FEATURES OF MODERN LITHUANIAN SOCIETY'S LEGAL IDENTITY DEVELOPMENT: FROM CLOSED TO HOLED SOCIETY*

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ABSTRACT

During the last three decades, few essential transformations of Lithuanian society took place – from a closed (according to the terminology of H. Bergman and K. Popper) soviet society during a short period of open society functioning it evolved into a holed (according to P. Aleksandravičius) society. The Republic of Lithuania becoming the rule of law and creation of liberal democracy was a favourable context of the transformations mentioned. These transformations were ensured not only by establishment of free market economy but also by corresponding legislation and implementation of legal norms.

The article analyses inter-directional methodological possibilities to reveal a legal identity of Lithuanian society. Creation of such possibilities is based on three ideas of Western civilisation:

1. The idea of compliance with the rules of common or social (now – public) behaviour.

2. The idea of legitimate powers of sovereign to create common (social or public) behaviour rules and to organize and control their implementation. It evolved into the idea of the rule of law.

3. The idea of natural rights and freedom. It evolved into the protection of human rights and freedom.

Based on these ideas and analysis of peculiarities of the process of the Republic of Lithuania becoming the rule of law, there are justified five stages of Lithuanian society's legal identity development.

Introduction

In 2018 Lithuanian people and the State celebrated two jubilees of modern period – centenary of the modern national state and thirty years anniversary of the Movement of Lithuanian, which brought us to liberation from soviet occupation and recreation of the statehood. The lawyers who participated the activity of the Movement and the Supreme Council of Republic of Lithuania – the Restorative Seimas – performed a very significant work in recreation and entrenchment of Lithuanian statehood[1]. Analysis of this role reveals that object-oriented culture of the law has reached a high level in Lithuania, however, during the period of soviet occupation, there were no idea of the rule of law, nor any practice of its functioning[2].

However, subject-oriented legal culture of Lithuanian society and its separate groups, especially representatives of policy and business[3], remains unclear, because, as yet, there are no systemic researches of it. During the last decade, state and development of society's legal culture was nearly unexamined, except single researches[4]. Therefore, in the context of the mentioned anniversaries, there is a striving to systematize performed sociological researches of society's legal identity development law and to reveal the widest picture of this identity development.

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[1] *Lietuvos teisė 1918–2018 m. Šimtmečio patirtis ir perspektyvos*, Mykolo Romerio universitetas, Vilnius 2018, p. 109–209.

[2] E. Kūris, *Teisinė valstybė, teisinių sistemų įvairovė ir Vakarų teisės tradicija*, [in:] *Vakarų teisės tradicijos*, M.A. Glendon, M.W. Gordon, C. Osakwe (ed.), Pradai, Vilnius 1993, p. XXVII–XXX.

[3] *NSGK patvirtino tyrimo dėl neteisėto poveikio politikams išvadas,* https://www.lrt.lt/naujienos/lietuvoje/2/214295/nsgk-patvirtino-tyrimo-del-neteiseto-poveikio-politikams-isvadas.

[4] V. Šlapkauskas, *The inner tensions of legal culture in consumer society,* "Jurisprudencija" 2010, 4 (122), p. 371–385.

Goal of this research is to reveal the features of Lithuanian society's legal identity development over the last three decades. The research is based on methodology of law sociology and insights of modern socio-cultural anthropology.

1. Problem of society's legal identity definition and research

A problem of society's legal identity definition and researches is presupposed by contradiction of three related socio-cultural phenomena – the concepts of society, legal and collective identity. They are not and cannot be defined unambiguously due to structural nature of these phenomena and uneven dispersion of its essence in social development. In striving to overcome this reason, there are constructed different methodological attitudes of cognition and research of the phenomena mentioned. For example, contentious issue arises not only because of the law concept[5], but because of the definition of the concept of "identity" and methodological differences of the research of this socio-cultural phenomenon in social and humanitarian sciences[6] as well.

In modern society, the most important question is the question "what is the law?". There is no clear answer to this question yet and it is acknowledged that the term "law" is multifaceted. This is because the nature of law is dual – valuable (to protect justice and other common values) and instrumental (to create and protect order)[7]. However, this nature of law often is being ignored, because it becomes more and more difficult for modern human societies to agree on common values. Valuable pluralism is acknowledged and tolerated, when it does not interfere human rights. Therefore, the state, in striving to create a law "allegedly" neutral in terms of values, turned it into the measure of power implementation, a tool of power[8]. Thus, there is highlighted an instrumental power of law – efficient regulation of social relationship.

[5] L. Baublys, D. Beinoravičius, A. Kaluina, P. Kathrani, G. Lastauskienė, K. Miliauskaitė, E. Spruogis, V. Stankevičius, E. Venskienė, *Teisės teorijos įvadas*, 2 pataisytas ir papildytas leidimas, Leidykla Mes, Vilnius 2012, p. 39–50.

[6] V. Čiubrinskas, *Tautinio identiteto antropologinio tyrinėjimo klausimai*, [in:] *Lietuviškojo identiteto trajektorijos,* V. Čiubrinskas, J. Kuznesovienė (ed.), Vytauto Didžiojo universitetas, Kaunas 2008, p. 13–25.

[7] H.J. Berman, *Teisė ir revoliucija. Vakarų teisės tradicijos formavimasis,* Pradai, Vilnius 1999, p. 41.

[8] R. Cotterrell, *Teisės sociologija. Įvadas,* Dangerta, Kaunas 1997, p. 64.

This means that the answer to the question "what is the law" depends on scientific attitude towards the ways and methods of cognition of law (legal reality). This research is based on attitude of non-positivist methodology: source of the law in material sense is society's economical, social, ethnic, religious, ideological, cultural, actual and other factors determining the content of legal norms and helping to determine their meaning and value. Such attitude includes both non-normative, non-valuable facts (factors), and valuable facts (factors).

The concept of collective (social) identity is a problem as well. There are even the ones proposing to reject this term as a paradigm, because there is little agreement on nature of identity, creation, recreation of identities and their transformation, and mostly on the fact if a nation-state is being threatened due increased abundance of politicized identities and a role of their globalization[9]. However, the concept of collective identity was not rejected, but, in search for research methodology of this socio-cultural phenomenon, there is a striving to construct the methodological attitude that would correspond a changing role of nation-state in the context of globalization.

It is important to highlight the fact that, according to Manuel Castells, any identity, both individual, of the single person, and collective, i.e. their concentration, is a social identity, i.e. identity of any social players – an individual player (individual) or a collective player[10]. Social identity describes person's identity with particular distinguished forms, stereotypes and symbols of collective thinking and behaviour, which are often supplemented by characteristics of human look and temperament, by dissociating from not theirs[11]. As we live in the flow of constant social changes, the forms of collective thinking and behaviour are transforming, and new stereotypes and symbols are forming inevitably. Therefore, collective identity is dynamic and therefore relevant.

M. Castells, who analyses dynamics of collective identities, distinguishes three main types of identity:
– legitimating,
– resistive,
– projective-reformulating and creating new identity[12].

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[9] T.C. Lewellen, *The Anthropology of Globalization: Cultural Anthropology Enters the 21st Century*, Bergin & Garvey, Westport (CT) 2002, p. 90–91.

[10] M. Castells, *Tapatybės galia*, Poligrafija ir informatika, Kaunas 2006, p. 22.

[11] V. Čiubrinskas, *Tautinio…*, p. 13.

[12] M. Castells, *Tapatybės…*, p. 23–24.

All these types distinguished by him are distributed on a modern global world's systemic divide of locality / globalization in such a way that the latter two are exposed as relevant processes of identification and start an obvious domination above the first. According to M. Castells, in modern civil society legitimating identities step back to the second plan, because due to globalization there remain no close relationship between logics of binding and representation of particular society as well as cultures and logics of creation of new leverages of power in global world of networking[13].

Society's legal identity is an important part of legitimating type of collective identity. It expresses a connection of collective legal consciousness and practise of legal relationship. According to M. Castells, legitimating identity is implemented by dominating institutions of society, especially by the state with its promoted ideology and power[14]. In other words, nation-state not only creates normative identity but also makes it symbolic. As a dominating institution, in striving to realize own power, nation-state expresses the power by manipulating in symbols important to society. Symbols convert that power into an *object*, turn it into reality (reify), and, as any institution, the state is represented through such a form (nation-state *converts* the nation *into object*). Thus, the person, by obeying, assigning himself to any social institution (usually, few at the same time), identifies himself with it (them), by directly assigning himself and directly acting as, for example, church's or state's person, i.e. as a Catholic or citizen. Together, he will also act symbolically, by using separate institutions, for example, symbols of nation-state (citizen's passport) (also through symbolic behaviour – rituals and symbolic thinking – myths), by implementing and consolidating own status by the performed not only legitimized (e.g., elections), but also ideal role of one or another status[15].

