tendency to distinguish and prioritize separate branches of law. This type of practice has evolved out of government's constant pursuance of economic stability and financial well-being. Finance has been always one of the top questions in law making in Lithuania[33]. Ultimately it leads

[32] Office of the Parliament of the Republic of Lithuania. Available at http://www3.lrs.lt/pls/inter/w5_show?p_r=8335&p_k=1 (last visited 9 March 2015).

[33] Following the statistics of separate spheres of legislation (up to 18) of Lithuania's Parliament in 2008−2013, we find that field of finance is usually one of the top three, outnumbered only by the field of military protection and operational performance of Parliament (also competing with the field of legislation considering social guaranties). See Office of the Parliament of the Republic of Lithuania. 2013 Report on activity in 2008−2013, p. 78. Available at http://www3.lrs.lt/pls/inter/w5_show?p_r=8335&p_k=1 (last visited 9 March 2015).

focusing more on commercial legal relationship. Lithuanian scholars demonstrate an ambiguous position towards aforementioned rapprochement of commercialization to law. One of the most famous Lithuanian legal theory specialists – A. Vaišvila – states that science of law could be performing a function of 'intelligence' to business development. General recognition of business priority causes transformation of the preferences in traditional branches of law: the priority is given to civil, commercial and international law, comparing to criminal, and administrative law[34]. There is also a different approach towards commercialization of law. It refers to one of undesirable aspects of commercialism. Certain negative outcomes might evolve because of changing perception of initial purpose of concept of law – it is moving away from perception that law is serving to the public good[35]. The same pattern of commercialism is also observed in the field of lawyers profession. Is stated that 'commoditizing of the law and consumer awareness, certainly have shaken up the foundations of the legal profession and require the renewed approach to seemingly immovable values including the principle of lawyer's independence.'[36] This is a reflection of how accustomed manner of law is being changed according to external demands.

With particular reference to the changing manner of law, caught up in commercialization and following exclusion of separate branches of law, it is important to emphasize the existence of direct link to the political will. Ultimately it implies 'flexibility' of law to politics.

3.1.3. Modifications in operational structure of law

Rapid movement to commercialization also has made adequate changes towards expectations associated with law. Due to commercial interests, law has been orientated to more practical objectives like efficiency, convenience and benefit. This type of changes implies that law could be flexible to political-commercial interests. One of the most notable examples would be the establishment of a system of alternative dispute resolution (hereinafter ADR). ADR was introduced to Lithuanian legal system soon after restoration of independence. Firstly, the Law on commercial arbitration had been passed (in 1996) and then it was followed by the Law on Conciliatory Mediation in Civil Disputes (in 2008). These new laws of dispute resolution provided a complementary mechanism to judicial system, except the fact that the main goal was not 'justice', but an 'ef-

[34] A.Vaišvila, 'Law as Instrumental in Money Loss Prevention and Lost Money Recovery', 2004 *Jurisprudenc*e, no. 61, p. 117.

[35] V. Šlapkauskas, 'Deterioration of Law as a Social Institution: the Impact of Commercialized Democracy', 2009 *Jurisprudenc*e, no. 4, p. 280.

[36] J. Kiršienė, 'Principle of Lawyer's Independence in the Context of Commercialization of the Legal Market: Remnant or Necessity', 2014 *Jurisprudenc*e, no. 21, p. 684.

