



Grand Chamber judgment

Permanent and irreversible disqualification of a former President from parliamentary office following his removal in impeachment proceedings was disproportionate

In today's Grand Chamber judgment in the case of [Paksas v. Lithuania](#) (application no. 34932/04), which is final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 3 of Protocol No. 1 (right to free elections) to the European Convention on Human Rights on account of the applicant's inability to stand for election to the Lithuanian Parliament.

The case concerned the applicant's disqualification from holding parliamentary office following his removal as President of Lithuania in impeachment proceedings² for committing a gross violation of the Constitution and breaching the constitutional oath.

Principal facts

The applicant, Rolandas Paksas, is a Lithuanian national who was born in 1956 and lives in Vilnius. On 5 January 2003 he was elected President of the Republic of Lithuania. Following impeachment proceedings against him, he was removed from office on 6 April 2004 by the Seimas (the Lithuanian Parliament) for committing a gross violation of the Constitution and breaching the constitutional oath.

The Constitutional Court found that, while in office as President, the applicant had, unlawfully and for his own personal ends, granted Lithuanian citizenship to a Russian businessman, disclosed a State secret to the latter by informing him that he was under investigation by the secret services, and exploited his own status to exert undue influence on a private company for the benefit of close acquaintances.

On 22 April 2004 the Central Electoral Committee (CEC) found that there was nothing to prevent the applicant from standing in the presidential election called as a result of his removal from office. However, on 4 May 2004 the Seimas amended the Presidential Elections Act by inserting a provision to the effect that a person who had been removed from office in impeachment proceedings could not be elected President until a period of five years had expired (as a result of which the CEC ultimately refused to register the applicant as a candidate). The matter was referred by members of parliament to the Constitutional Court, which ruled on 25 May 2004 that such a disqualification was compatible with the Constitution, but that subjecting it to a time-limit was unconstitutional. On 15 July 2004 the Seimas passed an amendment to the Seimas

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Formal indictment procedure whereby the legislature may remove from office a head of State, a senior official or a judge for breaching the law or the Constitution.

Elections Act, to the effect that anyone who had been removed from office following impeachment proceedings was disqualified from being a member of parliament.

Criminal proceedings were also brought against the applicant on a charge of disclosing information classified as a State secret, but he was eventually acquitted.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, Mr Paksas complained that the Constitutional Court had not been impartial and had exceeded its powers in the proceedings concerning the constitutional violations of which he was accused. He further complained that his right to be presumed innocent, under Article 6 § 2, had been breached in several respects. In addition, under Article 7 (no punishment without law), he submitted that the sanction of his lifelong disqualification from standing for election was not provided for by law and, relying on Article 4 § 1 of Protocol No. 7 (right not to be tried or punished twice), he alleged that the institution of impeachment proceedings followed by criminal proceedings against him had amounted to trying him twice for the same offence. Lastly, under Article 3 of Protocol No. 1 (right to free elections), he complained that the amendment of electoral law had been passed arbitrarily to bar him from holding office in future, and that his lifelong disqualification from being a member of parliament was contrary to the very essence of free elections.

The application was lodged with the European Court of Human Rights on 27 September 2004. On 1 December 2009 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber.³

A [Grand Chamber hearing](#) took place in public in the Human Rights Building in Strasbourg on 28 April 2010.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), *President*,
 Christos **Rozakis** (Greece),
 Nicolas **Bratza** (United Kingdom),
 Peer **Lorenzen** (Denmark),
 Françoise **Tulkens** (Belgium),
 Josep **Casadevall** (Andorra),
 Ireneu **Cabral Barreto** (Portugal),
 Lech **Garlicki** (Poland),
 Dean **Spielmann** (Luxembourg),
 Renate **Jaeger** (Germany),
 Egbert **Myjer** (Netherlands),
 Sverre Erik **Jebens** (Norway),
 David Thór **Björgvinsson** (Iceland),
 Dragoljub **Popović** (Serbia),
 Nona **Tsotsoria** (Georgia),
 Işıl **Karakaş** (Turkey), *judges*,
 András **Baka** (Hungary), *ad hoc judge*,

and also Michael **O'Boyle**, *Deputy Registrar*.

³ Under Article 30 of the Convention, where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Decision of the Court

Article 6 §§ 1 and 2, Article 7 and Article 4 § 1 of Protocol No. 7

The first set of proceedings in the Constitutional Court had concerned the compliance with the Constitution and the law of a naturalisation decree issued by the applicant by virtue of his presidential powers, and the second set had sought to ascertain whether he had committed gross violations of the Constitution or breached his constitutional oath. In the Court's view, the proceedings in question had not concerned the "determination of his civil rights and obligations" or of a "criminal charge" against him within the meaning of Article 6 § 1 of the Convention; nor had he been "charged with a criminal offence" within the meaning of Article 6 § 2 in those proceedings, or "convicted" or "tried or punished ... in criminal proceedings" within the meaning of Article 4 § 1 of Protocol No. 7, and the proceedings had not resulted in his being held "guilty of a criminal offence" or receiving a "penalty" within the meaning of Article 7 of the Convention.