In the researches of the role of nation-state during creation, legitimation and control of corresponding social behaviour practices, there was formed and entrenched a dual dichotomous attitude: one of them is based on typology of national identities and nations according to the criteria of ethnicity and citizenship[16], and another – according to the criteria of socie-

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[13] Ibidem, p. 27.

[14] Ibidem, p. 24.

[15] V. Čiubrinskas, *Tautinio…*, p. 15–16.

[16] J. Kuznecovienė, *Lietuvių tautinis identitetas: bruožai ir tipai*, [in:] *Lietuviškojo identiteto trajektorijos*, V. Čiubrinskas, J. Kuznesovienė (ed.), Vytauto Didžiojo universitetas, Kaunas 2008, p. 55–56.

ty's closeness and openness[17]. When role of the nation-state is strong (up to globalization), the content of "ethnicity and citizenship" and "closeness and openness" of dichotomies is very close, especially when society's openness is examined within the boundaries of the nation-state. For example, in classical point of view, the main characteristics of civil nation are territory, dependence of nation's members to political community, citizenship, common laws, equality of everyone before the law, common culture and civil ideology[18]. On the other side, researches of different authors revealed that concept of civil society of Middle and East European countries does not coincide to the western concept of civil society[19].

A presumption could be done that in modern divide of global world locality / globalism both dichotomies don't coincide, because within boundaries of nation-state, civil society might have dominating features of closeness, for example, homophobia, fear of foreigners. Tendency of national closeness that shows up in the countries of the European Union clearly confirms that. Therefore, it is not a coincidence that many researches acknowledge that while examining real cases, existing in practice, usually it is impossible to draw a clear divide between *civil nation* and *ethnic nation*, civil and ethnic identity[20]. Researches of dichotomous attitude performed by Jolanta Kuznecovienė revealed that prototypical civil nations are not factually based on purely political principles, but, at the same time, they are cultural and even ethnic communities. For example, R. Brubaker proposes to perceive nationality as unforeseeable, dependant on circumstances and unreliable in that sense construct and a ground for individual and collective actions, but not as relatively stable phenomenon, based on deep tendencies of economic, political, cultural development[21].

There are proposed two ways out of this situation: 1) In one case, there are proposed distinguished types, *ethnic* and *civil,* to be considered as ideal types, to perceive them rather as analytical instrument, not classification schemes (Laegaard, 2007; Peters, 2002) and to follow a presumption that in practice *nations* are combination of *ethnic* and *civil* elements,

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[17] See: H. Bergson, *Dva istočnika morali i religii* [Two sources of morality and religion], Kanon, Moskva 1994; K. R. Popper, *Atviroji visuomenė ir jos priešai,* Pradai, Vilnius 1998.

[18] A.D. Smith, *The Ethnic prigins of Nations,* Blackwell, Oxford 1986, p. 134–138.

[19] J. Kuznecovienė, *Lietuvių…*, p. 56–58.

[20] O. Zimmer, *Boundary mechanisms and Symbolic Resources: Towards a Process-oriented Approach to National Identity*, „Nations and Nationalism" 2003, 9 (2), p. 177.

[21] R. Brubaker, *Nationalism Reframed*, Cambridge University Press, Cambridge 1996, p. 19.

rate of which and dominance of one or another element differ depending on a particular case (Laegaard, 2007; Brubaker, 2004; Zimmer, 2003); 2) in another case, it is stated that a dichotomous area of *civil* and *ethnic* nationalism should be eliminated, these two types should be decomposed into their constituents (conceptual, empirical and evaluated), and they should be applied separately during analysis of particular nations (Laegaard, 2007)[22].

In regard to discussed limitations of "ethnic and civil" dichotomy, the research of modern

Lithuanian society's legal identity development characteristics is based on dichotomy of "closeness and openness". In my opinion, dichotomy of "closeness and openness" more precisely corresponds challenges of locality / globalism divide, because: 1) open society of liberal democracy, first, is a political reality, origin functionalism of which is based on interaction of public policy and constitutionality in which boundaries of policy are being drawn by its correspondence to requirements of human rights protection and national constitution[23]; 2) declining power of the state to legitimate collective identity and to limit possibilities for individuals to transform and to create new identity within or outside the state[24]; 3) content of closeness and openness can be conceptualized by idea of social behaviour.

2. Main ideas of social behaviour and their impact on formation of society's legal identity

Content of society's legal identity and paradigm of "closeness – openness" are based on functionality of rules of social behaviour, because H. Bergson revealed that "closed – open" society complies with its "closed – open" moral and "static – dynamic" religion[25]. These types of dichotomy are not only related, but also correspond different types of social behaviour rules, state of functionality of which could be essentially revealed by grounding on three ideas of Western civilization:

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[22] J. Kuznecovienė, *Lietuvių…*, p. 57.

[23] V. Šlapkauskas, *Moderniųjų laikų teisės politikos ir konstitucionalizmo ryšio inversija XXI amžiuje*, [in:] *Konstitucionalizmas ir teisės politika Europos Sąjungoje*. Mokslo studija, Mykolo Romerio universitetas, Vilnius 2013, p. 32–33.

[24] V. Šlapkauskas, *Teisės vaidmens silpnėjimas komercializuotoje visuomenėje*, „Jurisprudencija" 2009, 4 (118), p. 280.

[25] For more see: H. Bergson, *Dva…*

1. The idea of compliance with the rules of common or social (now – public) behaviour.
2. The idea of legitimate powers of a sovereign to create common (social or public) behaviour rules and to organize and control their implementation. It evolved into the idea of the rule of law.
3. The idea of natural rights and freedom. It evolved up to legal status and was named human rights and freedoms.

The first idea was articulated in detail by Friedrich A Hayek, who examined two fundamental questions: 1) how society is forming and 2) what power ensures society's legitimizing identity? He reasonably states that "it is necessary to get rid of illusion that society exists first and only later it creates own laws. On this false idea there is based entire constructive rationalism, starting with Descartes and Hobbes – through Rousseau and Bentham – up to modern legal positivism; it is the idea that put a true ratio of law and power into the shade for researchers. Only because individuals are following particular common rules, group of humans can live under conditions of the order we call a society. (…) Individuals, who disagree on common values, sometimes can agree on particular goals and act efficiently based on such agreement. However, such agreement on particular goals is never enough in order to form a stable order called a society"[26]. Unfortunately, this illusion is very supported under circumstances of liberal democracy.

In striving to understand reality of implementation of the first idea, it is important to reveal the social mechanisms that determine the conduct of social behaviour rules and their nourishing. Therefore, in the context of the research of Hayek, there arise two essential questions: why and how common behaviour rules or social order appear? A convincing answer to the first question was given by A. Maslow, and the second was answered by P. L. Berger and Th. Luckmann.

Appearance and development of the social order is a process of free individuals turning into human society, which is linked to implementation of their main needs. A. Maslow highlighted that "these needs, or values, are linked hierarchically and evolutionary – according to a strength and priority. For example, security is more powerful and stronger, more urgent, earlier, more vital need than love, and a need for food usually

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[26] F.A. Hayek, *Teisė, įstatymų leidyba ir laisvė. I: Taisyklės ir tvarka,* Eugrimas, Vilnius 1998, p. 146–147.

is stronger than other needs. Besides, all these needs could be supposed as steps on time patch towards common self-actualization that includes all basic needs"[27].

Thus, A. Maslow highlights the essential thing – a self-realization is available to all individuals in case either individuals or their groups constantly guarantee satisfaction of all basic needs to themselves and other group's members by corresponding activities. In both cases, this result can be reached when they follow common behaviour rules, essence of which is a realization of relationship of freedom (liabilities to other individuals) and responsibilities. Such constant conduct of social behaviour rules is a base for creation of social trust in a society. According to Hayek, "the most general basic rule, which is being followed by human in his actions, that these actions should correspond legitimate expectations, still remains the rule acknowledged by science. All forms of behaviour that correspond that rule are inter-compatible and become established customs. The incompatible ones are condemned as inappropriate behaviour. Therefore, totality of customs has a tendency to create a harmonious system"[28].