fective' decision. The feature of flexibility (law to politics) appears when priority of dispute settlement is given to 'effectiveness' rather than to the search for the 'truth'. For example, 'judicial mediation' operates as a tool for achieving cost-effectiveness in resolving a dispute (the maximum benefit at the lowest cost). Currently this complementary system of ADR is being applied to a limited range of civil legal relations in Lithuania. Though considering the rapid development of commercialization and 'cost effective' tools, it may be only a matter of time, when international practice in ADR will be adopted, and the range of ADR will be expanded to the other branches of law. For example, it's been decades for USA to use ADR in a field of public law. The existing legal regulation in Lithuania merely developed ADR in administrative practice so far, although there are few agreements of peace, based on the competing interests in the administrative case law[37]. Current legislation allows conflicting parties to solve certain administrative disputes by peaceful means, and some legal acts allow public administration to act in the capacity of a mediator[38]. Consequently it is possible to identify several substantial trends: firstly the need for faster and more cost effective resolution of legal disputes leads to seeking for other than usual structures of law. Secondly, law is no longer identified only with the value of justice but also is given a role of a mediator. The authorship of recent developments, of course, belongs to political actors and the interested social groups behind them. This is one of reasons why law could be characterized as flexible to politics.

Finalizing the position of Lithuanian researchers and insights out of practice, it could be stated, that legal mechanism and its content is more flexible to various forms of external effects than rigid to them. Primarily, this outcome results from notable disproportion in legislation, prioritized spheres and emerging commercialization in law, and finally visible modifications in operational structure of law.

3.2. Dynamic aspect of relationship between law and politics in Lithuania

In a set of perspectives how to investigate relationship between law and politics the dinamic aspect distinguish oneself by investigating relationship between law-making and political order. It also provides two characteristics of 'open' and 'closed' law making. An autonomous model characterized to have closed law-making. The closeness of law making in the this model 'results from the view by legal positivists and analytical legal philosophers that law-making receives inputs from the political order, but once these inputs arrive into the law-making, they are treated purely according to the rational-

[37] U. Trumpulis, 'Theoretical and Practical Assumptions Regarding the Application of Mediation while Solving Administrative Disputes in Lithuania', 2012 *Jurisprudence*, no. 19, p. 1434.

[38] Ibid., p. 1436.

ity and parameters offered by the legal order itself.'[39] This way the process of law-king is perceived as a politically neutral structure. Contrary 'the embracers of the embedded model then consider law–making as a mechanism whose manner of working and results are predominately determined by the battles taking place within the political arena'[40]. 'Scholars within modern natural law theory, CLS (critical legal studies) and the school of Law and Economics see law – making as open'[41] So 'within the embedded model, law–making is open to the political order in the sense that there is no clear distinction between the formation and the process of selection of certain values inside the political order and the formation and selection of certain corresponding legal categories inside the law-making procedures'[42]. Here are following features that correspond to this approach at practical level in Lithuania.

3.2.1. Interference of politics to the process of legislative initiatives.

There are more than a few features of open law-making in Lithuania. Primarily, a legal definition[43] of 'law-making' itself implies that law-making in Lithuania could be treated as an open process. This definition integrates more than the closing stages of legislative process, like adoption of legislation and promulgation. It also includes primary processes like drafting and legislative initiatives.

It is difficult to distinguish and clearly define when a draft out of 'political arena' becomes a 'legal' category. It shouldn't be related only with a lawyer's craft. Hypothetically, it may happen, that a certain proposal will not be 'transformed' into legal categories by professional lawyers. For instance, members of Parliament (who are politicians – not lawyers) can propose certain amendments in drafts, which will not be transformed into legal categories. Secondly, this also applies to certain cases of legislative initiative of citizens[44]. On the other hand, it is possible to identify features of closed type of law-making, what concerns legislative initiatives. For instance, citizens are provided with attributes of e-democracy to follow the development of legal acts at various stages

[39] M. Zamboni, *Law and Politics. A dilemma for contemporary Legal Theory,* 2010, p. 30.
[40] Ibid., p. 62.
[41] Ibid., p. 62.
[42] Ibid., p. 61−62
[43] Having regard to the Law on Legislation, the law making process, combines legislative initiatives, preparation of drafts, the adoption of legislation, signing and promulgation. See Lituanian legislation: Lietuvos Respublikos teisėkūros pagrindų įstatymas. *Valstybės žinios*. 2012, Nr. 110−5564. Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453597 (last visited 9 March 2015).
[44] This may be the case of legislative initiatives for fifty thousand of citizens. Having regard to Article 13 of Law on Citizens legislative Initiatives, the draft is being registered in the Parliament, as soon as Agency of Central Electoral Commission of the Republic of Lithuania concludes that there is a sufficient number of signatures. See Lietuvos Respublikos piliečių įstatymų leidybos iniciatyvos įstatymas. *Valstybės žinios*. 1999, Nr. 1−5. Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=111993 (last visited 9 March 2015).