The Court therefore rejected this part of the application as being incompatible *ratione materiae* (in terms of subject matter) with the provisions of the Convention.

Article 3 of Protocol No. 1

Admissibility

The Court observed first of all that Article 3 of Protocol No. 1, concerning the right to free elections, applied only to the election of the "legislature". It thus concluded that in so far as the applicant's complaint related to his removal from office or disqualification from standing for the presidency, it was incompatible *ratione materiae* with the provisions of the Convention and hence inadmissible. However, it was admissible *ratione materiae* in so far as it related to his inability to stand for election to the Seimas.

The Court then dismissed the Government's arguments that the applicant had not exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention and that his application had been lodged outside the six-month time-limit prescribed by the same provision. It also held that, contrary to what the Government maintained, Article 17 of the Convention, prohibiting the abuse of rights, could not be applied in his case.

Merits

The Court noted that, as a former President of Lithuania removed from office following impeachment proceedings, the applicant belonged to a category of people directly affected by the rule set forth in the Constitutional Court's ruling of 25 May 2004 and the Act of 15 July 2004. Since he had thus been deprived of any possibility of running as a parliamentary candidate, he was entitled to claim that there had been interference with the exercise of his right to stand for election. The interference satisfied the requirements of lawfulness and pursued a legitimate aim for the purposes of Article 3 of Protocol No. 1, namely preservation of the democratic order.

Assessing the proportionality of the interference, the Court observed on the one hand that, as it had previously held, Article 3 of Protocol No. 1 did not exclude the possibility of imposing restrictions on the electoral rights of a person who had, for example, seriously abused a public position or whose conduct had threatened to undermine the rule of law or democratic foundations. The applicant's case concerned circumstances of that kind, since his inability to serve as a member of parliament was the consequence of his removal from office by the Seimas in a decision taken in impeachment proceedings on the basis of the Constitutional Court's ruling that he had committed a gross violation of the Constitution and breached his constitutional oath. The Court further noted that, in the context of impeachment proceedings, which could result in senior officials being

removed from office and barred from standing for election, Lithuanian law provided for a number of safeguards protecting those concerned from arbitrary treatment.

On the other hand, while not wishing either to underplay the seriousness of the applicant's alleged conduct in relation to his constitutional obligations or to question the principle of his removal from office as President, the Court noted the extent of the consequences of his removal for the exercise of his rights under Article 3 of Protocol No. 1: he was permanently and irreversibly deprived of the opportunity to stand for election to Parliament. That appeared all the more severe since removal from office had the effect of barring the applicant not only from being a member of parliament but also from holding any other office for which it was necessary to take an oath in accordance with the Constitution. The Court found it understandable that a State should consider a gross violation of the Constitution or a breach of the constitutional oath to be a particularly serious matter requiring firm action when committed by a person holding an office such as that of President of Lithuania; however, that was not sufficient to persuade it that the applicant's permanent and irreversible disqualification from standing for election as a result of a general provision was a proportionate means of satisfying the requirements of preserving democratic order.

The Court noted that Lithuania's position in that area constituted an exception in Europe. It then observed that not only was the restriction in question not subject to any time-limit, but the rule on which it was based was also set in constitutional stone, with the result that the applicant's disqualification from standing for election carried a connotation of immutability that was hard to reconcile with Article 3 of Protocol No. 1. Lastly, it found that although the relevant legal provision was worded in general terms and was intended to apply in exactly the same manner to anyone whose situation corresponded to clearly defined criteria, it was the result of a rule-making process strongly influenced by the particular circumstances.

Accordingly, and having regard especially to the permanent and irreversible nature of the applicant's disqualification from holding parliamentary office, the Court concluded that there had been a violation of Article 3 of Protocol No. 1.

[Article 13 taken in conjunction with Article 3 of Protocol No. 1](#)

In view of its finding of a violation of Article 3 of Protocol No. 1, the Court considered that the applicant had an "arguable claim" calling in principle for the application of Article 13.

However, the absence of remedies against a decision of a constitutional court did not raise an issue under Article 13, which did not go so far as to require the provision of a remedy allowing a constitutional precedent with statutory force to be challenged.

This part of the application was therefore rejected as being manifestly ill-founded.

[Article 41](#)

By way of just satisfaction, the Court held unanimously that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Separate opinion

Judge Costa, joined by Judges Tsotsoria and Baka, expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.