Researches of P. L. Berger and Th. Luckmann revealed a process of formation of common behaviour rules, which consists of five structural elements: 1) externalization – human's existential need to project constantly his minds into environment, 2) habitualization (e.g., formation of habits) – human's ability to think of his actions and to shape part of them into a template, 3) institutionalization (e.g., formation of customs) – characteristic interest of human community (group) to establish part of template actions by institutions, 4) legitimation – an interest characteristic to human community (group) to legalize institutions formed, 5) internalization – human's ability to take over models of values and behaviour of other humans and a community[29].

In the context of interaction of individuals' habits, there is taking place a process of institutionalization of common behaviour norms, in which there are forming three behavioural institutions – a moral,

[27] A. Maslow, *Psichologijos duomenys ir vertybių teorija*, [in:] *Gėrio kontūrai*, Mintis, Vilnius 1989, p. 343.

[28] F.A. Hayek, *Teisė…*, p. 179.

[29] P.L. Berger, Th. Luckmann, *Socialinės tikrovės konstravimas,* Pradai, Vilnius 1999, p. 50–170.

religion and law. In this process, society's social forms of consciousness, moral, religious and legal, were formed, evolving and transforming, and a social form gathers a strength – mutual trust and security[30]. H. Bergson convincingly reveals that "duties imposed by society and allowing him [individual] to be [in a society], internalize inside him such arrangement [through socialization process], that usually coincides with the order of life"[31]. That is confirmed by the researches of Arnold Gehlen as well[32]. Therefore, it is not a coincidence that in the societies, that nourish social values and norms, personal relationship is subordinate to a social relationship.

Therefore, it is important to highlight two essential related things: 1) a relation of ways of social order functioning (moral, religious and legal) and human society's consciousness forms (moral, religious and legal); 2) domination of social (public) relationship over always more narrow area of personal relationship (even in case of their absolution). Namely based on strength of relationship of social order ways of functioning and moral, religious and legal consciousness forms, there are forming, evolving and even transforming concepts of relationship and practice of the main organizational forms of the social life (organizational social institutions) – family, church, school, enterprise and the state as well as liabilities (freedom) and responsibility. For example, "first pursuit of religion was support and strengthening of society's requirements. Religion fills the gaps of the connection between everyday habits, social requirements and laws of nature"[33]. This important social role is impossible to be replaced or refused, because religion most deeply legitimates common behaviour rules. Therefore, its support is needed while legitimizing legal rules.

A logical question arises – how are constructed identities? Social – cultural anthropology distinguishes two grounds of construction of identities: 1) moral – emotional grounding and 2) social-structural grounding[34]. In regard to moral-emotional grounding of construction of identities, C. Geertz states that not groups and not commitment

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[30] Ibidem, p. 80.
[31] H. Bergson, *Dva…*, p. 7.
[32] A. Gehlen, *Man, His Nature and Place in the World,* Columbia University Press, New York 1998, p. 62.
[33] H. Bergson, *Dva…*, p. 10.
[34] V. Čiubrinskas, *Tautinio…*, p. 18–19.

to groups, but persons and loyalties to persons are a measure of identity in general and the grounding of identity policy. In this sense, commitment or loyalty are as metanarrative that proclaims not a separatism and not its opposite – synthesis or balance between groups, but a mastering of partition and competition through trust and development of relationship[35]. In classical anthropology, culture plays the role of metanarrative "by understanding it holistically, [which] is supposed as a common moral grounding for any human movement, including self-identification. (…). It was supposed that every culture (and nation) can be understood through expression of emotions-behaviour, moral character, simple ethos characteristic to people of that culture (nation)"[36].

However during the last decades of the twentieth century, in the context of establishment of features of moral relativism and instrumentalism of consumer [37]society, in the socio-cultural anthropology, there established an attitude that even cultures of egalitarian societies are not homogeneous, that actually there functions a big variety of members of culture and none ethos dominates in the culture. This is especially clear in the societies characterized by social differentiation: ratio of personality and culture is very differentiated, accidental and depends on circumstances. Culture and personality are seen as fragmented, unfinished, changing, depending on context. Both are considered as socially constructed[38]. In accordance to established spirit of consumer society, according to M. Castells, individuals, social groups and societies are processing all construction materials of collective identities and re-arrange their essence in accordance to social definitions and cultural projects that make grounding of their own social structure and space as well as time system[39]. In this process, with the increasing establishment of creation of individual identities, power of some collective identities is inevitably transforming (e.g., legitimizing), because consumer society with moral relativism and instrumentalism lacks belief in common values.

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[35] C. Geertz, *Primordial Loyalties and Standing Entities. Anthropological Reflections on the Politics of Identity*, [in:] *Public Lectures*. No. 7. Collegium Budapest, Institute for Advanced Study 1996, p. 15–16.

[36] V. Čiubrinskas, *Tautinio…*, p. 18.

[37] Ch. Taylor, *Autentiškumo etika*, Aidai, Vilnius 1996, p. 25–34.

[38] V. Čiubrinskas, *Tautinio…*, p. 19.

[39] M. Castells, *Tapatybės…*, p. 22.

Thus, it can be stated that socio-cultural development of consumer society's differentiation is a necessary context of construction of new collective identities in which not only "identity's boundaries are being drawn by using symbolic resources of particular institution, e.g., the state or church, as well through symbolic-ritual behaviour"[40], but also a development of open society takes place during the same process. Namely, a change of collective identities' construction grounding visibly confirms that during the last decades of the XX century, more clear development of open society took place in the Western civilization.

The second idea of Western civilization expresses a legitimate power of the state (sovereign) and its institutions to create common behaviour rules and to organize and control their implementation. Although in the states of Western civilization, there was established the „rule of law" concept and mechanisms of verification of public policy subjects' compliance to their national constitution function, but, nonetheless, the state institutions tend to adopt legislation (decisions) violating the national constitution, to make absolute legal instrumentalism[41] and selectively follow common behaviour rules. Therefore, the third idea is constantly needed – the idea of natural rights and freedoms, which was given a legal status in 1948 by the Universal Declaration of Human Rights and Freedoms by the UN. Namely, legal protection of human rights and freedoms is an essential grounding of open society's functioning.

Every new version of development of natural rights and freedoms doctrine affected not only evolution of limitation of sovereign powers, but also a development of open society. Its essence is revealed by famous oration of Pericles during the first funeral of soldiers who fall in the Peloponnesian War: "by using a freedom we do not contravene the law. We pay respect for authority and laws and never forget that we have to defend an oppressed human. Besides, we know how to follow those unwritten laws, which it is an acknowledged shame to break"[42]. Thus, public openness is based on a creation of confident social order and its implementation. In particular, a development of European cities inevitably needed and still needs high level of social openness. It is not a coincidence that

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[40] V. Čiubrinskas, *Tautinio…*, p. 19.

[41] V. Šlapkauskas, *Instrumentinio požiūrio į teisę absoliutinimas ir jo kritika*, „Jurisprudencija" 2006, 4 (82), p. 83–90.

[42] K.R. Popper, *Atviroji…*, p. 191.

in the evolution of development of social openness, there was articulated and established the idea of rule of law[43].

Open society is a society in which citizens deliberately not only follow common behaviour rules, but also actively participate in creation of common state's social order that expresses interests of different social groups coordinated in the social compromise. Its essential features are as follows:

1. Open society can be formed and functioning under the circumstances of liberal democracy. Its formation is based on nourishment of citizens' mutual and social trust, i.e. by following common behaviour rules and mutual respect.

2. The main principle of open society's organization is cooperation and involvement of society's members into activity. Society seeks to involve people of any identity into public activity. Social compromise is a dominating type of social communication, based on empathy. Society's members are able to integrate new things into own personal, national, cultural, religious identity without self-destruction, but with more maturity.

3. Ability of self-government – many society's members voluntarily, without external compulsion, acknowledge other person's rights, restrict own rights by them.

The state of interaction of the main social behaviour ideas expresses functionality of content of social order of a particular society. Based on the revealed ideas, social and cultural insights of anthropology and methodology of law sociology, we distinguished the features of development of legal identity of modern Lithuanian society, functionality of which changed during the development of Lithuania as rule of law. Namely, development of the Republic of Lithuania becoming the rule of law supposed a changing social-legal context, analysis of which allows distinguishing of stages of society's legal identity development:

1. The stage of preparation of restoration of sovereignty of the Lithuanian state in 1988–1990: society's support was necessary for legitimation of sovereignty[44].