of drafting, merely by using specific instruments in governmental e-sites[45]. Further on, civil service responds to these inquiries or propositions, related to the matter in the draft and ultimately, these proposals are constructed/expressed using a legal terminology and transferred to responsible authorities. At that point legal rhetoric is inevitable and it may draw the line between law and politics.

We could also notice a tendency of openness to political processes mainly because of political actors' aspiration to cover the field of legislative initiatives. Extensive activity also might be visible in their actions, and to be more accurate, their effort to use specific legislative initiatives which are designed for the benefit of ordinary citizen[46]. Despite the fact that members of parliament are entitled to make direct proposals in the law-making procedure, they still tend to use the system for legislative initiatives (which are set for ordinary citizens in order to reach the legislature). For example, during the years of independence, more than a half of the initiatives of referendums were launched with participation/initiation of politicians[47] and not by ordinary citizens or their associations. A similar situation is discovered investigating other citizens' initiatives for legislation. For instance, political parties are not entitled to use a right of petition addressing to governmental and administrative institutions in Lithuania, though a politician can easily bypass this restriction. No one could prevent any politician to prepare the text of petition and to distribute it to an unlimited number of citizens, although it wouldn't be a regular phenomenon. Finally, various ways of interference of political actors to the process of legislative initiatives portrays how politics affect, or even overtake, the field of legislative initiatives, which in turn indicates the feature of openness.

3.2.2. Supplementary resources in legislative process

The following important feature of an open law-making is the willingness to incorporate supplementary means and resources to the legislative process. One of them is a specialized data provided by sociologists. According to the representatives of sociology, the help of sociologists in the legislative processes is irreplaceable. This opinion is grounded by declaring that liberal democracy demands to show an adequate sensitiveness to public opinion during the legislative process. Therefore, the legislative body must understand social functioning of law, so that it would be able to shape social con-

[45] Citizens are able to use a specific instrument in the Parliament's governmental site to propose an amendment for the drafts in the sector 'your suggestions and comments'.

[46] It includes a right to petition or legislative initiatives, designed for collective actions like proposal for legislation of fifty thousand of citizens, or initiative for referendum which requires three hundred thousand of signatures of citizens.

[47] See Agency of Central Electoral Commission of the Republic of Lithuania. 2012, Available at http://www.vrk.lt/documents/10180/432567/2340_referendumai2012−06.pdf/84adb4dc-41c4−44c3−896d-2aff437125d3 (last visited 9 March 2015).

sequences of the legislation[48]. The pioneer of Lithuanian sociology of law – V. Šlapkauskas – notices that modern Lithuanian jurisprudence and legislation only episodically refers to sociological approach[49]. Researcher declares that this type of policy could lead to negative social consequences and proposes instrument of 'sociological assistance'. It is a specific procedure for assessment of social impact and effects of legislation. The Law on framework of the legislation in Lithuania commands to indicate positive and negative consequences of drafts and also orders to assess the impact for the economy, public finances, social environment and other areas of social life. This regulation opens widely the door for an assistance of sociology in law making process, but there is no obligatory mechanism, which could connect them directly.

3.2.3. The question of judicial legislation[50]

Further investigation of flexibility of law and politics leads to the system of justice and a phenomena called 'judicial legislation'. We have to agree, that 'the process of legal production (either in a legislative, judicial or scholarly form) on the creation of new norms, categories and concepts, is viewed as strongly affected by political environment'[51]. Going further, we should ask an essential question whether judicial legislation could be affected by political interference and how we could indicate even a relatively small influence out of politics? Answering these questions brings us to scholar's approach of extensive judicial interpretations in the general system of courts and comments on a doctrine of Constitutional Court of Republic of Lithuania.