2. The stage of restoration of the Lithuanian independent state in 1990–1993: a) start of the stage – enactment of the Act of restoration of the Lith-

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[43] H.J. Berman, *Teisė…*, p. 388.
[44] *Lietuvos teisė 1918–2018…*, p. 120–142.

uanian independence in March 11, 1990; b) end of the stage – enactment of the Constitution of the Republic of Lithuania[45].

3. The stage of establishment of the Lithuanian statehood in 1993–2000. The beginning of this stage is related to the beginning of work of the Constitutional Court of the Republic of Lithuania, and the end is related with the beginning of preparation to enter the EU[46].

4. The stage of Lithuania's preparation and becoming the EU member in 2001–2008. The beginning of this stage is marked by coordination of national legislation with the legislation of the EU, and the end – by country's economic crisis in 2008/2009.

5. Emptying Lithuania. In point of view of law sociology, the beginning of this stage was determined by country's economic crisis in 2008/2009.

3. Social-legal context of Lithuanian society's transition into open society

Features of legal identity of Lithuanian society till restoration of statehood. Before a restoration of Lithuanian statehood "all territory of the Republic of Lithuania was occupied, armed resistance to soviet occupation has been suppressed long time ago, anti-soviet underground was scarce.<…> In Lithuania, there worked institutions of the foreign state, USSR, and Lithuanian SSR, that was established by it, which were completely controlled by the communist party of Soviet Union"[47]. Soviet legal system was not only politically motivated, but also tolerated a big divide of social reality and social justice where everyone got dirty hands with corruption, and a justice was for sale[48]. Such situation of social relations inevitably is forming when political totalitarian regime is grounded on legal regulation formula – everything not allowed by law and an authorized officer is forbidden.

Lithuanian society haven't spread out after forced deportations to Siberia, but concentrated towards social-ethno-cultural closeness.

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[45] Ibidem, p. 143–209.

[46] Ibidem, p. 211–239.

[47] Ibidem, p. 120.

[48] See: K. Simis, *U.S.S.R.: The Corrupt Society: The Secret World of Soviet Capitalism*, Simon & Schuster, New York 1982.

There were no other possibilities, because a dominating soviet regime of forbidding legal regulation, a forced nationalization of private property and collectivization eliminated possibilities of nation's authentic development. Therefore, traditions of rural communities that dominated till soviet occupation were nourished as a silent resistance to aggressive sovietization. Although forced collectivization of agriculture destroyed a culture of rural communities, it remained in towns in form of a folklore. Therefore, it can be stated that ethnocentrism helped the nation to survive occupation under circumstances of sovietization. Thus, till restoration of the Lithuanian statehood, a closed Lithuanian society consisting of three different social groups existed.

Limitations of possession of private property and personal initiative in the regime of imperative legal regulation made a deeply negative impact on a conduct of common behaviour norms. Common behaviour rules of soviet life were followed only to the extent that warranted any personal benefit under conditions of overall deficit and the possibilities to avoid public moral condemnation and legal responsibility. Soviet law enforcement functioning was based on fear of possible physical, social and mental repressions. Therefore, there inevitably entrenched nepotism, clientism and bribery characteristic to entire soviet society. Essential feature of legal identity of soviet society was legal nihilism and corruption: no one respected the law and human. In this society, there existed the groups of soviet nomenclature and its services that were above the law.

Legal nihilism and corruption were so entrenched in soviet society, that Moscow (Communist party of USSR) was "forced" to start a risky "perestroika". This newly forming political situation was perceived by Lithuanian intelligence as a very favourable moment to take actions necessary for restoration of at least partial sovereignty of the Republic of Lithuania, and in case of favourable possibilities, to strive for full sovereignty. Therefore, the Reform Movement of Lithuania established in June 3, 1988, had "as widely as possible to use and develop the possibilities given by Moscow's reformation ("perestroika"), public and democratization policy"[49] to strive consistently and to become gradually the strongest political power preparing the restoration of independence of the Lithuanian statehood and mobilising people for that purpose. This political – legal process was constantly related to an existing risk, because soviet govern-

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[49] *Lietuvos teisė 1918–2018…*, p. 120.

ment could take repression actions at any time not only against the leaders of the Movement but other society's members as well. For example, in September 28, 1988, the occupational government used repression measures against peaceful demonstrators[50].

The activity of the Movement in the summits of Peoples deputies of Lithuanian SSR, USSR and Baltic states caused especially important political – legal processes that stimulated formation and development of social openness of Lithuanian society:

1. Under impact of the Movement the process of making public Molotov-Ribbentrop Pact's secret protocols started in December 24, 1989. The summit of USSR people's deputies acknowledged them as void[51].

2. The Movement prepared and on its initiative there were accepted additions and corrections of Lithuanian SSR constitution. For example, in November 18, 1988, The Supreme Council of Lithuanian SSR supplemented the Lithuanian SSR constitution by 77¹ article[52], according to which Lithuanian language was recognized as the official language of Lithuanian SSR, and changed the articles 168 and 169[53], by announcing a national flag as official flag of Lithuanian SSR and "Tautiška giesmė" by V.Kudirka – as official anthem of Lithuanian SSR.

3. In the society, there gradually started and developed the process of recreation and legitimization of national values and attributes as well as organizations, in which society's social – political openness formed. Especially rapidly grew the Reformation Movement of Lithuania as a social – political organization.

4. Significant process of society's social – political openness formation stimulated the Seimas of the Movement to make a statement in June 18, 1989 "On development of the Lithuanian statehood restoration"[54],

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[50] V. Venckūnas, „*Bananų balius*": *Ilga trumpo mitingo istorija*, http://www.bernardinai.lt/straipsnis/2012–09–28-valius-venckunas-bananu-balius-ilga-trumpo-mitingo-istorija/88587.

[51] *Lietuvos teisė 1918–2018…*, p. 121.

[52] *Lietuvos TSR įstatymas papildyti Lietuvos TSR konstituciją (Pagrindinį įstatymą) 77¹ straipsniu*, [in:] *Lietuvos valstybės konstitucijos,* K.L. Valančius (ed.), Vilnius Ekonomikos mokymo centras, 2001, p. 100–101.

[53] *Lietuvos TSR įstatymas pakeisti Lietuvos TSR konstitucijos 168 ir 169 straipsnius*, [in:] *Lietuvos valstybės konstitucijos,* K.L. Valančius (ed.), Vilnius Ekonomikos mokymo centras, 2001, p. 101.

[54] *Lietuvos kelias*, Viltis, Vilnius 1989, p. 55–56.

to organize successfully a process of consolidation of political forces (Gotland communique)[55] and, in August 23, 1989, to organize the chain of peoples from three Baltic states – Estonia, Latvia and Lithuania – holding hands in the "Baltic way" that connected three capitals – Vilnius, Riga and Tallinn. All that was achieved based on democratic cooperation and publicity by forming a social trust in the society.

The stage of the independent Lithuania statehood restoration in 1990–1992. Democratic elections to the Supreme Council of Lithuanian SSR in February 24, 1990 were won by the Movement, which not only took control of the soviet governmental institutions and transformed them into apparatus of the independent Lithuania, but also organized a political – legal process of restoration of the statehood of the Republic of Lithuania. Beginning of this process is a legal dissociation from "Lithuanian SSR" by enacting preparatory legal acts of restoration of independence – Declaration "On credentials of deputies of Supreme Council of Lithuanian SSR" and the law "On the name and national emblem"[56]. After enacting of these two legislatives, a new institution came into force that was called the Supreme Council of the Republic of Lithuania. Namely the Supreme Council of the Republic of Lithuania enacted the Act "On restoration of the Lithuanian independent statehood" in March 11, 1990[57].

Restoration of Lithuania as democratic state after a long term soviet occupation was a creation and formation of absolutely new social reality. A new social reality could be created only on a legal basis. Therefore, an urgent necessity emerged to create new models of legal behaviour and their implementation. As Lithuanian society had neither concept of the law based on human right protection, nor understanding of the rule of law, nor experience of democratic life creation, in the process of destruction of soviet culture and social behaviour

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[55] *Kelias į Nepriklausomybę: Lietuvos Sąjūdis 1988–1991*, A. Anušauskas, K. Bartkevičius, V. Čepaitis, B. Genzelis, B. Kuzmickas, A. Rupšytė, R. Ozolas, L. Saldukas, A. Tyla, P.Vaitiekūnas, D. Žalimas, editors: B. Genzelis, A. Rupšytė, Šviesa, Kaunas 2010, p. 174.

[56] D. Žalimas, *Lietuvos Respublikos nepriklausomybės atkūrimo 1990 m. kovo 11 d. tarptautiniai teisiniai pagrindai ir pasekmės*, Demokratinės politikos institutas, Vilnius 2005, p. 202–204.

[57] Lietuvos Respublikos svarbiausių dokumentų rinkinys (1990 m. kovo 11 d. – 1990 m. gegužės 11 d.), Mintis, Vilnius 1990, p. 8.

norms, an individual freedom without responsibility was made absolute very quickly. That had impact on a legislative policy of the Supreme Council of the Republic of Lithuania: "the law is perceived as a mode by which human's behaviour is being connected to the power of norms"[58] and based on this, there noticeably started a domination of not only tendency of universally allowed legal regulation regime, but also of possibilities to legalize a mode of non-legislative nature[59]. Non-legislative mode is an action against protection of human rights and freedoms, justice and other legal values.

Therefore, A. Vaišvila, having analysed conditions of creation of the rule of law, highlighted that "during re-orientation of the Lithuanian state life towards democratic values, there is needed (…) to modernize the legal consciousness of the nation, especially lawyers, as a creator of a new reality. And that should be done the first, because legal consciousness is the primal human source from which directly grows a model of "well organized state", its quality and social practice. (…) The quality of our laws, state institutions, their competence, law enforcement legitimacy and, finally, the level of human rights protection will depend on the quality of this consciousness"[60].

However, endeavour of the restored state to modernize society's legal consciousness absolutely demur the changes of social behaviour taking place under conditions of institutional deviation[61] and social system deviation[62]. Therefore, in different groups of society, especially the ones related to policy and business, there established legal nihilism and corruption, legalization of mode of non-legal nature (the first features of grown-up of policy and business) and criminality increased[63]. All that determined a formation of social disorganization: "declined society's trust in own

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[58] H.J. Berman, *Teisė…*, p. 19.

[59] V. Šlapkauskas, *Socialinės deviacijos intensyvėjimas*, „Jurisprudencija" 2011, t. 19 (11), p. 45.

[60] A. Vaišvila, *Teisinės valstybės koncepcija Lietuvoje*, Litimo, Vilnius 2000, p. 19.

[61] V. Šlapkauskas, *Institucinė deviacija: situacijos apibrėžtis ir interpretacijos problema*, „Lietuvos Mokslas" 1997, vol. V, issue 15, p. 97–105.

[62] V. Šlapkauskas, *Socialinės sistemos deviacijos apibrėžties problema: dalies visuomenės narių atstūmima*, „Socialiniai mokslai. Sociologija", 1998, Nr. 4 (17), p. 16–20.

[63] A. Dapšys, *Nusikalstamumas:jo kontrolės ir prevencijos perspektyvos Lietuvoje*, [in:] *Lietuvos socialinės panoramos kontūrai*, Lietuvos filosofijos ir sociologijos institutas, Vilnius 1998, p. 218–220.

norms does not force to follow norms"[64]. Therefore, E. Kūris highlighted that "the legal doctrine in Lithuania today does not differ substantially from the one that was imposed on us five decades ago by the Soviet Union. (…) This doctrine can be briefly described as a combination of statism (recognition of the state primacy against law) and positivism (non-recognition of any law other than created by the state). The state here is perceived as a measure to control the society. The law is perceived as the behaviour rules determined or sanctioned by the state"[65]. Therefore, it can be reasonably stated that in the state of restoration of independent Lithuanian, there were neither the rule of law, nor human rights protection.

But radical reforms and social disorganization didn't overcome the faith of Lithuanian society in the future of the Lithuanian state. That is confirmed by active participation of Lithuanian population (84,43% of all electorate) in an universal survey (plebiscite) that took place in February 9, 1991. The statement of the survey "the Lithuanian state is an independent democratic republic" was approved in a secret ballot by 3/4 (90,47%) of all Lithuanian citizens with a voting right[66]. Analysis of the survey results indicated that this statement was approved not only by Lithuanians but also by the persons of other nationalities living in Lithuania[67]. Thus, majority of the society members believed that in the future there will be created a higher protection of legitimacy that was clearly lacking at the stage of the Lithuanian statehood restoration.

The stage of establishment of the Lithuanian statehood in 1993–2000. Modern highest legal protection is based on the Constitutional law, implementation of which is guaranteed by a constitutional judicial control. Therefore, it can be reasonably stated that the stage of establishment of the Lithuanian statehood in point of view of the state's highest authorities' powers balance mechanisms and constitutional protection's real functioning starts from the adoption of the Constitution of the Republic of Lithuania in October 25, 1992 by the referendum. This essential ref-

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[64] R. Dahrendorf, *Modernusis socialinis konfliktas. Esė apie laisvės politiką,* Pradai, Vilnius 1996, p. 245.

[65] E. Kūris, *Teisinė…*, p. XVII.

[66] *Lietuvos teisė 1918–2018…*, p. 172.

[67] J. Žilys, *Iš konstitucionalizmo istorijos. 1991 m. vasario 9 d. apklausa (plebiscitas) Lietuvos konstitucionalizmo požiūriu*, „Justitia" 2001, nr 1, p. 11.

erendum took place: it was participated by 75,26% of all voters; the Constitution was approved by 75,42% of the citizens participating the referendum, and that made 56,75% of the total electorate[68]. Thus, the will of Lithuanian citizens was the main factor to approve the Constitution that corresponds expectations of Lithuanian people related to law and justice, harmony of social relations and a social order based on welfare[69].

The Constitution finally validated a constitutional identity of the Lithuanian state that is based on such fundamental values as state's independence, democracy, nature of human rights and freedoms, respect for international law and geopolitical European orientation of the Lithuanian state. Protection of all constitutional values has to be guaranteed by the Constitutional Court established on the basis of this protection for the first time in the history of the Lithuanian state, which started its activity in 1993[70].

Before the adoption of the Constitution, the organization of the state government branches was particularly lacking an independent court as a power of independent highest authority. During the period of soviet occupation and after restoration of the Lithuanian statehood, in the society there dominated distrust in courts[71]. Therefore, in striving to create a trust in courts, following legal conditions had to be implemented: a) to guaranty possibilities to verify the law and other legislation on compliance with protection of constitutional values, b) to implement independence of the courts, 3) to guaranty a required qualification of judges and efficiency of courts decisions, 4) to guaranty a respect of courts decisions and their efficient implementation. Lacking of any of these conditions causes and forms society's distrust in courts. For example, distrust in courts was stimulated by a vital in Lithuanian society provision to bribe an authority[72]; lack of experienced lawyers: work experience in advocacy of even 34,7% of the lawyers (in the beginning of 1999) was from three years, and 32% had work experience more than ten years[73].

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[68] *Lietuvos teisė 1918–2018…*, p. 185.

[69] Ibidem.

[70] Ibidem, p. 223.

[71] A. Sakalas, *Kodėl nepasitikima teismais Lietuvoje?*, „Lietuvos žinios" 1998 gruodžio 8, Nr. 150, p. 19.

[72] *Kyšiai valdininkams nešami ne lagaminais*, „Ekstra" 2002, Nr. 9, p. 10–11.

[73] *Nusikalstamumas ir teisėsaugos institucijų veikla 1998*, Statistikos departamentas prie Lietuvos Respublikos Vyriausybės, Vilnius 1999, p. 24–27.

In point of view of formation of the rule of law, it is very important that the Constitution of the Republic of Lithuania clearly determined a legal power of the Constitutional Court decisions: "a law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act (or part thereof) of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not a subject to appeal" (Article 107, 1–2 part)[74]. By the actions of the Constitutional Court as the institution implementing the state's power[75], there is a possibility to strive not only for a protection of constitutional values, but for political – legal goals as well:

1) to minimize opportunities to legalize activity of illegal nature through legislation of laws and other legislation; 2) to guarantee indirectly independence of courts and efficiency of their decisions because the Constitution of the Republic of Lithuania established the rights of courts to apply to the Constitutional Court (Article 103, parts 1–3)[76]; 3) to guarantee the process of more active civil society formation by the constitutional protection of human rights and freedoms. However, a striving for these political-legal goals was and is restricted in juridical point of view, because the Constitution of the Republic of Lithuania legalized a passive verification of legislation's correspondence to the Constitution, which depends on decisions of the highest authority institutions to apply the Constitutional Court (Article 106). The Seimas of the Republic of Lithuania haven't legalized an individual constitutional plaint.