Lithuanian legal research reveals that a conservative approach towards judicial work in interpreting and applying the law is gradually changing into more active[52]. The interpretation of legal texts helps to assess specific norm according to the social background of its existence and the ethical point of view[53]. Likewise the interpretational judicial framework is shaped in theoretical and normative legal assumptions like '1) legal interpretation is associated with non positivist conception of law, when law is defined through the unity of justice, permissions and commandments; 2) the principle of judicial independence; 3) the fact that legal texts are explained by a profes-

[48] V. Šlapkauskas et al., *Teoriniai teisėkūros pagrindai ir problemos*, 2012, p. 105.

[49] Ibid., p.105.

[50] We refer to 'judicial legislation' as a part of machinery of legal production. Although judicial system *de jure* do not participate in a process of legislation, but holds a particular position towards interpretation of legal norms, thus creating a possibility of indirect legislation.

[51] M. Zamboni, *Law and Politics. A dilemma for contemporary Legal Theory,* 2010, p.7.

[52] G. Lastauskienė, 'The Thouthful Disquisition of Legal Text – Panacea or Risk', 2006 *Jurisprudence*, no. 8, p. 69; G. Lastauskienė, '„Interpretative Play ' by Courts and their Doctrinal Assumptions', 2006 *Jurisprudence*, no. 19, pp.1343−1359.

[53] G. Lastauskienė, 'The Thouthful Disquisition of Legal Text – Panacea or Risk', 2006 *Jurisprudence*, no. 8, p. 69.

sional lawyer – a judge; 4) prohibition for a judge to judge in his own case; 5) a provision that legal interpretation is not a separate action, but an integral part of the application of the legislation[54]. Although a classical view to the role of a judge in interpreting the law is still being 'universally recognized and widely used'[55] in Lithuania, there are also indications and criticism for an extensive judicial interpretation. Before this criticism accelerated, an entire legal community for decades invited judges to be more active and this way contributed to the current situation which even began to 'irritate not only the members of society, but also started to concern a part of the legal community too.'[56] The main object of criticism is laid down in the fact, that there is no clear system when the principles, and when the direct text of the law should be applied[57]. There are also other critical observations about the interpretation of law like the cases when interpretation made by judges generates a new legal rule. It is declared that 'the real purpose of the interpretation of legal texts is not to create new legal norms but to identify law in those texts'[58] which should be applied. Either way, we are not able to state that scholars find or even look for any connection with politics or its interference. This might be influenced by a combination of both – the respect to model of separation of powers and a heritage of continental law system. The closest connection we are able to detect is the influence of 'social background' (where the actors of politics are in action) in judicial reasoning. So, in this case we are not able to state positive answer about any interference out of politics field (at a given situation), because there is no obvious connection, except the *possibility* of indirect and not obvious interference referring to a more active role of judges. Quite different situation reveals concerning the doctrine of Constitutional Court.

Continuing to examine the extensive powers of court, we may find that a doctrine of Constitutional Court of the Republic of Lithuania is a separate sphere, where connection between law and politics is not left unseen. Some may find a political interest reflecting in extensive interpretation of Constitution. A relatively large part of constitutionalist acknowledges the right to interpret the main legal document in order to reveal its inner content and do not criticize, or even emphasize, possible ways of exten-

[54] A. Vaišvila, 'Legal Interpretation as Identification of law in the Texts of Statutes', 2006 *Jurisprudence*, no. 8, p. 16.

[55] R. Kazanavičiūtė, 'Alternative Approaches to the Role of Judges in Interpretating and Applying Law', 2009 *Law*, no. 71, p. 160.

[56] G. Lastauskienė, '„Interpretative Play' by Courts and their Doctrinal Assumptions', 2006 *Jurisprudence*, no. 19, p. 1352.

[57] A. Vaišvila, 'Legal Interpretation as Identification of law in the Texts of Statutes', 2006 *Jurisprudence*, no. 8, p. 16.

[58] Ibid., p. 16.

siveness of these interpretations[59]. Significantly smaller part of scholars shows evident disapproval to the legal interpretation of the main legal document, which has features of extensiveness[60], but do not demonstrate critically marginal approach to this issue. And although it does not mean the direct accusations for Constitutional Court of politicking, but it gives grounds for this type of presumption, thus there is no clear expression of what shapes or influences the content of principles which are often used as justification (reasoning) in decisions. Generally we find a formal declaration that Constitutional Court should not interpret Constitution in the way that it might create a new legal rule, because this institution is not provided with the legislative power[61], but in fact there is a considerably large part of supporters of interpretational doctrine. On the other hand, we observe an opposite situation in a public mass media – there is more noticeable critics to extensive interpretations of Constitutional Court, than a supporting tone.

Summarizing, most obvious links between legal and political content reveals through formal legislative side, i.e. what type of data and other aspects of implementation are being evaluated in the drafts. If we follow the ideas of commercialism we will find the requirement for each draft to be evaluated at the performance of its impact on the economy and public finances. The latter indicates both – certain grounds for open and closed law-making procedure, though the investigation of legislative initiatives indicates more features of open law-making than a closed one. Going further, the question of judicial legislation brings us to uncertainty, because the connection between law and political order (referring only to this aspect) is not raised at theoretical level, except the doctrine of Constitutional Court. Consequently, there are indications moving towards openness to political content.

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[59] See E. Šileikis, 'Active Constitutional Jurisprudence as a Method to Influence Legal Issues', 2006 *Jurisprudence*, no. 12, pp. 58−59; V. Sinkevičius, 'What are the Laws and Other Legal Acts whose Compliance with the Constitution is Subject to Review by the Constitutional Court', 20014 *Jurisprudence,* no. 21, p. 907; E. Jarašiūnas, 'Jurisprudential Constitution', 2006 *Jurisprudence*, no. 12, p.31; E. Kūris, 'Konstitucija, Konstitucinė doktrina ir Konstitucinio teismo diskrecija', 2002 *Baltijos ir Skandinavijos šalių konferencijos medžiaga,* p.5−6; V. Sinkevičius, 'The Implementation of Rulings of the Constitutional Court in Legislation', 2011 *Jurisprudence*, no. 18, pp. 500; G. Mesonis, 'The Dynamic of the Process of the Constitutionalization of Law', 2011 *Law*, no. 80, p. 10; K. Jankauskas, *The concept of principles of law and its consolidation in constitutional jurisprudence*, 2005, pp. 180−181.

[60] There are only a few separate cases in research literature of Lithuanian legal science, where Constitutional Court's activity is specifically criticized and even linked with politics. See A. Vaišvila, 'Konstitucinis Teismas: tarp legalios ir kontrabandinės teisėkūros', 2014 *Kultūros barai,* no. 7−8, pp. 2−8; A. Vaišvila, 'Konstitucinis Teismas: tarp legalios ir kontrabandinės teisėkūros', 2014 *Kultūros barai,* no. 9, pp. 2−7; V. A. Vaičaitis, 'Normativity of law and the Competence of Lithuanian Constitutional Court', 2012 *Law,* no. 85, p. 74.

[61] E. Kūris, 'Konstitucija, Konstitucinė doktrina ir Konstitucinio teismo diskrecija', 2002 *Baltijos ir Skandinavijos šalių konferencijos medžiaga,* p. 5.

3.3. Epistemological aspect of relationship between law and politics in Lithuania

The popularity of certain composition of 'law and...' is driven by desire to use law as it is the most efficient regulatory mechanism of social relationships. Naturally, it brings adequate consequences – legal science is being enriched with new concepts out of other fields of science. Despite the general trend of interdisciplinarity, not many scholars from international community credit themselves as scholars of law and politics. We have to agree, that only a few scholars are likely to label themselves as participants in a law and politics movement[62]. Overall, situation in combination of law and politics with science of law is ambiguous, because one part of scholars declare themselves as specialists in two fields of science, than the other part proclaim to be only lawyers no matter how much political science they absorb or teach. For instance, most constitutional or administrative law professors consider themselves as professors of law, not 'law and...' professors[63]. Entirely different situation appears looking at the combination of sciences of law and economics. Scholars in international community clearly declare to have research interests in both of these fields.