It is very important to state the state of society's legal identity before the beginning of activity of the Lithuanian Republic Constitutional Court: 1) a provision to follow common behaviour rules was weakened in society's consciousness (a result of sovietization and deep social disorientation), 2) the rule of law wasn't functioning actually, 3) there were no protec-

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[74] The Constitution Of The Republic Of Lithuania, http://www3.lrs.lt/home/Konstitucija/Constitution.htm.

[75] *Lietuvos Respublikos Konstitucinio Teismo 2006 m. birželio 6 d. Nutarimas*, „Valstybės žinios", 2006, Nr. 65–2400.

[76] The Constitution Of The Republic Of Lithuania…

tion of human rights and freedoms. Although all these ideas were declared in the Constitution of the Republic of Lithuania, however, without a constitutional control of their implementation a legal mentality neither of the state governing institutions, nor of the society groups could not change.

General orientations of Lithuanian society groups identification are also important. For example, in 1994, during the comparable ethno-sociological research of Poland and Lithuania, it was determined that importance of state identity and ethnic identity are almost identical: 31% of the respondents are characterized by high identification with the national state as a civil society. 32% of the respondents identify themselves with ethnic group. The Poles are the only national group, tendency towards collective unity of which exceeds the provisions of individualism. Lithuanians are most tended to identify themselves with the state as a civil society, and the Poles more than representatives of other nationalities are trying to coincide with an ethnic group. Attitude of Lithuanians towards perspectives of ethnic relations substantially differs from that of all other ethnic groups – Lithuanians are most tended to create the united state in which national civil identity dominates. The model of the multinational state, where many ethnic groups would live together, is not universally acceptable for Lithuanians[77]. Thus, this research revealed two essential aspects: 1) Lithuanians identify civil society with the national state and 2) openness of Lithuanian society is of ethnic nature.

These aspects explain the reasons of active participation of Lithuanian citizens in the referendum of the adoption of the Constitution. On the other hand, political-legal activity of citizens is a very significant expression of this civil society's legal culture. It helps to concretize society's legal identity. Legal culture of civil society is a system of achievements it achieved by creating, protecting and developing constitutional legal conditions of own existence, which are expressed by three inter-related parameters of entity: state of law enforcement, volume of spread of legal behaviour, level of legal consciousness. If a bad state of law enforcement appears in a society, this is the signal about a spread of illegal behaviour in the society and society's low legal consciousness. Its worsening can in-

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[77] *The Lithuanians in Poland – The Poles in Lithuania-1994*, P. Adlys, W. Jaszkawiczene et al. (ed.), Series Ethno-Sociological and Ethno-Statistical Comparative Studies, Zakład Wydawnictw Statystycznych, Warsaw-Vilnius 1995, p. 69–79.

duce a serious risk for the state constitutionality. And vice-versa, an improvement of law enforcement under conditions of democracy informs about an increase of conduct of common behaviour rules and volume of citizens mutual respect.

The state of law enforcement is determined by social – moral and public legal processes related to guaranties of legitimacy protection. There are distinguished two groups of guaranties of legitimacy protection – general and special. The first group includes economic, political – ideological, moral guaranties of legitimacy protection. The second group includes constitutional and other legal guaranties of legitimacy protection. However, a decisive impact on legitimacy implementation is done by economic, political and moral guaranties of legitimacy protection. Those are opportunities of acquisition and disposition of property, economy's development without crisis, employment rate, political system, ideology, state of culture. Inconsistency of situation in these fields creates an environment for law infringements, society's criminalization.

Thus, legitimacy protection based on the Constitutional law might be not enough, if unfavourable economical, political – ideological, moral guaranties of legitimacy protection are developed. Lithuanian society haven't escaped exactly this social state. Its formation was determined by process of privatization, non-transparent in point of view of the law, that started in 1991, and which coincided with another process – spread of neo-liberalism philosophy in the society and formation of free market. Adhesion of these two processes stimulated an increasing entrenchment of those models of practical actions that guaranteed a rapid and successful implementation of selfish interests.

Moral and legal consciousness of sovietized society is poorly developed, therefore, part of society's members easily trampled moral and legal norms in striving to get rich quickly. Easily established motives of quick enrichment blinded possibilities to envisage the conflict of "activity models" of illegal nature and cultural values. That is illustrated not only by non-transparency of privatization process, but also by other social processes, for example, society members' trust in "shadow" and unclear legality banks, striving to improve conditions for property acquisition by bribery, cynical detachment of content of legal norms from a moral, validation of privileges etc. Thus, the most active part of society members during that

period interiorized the models of behaviour and activity that are unacceptable to western civil and open society.

It is likely that changes of society's property stratification affected the changes of national identification: "in 1990, even 2/3 of the respondents identified themselves with Lithuania, in 1999 such responses were slightly less – slightly more than half. (…) The youngest and the oldest mostly identify themselves with Lithuania. The respondents with lowest income usually identify themselves with a living place (…), and the wealthy enough but not the richest respondents identify themselves with Lithuania (…). The richest often identify themselves with the Europe and the world – even 15%"[78].

Thus, analysis of the content of social – legal processes that took place at the stage of the statehood entrenchment revealed characteristic features of the period:[79]

1. In the context of economic and social instability, contraband and new forms of organized crime, e.g., racket, spread.
2. There was forming new stratification of society's property that acquires the features of polarization. Two dangerous tendencies of social development showed up: a) tendency of business and political activity adhesion that is expressed by the spread of corruption extent; b) tendency of impoverishment and marginalization of part of society[80]. By avoiding to regulate systemically business and political relationship, the law on universal declaration of private income and property was not adopted.
3. Political and legislation attempts to increase role of criminal law policy noticeably revived, but at the same time the crisis of legislation and realization of this role increased. There is a striving to form a modern legal system, dominating feature of which is its technical nature[81]. Therefore, instrumental attitude towards law is being highlighted in legislation and application of law[82].

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[78] M. Taljūnaitė, *Tautinio identiteto tyrimai Lietuvoje (iki 2005 m.)*, [in:] *Lietuviškojo identiteto trajektorijos*, V. Čiubrinskas, J. Kuznesovienė (ed.), Vytauto Didžiojo universitetas, Kaunas 2008, p. 48.

[79] V. Šlapkauskas, *Socialinės deviacijos…*, p. 44.

[80] V. Šlapkauskas, *Der Charakter der Evolution einer modernen Soziokultur*, [in:] *Litauische Gesprache zur Padagogik: Humanismus. Demokratie. Erziehung*, Peter Lang GmbH, Europaischer Verlag der Wissenschaften, Frankfurt am Main 1999, p. 27–33.

[81] R. Cotterrell, *Teisės…*, p. 64–66.

[82] V. Šlapkauskas, *The inner…*, p. 183–190.

4. The media was unable to coordinate its mission and business[83]. The cult of power and aggressiveness that was propagated by the media stimulated a development of individuality and depressed a development of positive social community.

5. A striving for private benefit and profit became a subordinating principle of society's value system. A position of society's moral neutrality is forming, i.e., it is avoided to assess publicly illegal behaviour of individuals in moral point of view.

At the stage of entrenchment of the Lithuanian statehood, adhesion of business with political activity at the levels of the state (e.g., public procurement) and municipalities became particularly formidable. The extent of corruption was spread so much that there was a need to establish a special investigation institution: in February 18, 1997, there was established the Special Investigation Service of the Republic of Lithuania (STT). This is a law enforcement institution accountable to the President of Lithuania and the Seimas and based on statutory activity, that reveals and investigates criminal activities of corruption nature, prepares and implements corruption prevention measures. Article 6 of the law on special investigation service of the Republic of Lithuania emphasized the duty of the state and municipal institutions, organizations and offices to provide information for the Special investigation service, the main task of which is to protect and defend a person, society, the state from corruption, to execute a corruption prevention as well as exposition (Article 7)[84]. In 1999, Corruption perception index given by "Transparency International" was 3,8 for Lithuania[85].

In summary it can be stated that at the stage of consolidation of the statehood, there existed a clear internal contradiction of society and its groups social-legal behaviour:

a) on initiative of part of society members, there was a striving for legal protection of important social values, e.g., adopted "the law on fundamentals of children rights protection", "the law on equal opportunities of women and men" and other laws,

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[83] *Kritiškai apie kritikai nepakančią "ketvirtąją valdžią"*, „Kultūros Barai" 2001, Nr. 7, p. 2–7 and Nr. 8–9, p. 2–10.