In pursuance to determine whether discipline of science of law in Lithuania is considered to have an 'autonomous' structure or not (integrates acceptable categories from other disciplines) it is important to indicate the general characteristics of the system of perceived ways to enrich discipline of science. Therefore it is important to investigate 1) the scope of interdisciplinarity in education system and 2) insights, provided by legal theory specialists on the matter of relationship between law and politics. The aforementioned aspects substantiate labeling this relationship in a field of science as 'mixed legal discipline' or a 'pure legal discipline'.

3.3.1. Law and politics in the system of education

Lithuanian science of law could be characterized as flexible to contemporary realities. It also corresponds to general trends of international scientific community of law. Likewise in the international practice, there is a noticeable tendency to combine science of law with other disciplines. This fact becomes evident by observing increased numbers of new programs or interdisciplinary subjects in the system of education[64]. It is also obvious in a variety of new specialized legal services in practice. Undoubtedly, this type

[62] M. Shapiro, 'Law and Politics: The Problem of Boundaries', in A. Gregory et al. (eds.), *The Oxford Handbook of Law and Politics, 2009,* p. 768.

[63] Ibid., p. 768.

[64] For example, one of the leading universities, where law studies are provided, offers combined study programs like: Law and Management, Law and Police Activities, Law and Pretrial Process, Law and State Border Guard, Law and Customs Activities, Law and Penitentiary Activities etc.

of tendency is a result of intensive social relationship and the need to incorporate a mechanism of assurance for it. For instance, positive changes and challenges in the field of macro and micro economics requires to develop a closer and more diverse connection between law and business. The closeness of sciences in law and business is followed by emergence of specialized branches of law. Legal knowledge is being combined with knowledge out of specific fields of science and practice like finance, insurance, transport, taxation and other areas of economic life. As it was already mentioned before, it is done by prioritizing[65] legislation. (The main objective is to secure this business-law development through the legislation so that there would be enough confidence to use it in practice.) Gradually this type of focused legislation also stretches to the field of education. Ultimately those institutions of higher education, who operate in a new field of emerging needs of society, quickly corresponds to this trend.

On the other hand, investigating the case of Lithuania it could be observed that combinations of law and politics in a field of science is not that popular. This kind of assumption follows after examining three leading universities which provide legal studies according to following parameters 1) whether there is a joint program of law and politics on an equal basis; 2) whether there are subjects on law and politics 3) whether there ware doctoral theses explicitly about relationship between law and politics 4) whether there ware intentions to investigate aforementioned relationship in the main field of declared scientific research. The investigation revealed that none of universities have such a program combining law and politics, but there are separate cases concerning disciplines. Although those cases are not related to subject called 'law and politics', but incorporates other aspects like history or institutions (History of political and law theories (VU), Institutions of law and politics (VDU)). There were no doctoral theses about relationship between law and politics. Two out of three universities do not declare law and politics to be a subject of their main research field. One declares it in the level of department.

It is also usual for scholars of law not to declare their interest of research admitting interdisciplinary pattern of their work. It is a rare phenomenon for a professor of law to admit to be a specialist of interdisciplinary subject. In the absence of clear recognition from scholars of interdisciplinarity of their research, it is hard to suggest that concepts

[65] The connection between science and business is promoted at a supranational level. For example, European Commission (EU) Work Programme 2014−2015 which was adopted on 10 December 2013 (following HORIZON 2020) specifically addresses the development of new forms of innovation that can play a big role in overcoming the crisis and creating opportunities for growth. It involves enterprises, young entrepreneurs, incubators, universities and innovation centres and other relevant actors through support to open innovation, business model innovation, public sector innovation and social innovation. See European Commission Decision C (EU) 2014/9294 of 10 December 2014. Available at http://ec.europa.eu/research/participants/data/ref/h2020/wp/2014_2015/main/h2020-wp1415-societies_en.pdf (last visited 9 March 2015).

and categories from political science are easily adopted and applied. Furthermore, although there is a visible tendency to combine law and other disciplines, but higher education programs do not contain such a subject like 'law politics' or 'politics law'. It seems that till now non-legal categories are incorporated only in those cases when it is needed to satisfy the objective of 'efficiency'.

3.3.2. An authorized 'contribution' to law

It is a rare phenomenon to find a comprehensive discussions about the contribution of non-legal categories from other disciplines to the science of law. Even so, there are some direct, and more often – indirect, statements of legal theory specialists in Lithuania about possible ways how law is being enriched with concepts from other fields of science. Researchers do not declare resentment to contribution of non-legal categories, though there's a diversity of opinions to what certain extent this contribution should appear. One of the eligible fields of science, which enriches subject of law with new categories is sociology. For example, one of distinguished fields could be aforementioned legislative process and effectiveness of implementation of laws. In this case, the bond between law and sociology is quite intensive. Legislative bodies use 'sociological aid' as a tool in order to avoid negative social consequences. It is claimed, that legislative body has to understand social mechanisms in the implementation of laws, so that it would be able design in advance possible social consequences of legislation [66].

However, not all 'non-legal' categories are welcomed in the system of legal concepts. For example, A. Vaišvila criticizes those attempts to incorporate moral/religious value of mercy to the system of justice in the interpretation of case law. For instance, recognizing individual's guilt and not imposing a punishment in the sentence[67]. The latter comes as a result of extensive interpretation of law (in judges decisions). The same moral issues enters the case in declaring death penalty an unconstitutional instrument. It is claimed, that values like 'mercy' should not step into law[68].

3.3.3. Judicial legislation, values and political content

Specialists of legal theory in Lithuania are unwilling to accept concepts out of political science to the sphere of justice implementation, and if this happens, it is considered as an individual and not necessarily a positive thing. Usually, such statements as 'judicial power to influence public policy' or 'the influence of political actors to judicial decisions' being transformed and gains a different 'outfit' like – 'the power of the judges

[66] V. Šlapkauskas *et al.*, *Teoriniai teisėkūros pagrindai ir problemos*, 2012, p. 105.
[67] A. Vaišvila, 'Legal Interpretation as Identification of law in the Texts of Statutes', 2006 *Jurisprudence*, no. 8, p. 16.
[68] A. Vaišvila, *Teisinis personalizmas: teorija ir metodas*, 2010, p. 37.

to interpret the law' or a statutory norm which states that 'in interpreting and applying laws, the court shall be guided by the principles of justice, reasonableness and good faith'[69]. Accordingly to this, researchers of legal theory focus on analysis of the judicial interpretation of laws. Their insights, in turn, enables to demonstrate how non-legal categories are estimated in the society of researchers of law. This could be the most revealing context of interaction of legal and non-legal categories in science. Equally important is the research on law and ethics in the implementation of law. Individual approach on the matter of politics influencing the law usually is provided in very correct and slick manner. Quite often general position is limited to the opinion that law is influenced by social phenomena or public culture. This way researchers avoid to indicate the slightest contribution containing word 'politics'. Perhaps the main reason is that, according to an ideal model of separation of powers there should be no political contribution at all. However, if we interpret the definition of politics in a wider context, for instance as an 'activity of social groups and individuals using state power to satisfy their interests'[70], or at least we agree with the idea that 'in handling individual relationships, politics refers to the ... moral norms and institutes of legal constrain'[71], we will come up to the fact that the bearers of principles and values of social phenomena to legal system is no one else than the entities, which are involved in politics. They 1) influence legislation and 2) undertake the process of legislative initiatives. Their power 3) combines an ability to escalate specific topics to the extremes with the help of social media, sometimes even simulating the public need to deal with them. Finally, although indirectly, but politicians have impact to social relationships and their changes which subsequently may be seen as a 'public opinion' or 'dominant culture' and indirectly influence litigation. 'Every social, descriptive, normative fact is valorem in the sense that it can be seen through the prism of concepts of 'right' and 'wrong', 'honest' and 'dishonest'; even more, if those facts are accepted by the court as a normal part of life in society, they are determined by prevailing culture in society and consciousness'[72]. Following this, there is also more detailed research in the field of legal text interpretation in Lithuania. G. Lastauskienė is suggesting to apply a distinction between the principles and values which the courts would be able to/must follow while resolving cases. Discussing the relationship of values and principles author notices that 'principles are derived from the legal traditions [...] and ethical values have civil or political significance and exist alongside (prior to / outside) of posi-