[84] Lietuvos Respublikos specialiųjų tyrimų tarnybos įstatymas, https://www.e-tar.lt/portal/lt/legalAct/TAR.9C9FA25983BC.

[85] The Informacion of Transparency International – Lithuania, http://transparency.lt/media/filer_public/2013/01/22/ti_ksi_2006.pdf.

b) in legal point of view, in the twist of processes of validation of non-transparent privatisation and free marked, legal nihilism and corruption entrenched in the society, e.g., attempts to legalize illegal activity through legislation; illegal banks were established and functioned; public procurement were organized non-transparently, universal declaration of private income and assets has not been adopted,

c) a tendency of formation of legal instrumentalism was highlighted in the state governance and in the society, e.g., multiple legislative manipulations in limited restitution, tax policy,

d) closed groups of society with low income and opportunities remained and were further forming.

The stage of Lithuania's preparation and becoming a member of the EU in 2001–2008. It was a period of hopes, when it was expected for recovery of western orientation's open society formation, because the Republic of Lithuania was invited to negotiations on the accession to the community of the European Union member states. On May 1, 2004, the Republic of Lithuania became a member of the EU. Thus, a beginning of the process of coordination of national legislation with the EU law describes a beginning of this optimistic stage, and economic crisis in the country in 2008/2009 marked its end.

Expectations of Lithuanian society for better life determines its positive attitude towards the invitation of the Republic of Lithuania to negotiation on the accession to the EU. Sociological researches that took place at the end of the XX century revealed expectations of different society groups migration to the USA and Western European countries[86]. Lithuanian society is characterized by a tradition of migration to wealthier countries: in 1918–1939 about 100 thousand people departed to other states of the world, mainly to the USA. According to the number of emigrants, Lithuania was a leader in the Europe at that time. During the World War II, in 1944, part of Lithuanian citizens retreated to the West[87].

Society's approval to access to the EU, that was felt, stimulated specialists of constitutional law to find constitutional possibilities to harmonize national law with the EU law. Therefore, first, the question arise "wheth-

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[86] L. Kuzmickaitė, *Migraciniai procesai ir Paribio gyventojų nuostatos išvykti iš Lietuvos*, [in:] *Paribio Lietuva. Sociologinė Paribio gyventojų integravimosi į Lietuvos valstybę apybraiža*, Lietuvos filosofijos ir sociologijos institutas, Vilnius 1996, p. 131–145.

[87] Ibidem, p. 132–134.

er the revision of the Constitution will be required during the accession to the European Union, and if yes, what will be its extent and nature"[88]. As in other countries of the Middle and Eastern Europe relating their future with the EU, in Lithuania there was a striving for legal grounding of coordination of the state independence (sovereignty) and nation's sovereignty with the EU membership challenges[89]. There was met the offer "to look not only for the use of doctrinal but also legal categories (terms) and interpretation compatibility, but not for the opposite"[90]. The solutions required were found in the Constitution of the Republic of Lithuania: it corresponds the European constitutionality of the end of the XX century and, therefore, it is characterized by the openness to international law and European integration. Thus, Lithuanian constitutionality opened the way for the Republic of Lithuania to strive for the EU membership[91].

In May 10 and 11, 2003, the compulsory referendum on the Republic of Lithuania membership in the European Union took place. Although the referendum took even two days, the voters were not very active: the referendum was participated by 63,37% of the total electorate. 91,07% of them approved and 8,93% didn't approved membership of the Republic of Lithuania in the EU[92]. Citizens of Šalčininkai district were the ones who most disapproved the membership of Lithuania in the EU – 20,60% of the electorate *haven't* voted. The most inactive voters were in Visaginas – 37,32 % and in Trakai district – 48.69% of the electorate[93].

Therefore, few things have to be acknowledged: 1) the process of the entrenchment of the Lithuanian statehood that took place before wasn't smooth in point of view of social development and formed social

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[88] K. Lapinskas, *Lietuvos konstitucinė sistema ir stojimas į* ES, [in:] *Stojimas į Europos Sąjungą ir Konstitucija,* Eugrimas, Vilnius 2000, p. 42.

[89] *Lietuvos teisė 1918–2018…*, p. 211–213.

[90] S. Stačiokas, *Pasruošimas stojimui į ES: Konstitucinio Teismo praktikos tarptautinis ir lyginamasis aspektai*, [in:] *Stojimo į Europos Sąjungą ir Konstitucija,* Eugrimas, Vilnius 2000, p. 37.

[91] E. Jaraiūnas, *The Constitutional Grounds for Membership of the Republic of Lithuania in the European Union*, [in:] *Lithuanian Constitutionalism: The Past and Present*, Constitutional Court of the Republic of Lithuania, Vilnius 2017, p. 256–287.

[92] Referendumas dėl Lietuvos Respublikos narystės Europos Sąjungoje 2003 m. gegužės 10–11 d. Rinkimų rezultatai. http://www.vrk.lt/statiniai/puslapiai/rinkimai/2003/referendumas/rezultatai/rez_l_16.htm.

[93] Ibidem.

property polarization could affect negatively the activity of part of Lithuanians to participate the referendum, and because of their clear orientation towards the national state even to vote against the entering to the EU; 2) in territorial point of view, clear tendency of the Poles, living compactly, to identify themselves with the ethnic group, it is likely, determined their negative attitude towards the membership in the EU; 3) for the people of Russian nationality this choice could be painful (a challenge for possible termination of relationship with Russia), therefore, it is likely they could ignore the referendum. Thus, in summary, it can be stated that legal identity at least 1/3 of Lithuanian citizens is of ethnic nature that is characteristic to a closed society.

Therefore, an essential question is raised – if there is forming a civil society of western orientation? In the Republic of Lithuania there are registered about 14 thousand of different civil society's organizations[94], activity of which according to data of "Baltijos tyrimai in 2005, was participated by only 17% of the country's population"[95]. This number is almost unchanged, though during the period of 1990–2005 the number of society's organizations grew every year and increased more than tenfold[96]. There were also "found" such non-governmental organizations where not civil but private interests dominated[97].

The research revealed two opposite tendencies of the development: although there were established a lot of non-governmental organizations, however, they have not involved more citizens into their activity. Inconsistency of these two tendencies probably is an index of combination of twofold phenomena: 1) In the process of fining down of Lithuanian non-governmental organizations there formed a model of small social organization based on personal relationship; 2) very small participation of citizens in activity of social organizations does not allow stating that Lithuanian civil society of western orientation has formed.

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[94] R. Žiliukaitė, A. Ramonaitė, L. Nevinskaitė, V. Beresnevičiūtė, I. Vinogradnaitė, *Neatrasta galia: Lietuvos pilietinės visuomenės žemėlapis*, Versus aureus, Vilnius 2006, p. 22; Lietuvos nevyriausybinių organizacijų situacijos analizė, *Nevyriausybinių organizacijų informacijos ir paramos centro 2005 metais atliktas tyrimas*, www.nisc.lt/files/main/Trečiojo sektoriaus institucijų sistuacija Lietuvoje1.pdf/.

[95] Lietuvos visuomenė išlieka menkai organizuota, www.old.nisc.lt/tyrimai.php.

[96] R. Žiliukaitė, A. Ramonaitė, L. Nevinskaitė, V. Beresnevičiūtė, I. Vinogradnaitė, *Neatrasta…*, p. 21.

[97] Ibidem, p. 49.

The latter conclusion is confirmed by the results of the researches of Lithuanian national identity in 2005. Their analysis revealed the most important features of national identity: "to be born / to grow in Lithuania (mentioned by 80,5% of all respondents), citizenship of the Republic of Lithuania (60,3%), living in Lithuania (59,2%), in the fourth place – Lithuanian roots (48,7%), followed by Lithuanian language (39,6%), love of Lithuania (30,2%), following of Lithuanian traditions and customs (29,8%), respect for the Lithuanian Constitution and laws (26,1%) and Catholic faith (11,5%)"[98]. Most respondents "draw a strict line of divide between a citizen of Lithuania and a Lithuanian, between citizenship and nationality. Citizenship is perceived as a formalized expression of human relationship with the state, foreseeing particular political and social rights and obligations"[99]. Respondents especially gave prominence to the features of moral-emotional dimension[100], but not a respect for the Constitution and laws. Therefore, it can be stated that civil society of western orientation, the main feature of legal identity of which is a respect for the Constitution and a highlighting of relationship of individual freedom and legal responsibility, haven't formed yet[101].