[69] Lithuanian legislation: Civil Code of the Republic of Lithuania, žin., 2000, Nr. 74−2262. Available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=404614 (last visited 9 March 2015).

[70] R. Rakucevičius, *Politologija*. 2003, p. 11.

[71] Politikos mokslų enciklopedinis žodynas. Check http://terminai.vlkk.lt/pls/tb/tb.result (last visited 9 March 2015).

[72] E. Spruogis, 'Problematis Aspects of Law Interpretation', 2006 *Jurisprudence*, no. 8, p. 61.

tive law. The author refers to set differences between principles and values provided by K.Rohl and states that 'value becomes a principle of law when it is recognized, named and establishes in the legal order'[73]. This leads us to the assumption that if values contain a political meaning, than we cannot deny the impact of politics to reasoning of judges in the process of interpretation of law. Aforementioned connection is not a direct one, but it is presumable one.

Discussed features suggest that the Lithuanian legal theory specialists maintain a reserved approach to the possibility to investigate the relationship between law and politics. Form the disciplinary point of view, both the researchers and the research institutions are more oriented towards greater social importance relations between law and economics, business or public relations.

Ultimately Lithuania, as well as the international scientific community, is distancing from the concept of an autonomous discipline of law. It is considered to step back from the autonomous legal discipline and to accept incorporation of different categories from other scientific fields. On the other hand, there could be noticed a reserved and cautious attitude of both researchers and research institutions on the conjunction of law and political science. Prioritized spheres still remain the interaction between law and economics, business or public relations.

4. Final Considerations and conclusions

With this paper we have been searching for new ways to look at practical level of interaction between law and politics. Thereby we have used M. Zamboni's methodology for depicting features of interaction between law and politics in certain dimensions. We searched for descriptive features in a relationship between law and politics in a national context of Lithuania. The research ranged from static to dynamic and finally to epistemological aspects of relationship between law and politics. Nonetheless it is just a beginning of conceptualized and structured approach, which might be filled with other relative features, corresponding to given methodology and gives an impetus to further investigations.

The concluding statements should start with the notion that legal mechanism in Lithuania and its content is more flexible to various forms of external effects than rigid to them. This outcome results from notable disproportion in legislation, prioritized spheres in law, emerging commercialization in law and modifications in operational structure of law. In a 'dynamic' realm, which has much to do with legislation, we have noticed the interfer-

[73] G. Lastauskienė, 'The Thouthful Disquisition of Legal Text – Panacea or Risk', 2006 *Jurisprudence*, no. 8, p. 65;

ence of politics to the process of legislative initiatives and supplementary resources in legislative process. The investigation of judicial legislation, as a part of legal production, also provided us with observation of certain input out of political realm, and the intensity depends on the competence, provided to the court. Thereafter we found, indications that there are more features of open law-making than a closed one. Finally, the epistemological aspect of relationship between law and politics in Lithuania enables to indicate a conservative corporation of law and political sciences in the system of education, it also maintains an authorized 'contribution' to law of non-legal categories.

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