The lack of respect for the Constitution and human rights is characteristic not only to a society but its political elite as well. The results of qualitative and quantitative analysis of decisions of the Constitutional Court adopted in the period of 1993–2004 reveal: a) 103 decisions (62,80%) stated that single laws of the Republic of Lithuania (their parts), decisions (their parts) of the Seimas and Government of the Republic of Lithuania contradict to the Constitution of the Republic of Lithuania; b) legislation of the Republic of Lithuania infringes human rights and freedom – in 29,37% of the cases, provisions of Preamble of the Constitution of the Republic of Lithuania – in 14,13% of the cases, the articles that describe constitutionality of the Lithuanian state, national economy and work – in 10,76% of the cases each[102].

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[98] J. Kuznecovienė *Lietuvių…¸* p. 69.

[99] Ibidem, p. 63.

[100] Ibidem. p. 67.

[101] V. Šlapkauskas, *Kodėl nesusiklosto lietuvių tautos pilietinė visuomenė ir jos teisinė kultūra?*, [in:] *Teisė ir demokratija.Demokratija Lietuvoje: tarp Vakarų ir Rytų (1990–2007 m.)*, collective monograph, Mykolo Romerio universitetas, Vilnius 2009, p. 214.

[102] V. Šlapkauskas, *Teisinės sistemos disfunkcija – silpnos socialinės politikos požymis*, „Socialinis darbas" 2006, Nr. 5 (1), p. 28.

Having summarized the results of the mentioned researches, it can be stated:

This stage was characterized by: a) coordination of valuable and instrumental attitudes towards law in striving to harmonize national law with the EU law; b) big investments of the EU, for absorption of which there was legalized an expansion of the state governance apparatus. It stimulated a new wave of business and policy adhesion – a trade in political impact[103]; c) a society is polarized by the mark of financial-economic success/failure (as two Lithuanian societies), which is characterized by features of closed and open society. Its civil development "stuck" between moral-emotional faith in the Lithuanian state and its social-political reality. Social-political thinking and activity that can influence political-legal decisions of the state's highest authority in democratic ways, which is characteristic to members of western orientation society, have not formed. Therefore, it was needed to wait for some unexpected social incident that would stimulate new spontaneous social process. Such incident was world's financial crisis of the year 2008/2009 that has a huge negative impact on functionality of Lithuanian economy. It was a crisis of Lithuanian economy that stimulated emigration of working youth and their families outside the country.

Emptying Lithuania. Though the beginning of this stage is described by the economic crisis in 2008/2009, however, the reasons of Lithuania's emptying lie deeper. The presumption could be raised that socially abandoned young generation that grew up during the period of the Lithuanian statehood entrenchment, with civil society of western orientation absent and disappointment in absolute of parents generation's moral-emotional attitude towards Lithuanity, is constructing own behaviour according to the labour market laws: they are leaving to the Western European countries where their relatives or friends are living already and where is an opportunity to get a job with a higher wage. Unlike in cases of illegal emigration of the generations of grandparents, modern young generation can emigrate legally because the EU law guarantees a freedom of movement and the right for work.

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[103] NSGK patvirtino tyrimo dėl neteisėto poveikio politikams išvadas, https://www.lrt.lt/naujienos/lietuvoje/2/214295/nsgk-patvirtino-tyrimo-del-neteiseto-poveikio-politikams-isvadas.

Freedom of movement is strengthened not only by a favourable legal context of the EU, but also by possibilities provided by informational technologies and global transport. Under the impact of interaction of globalization and informational technologies, a new empirical state of sociality is forming, main features of which are ephemerity and movement of any social formation. It is not a coincidence that Z. Bauman highlighted the fact that globalization (movement and unclosing) and localization (indecision, passiveness and closing) are the conditions that influence the same society at the same time, which can be turned by our corresponding activity or inactivity into the conditions of our unification or separation[104].

Therefore, it is necessary to state that open society increasingly obtains the features of "abstract or impersonal society", which were mentioned by K. R. Popper in the middle of the XX century. Although he doubted that open society " can move away much from a particular or real human group or a system of other real groups; (…) [and as a hyperbole explained, that] lets imagine such society where people almost do not meet eye to eye, where all things are being handled by isolated individuals communicating by letters or telegrams and driving closed cars. Such imagined society could be called "absolutely abstract or impersonalized society"[105]. At least it exists and Povilas Aleksandravičius describes such society as a "holed society".

When political authorities are not tackling or are tackling heavily the problems of social existence of Lithuanian society, political pendulum of elections starts to sway inevitably. When its sway tires, then, according to Povilas Aleksandravičius, a "holed society" is forming, existential feature of which is movement of its members to a better place, because the borders of the states weakened under conditions of globalization. This is a society of the persons focused towards own personal life, putting on a mask of indifference or even walking away. On the other hand, "holing of societies" can take place in different rate, because this process is restricted from inside by a strength of relationship of members of formed civil society and democratic possibilities of citizens unifications to make a legal-political impact on any authority in striving to improve conditions of personal and social existence. When western oriented civil society is absent, its

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[104] See more: Z. Bauman, *Globalizacijos pasekmės žmogui*, Strofa, Vilnius 2002.

[105] K.R. Popper, *Atviroji…*, p. 180.

transformation into a "holed society" goes on the high pace under conditions of globalization. Changes of modern Lithuanian society are an example of such social transformation.

Conclusions

1. Society's social-political form, social-political and legal identities are forming, evolving and can transform within the boundaries of really functioning legality protection. Ethnocentristic societies are of the closed form and their social identity is expressed by the moral – emotional features. Legal identity is based on a customary law.
2. Conditions of the state's political-legal regime – combination of regimes of political ideology and legal regulation and nature of their real functioning – are an essential context of society's social-political form, formation of social and legal identities, their evolution and transformation.
3. During the period of soviet occupation in Lithuania, there was dominating a totalitarian regime of USSR Communist Party based on combination of Marxist ideology and regime of prohibition. During the occupation period, their functionality changed – from persecution and mass violence to more mild nature. In reality, there existed a huge divide between a social reality and social legality protection, where everyone had hands dirty in corruption, and a justice was for sale. Under these political-legal conditions, Lithuanian society strived to survive and therefore retained own closed form based on ethnocentrism. However, at the end of occupation, legal identity of Lithuanian society already had acquired the features of legal identity characteristic to soviet society – legal nihilism and corruption.
4. During the period of the Lithuanian statehood restoration in 1990–1992, the changes of society's social-political form took place from closed society towards its democratic open form. Creation of the allowed legal regime became a favourable context for entrenchment of negative features of society's legal identity – legal nihilism, corruption and legalisation of activity of non-legislative nature. Activity of non-legislative nature is an activity directed against protection of human rights and freedoms, justice and other legal values. At the stage of the Lithuanian statehood restoration, there was neither a rule of law, nor human right protection.

5. The period of the Lithuanian statehood entrenchment in 1993–2000 is very controversial in point of view of society's social-political form, development of social-political and legal identities. On the one hand, protection of liberal democracy values is based on the adoption of the Constitution of the Republic of Lithuania by referendum and activity of the Constitutional Court guarantied political-legal conditions for self-creation of open society, but, on another hand, non-transparent process of privatization in legal point of view "made topical" negative features of legal identity – legal nihilism and corruption. In the twist of these tendencies, there was shown up: a) an attitude of political and the state institutions towards the law; b) identification of civil society with the national state; c) openness of ethnic nature society.

6. The process of Lithuania's preparation and becoming the EU member oriented a political-legal entrenchment development of Lithuania as the rule of law, which was a favourable context of open society and its legal identity formation. However, researches by different authors revealed, that: a) important elements of Lithuanian society social-political identity are its moral-emotional features that possibly restrict a development of western oriented civil society; b) lack of respect for the Constitution and human rights is characteristic not only to a society but its political elite as well; c) legal identity characteristic to western oriented civil society haven't formed.

7. Under the impact of interaction of globalization and informational technologies, a new empirical state of sociality is forming, essential features of which are ephemerity and movement of any social formation. This new state P. Aleksandravičius describes as a "holed society". Speed and nature of its formation could be restricted by the strength of functionality of western oriented civil society. Lithuanian society is not a western oriented civil society, therefore, we observe the process of its very rapid "holing" formation.

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