EUROPEAN COURT OF HUMAN RIGHTS
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Criminal proceedings lawful in case concerning voting on behalf of fellow parliamentarians in Lithuania

In today's **Chamber** judgment[1] in the case of Sacharuk v. Lithuania (application no. 39300/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights**, and**

no violation of Article 7 (no punishment without law).

The case concerned Mr Sacharuk's conviction in 2017 of abuse of office and of unlawful use of an official document because he had used another parliamentarian's identity card to vote in parliament on his behalf.

The Court found in particular that the Supreme Court had not freshly examined the case in its second set of proceedings brought against Mr Sacharuk. As a result, his concern that the judge who sat on the bench in both sets of proceedings might have a preconceived view of his guilt had been legitimate, and his doubts as to the impartiality of the Supreme Court had been justified. Therefore, his request for that judge to be replaced should have been accepted.

At the same time, Mr Sacharuk could have foreseen that his acts would constitute an offence under the criminal law applicable at the time. The Court could not discern any flagrant non-observance or arbitrariness in the application of the law in question.

Principal facts

The applicant, Aleksandr Sacharuk, is a Lithuanian national who was born in 1977 and lives in Vilnius. He was a member of the *Seimas* (the Lithuanian Parliament) from November 2008 to November 2012.

In January 2010, during a session of the *Seimas*, Mr Sacharuk voted several times on behalf of another parliamentarian, who was on holiday abroad, using that parliamentarian's *Seimas* member's identity card, although according to the *Seimas* statute, members had to vote in person and the right to vote was not transferrable. The *Seimas* Special Investigation Committee (SSIC), formed to examine whether Mr Sacharuk and the parliamentarian in question were guilty of serious misconduct, asked the Prosecutor General to carry out a pre-trial investigation in May 2010.

When the Prosecutor General's Office asked the *Seimas* to lift Mr Sacharuk's political immunity in order for them to be able to investigate, the number of votes in favour were not sufficient. In the subsequent decision not to start a pre-trial investigation, it was noted that, based on information provided by the SSIC, Mr Sacharuk's actions had contained elements of criminal offences.

Proceedings for serious misconduct were subsequently initiated. During the Constitutional Court proceedings, Mr Sacharuk argued that, under the *Seimas* statute, the only sanction for such an infraction should be a warning, and that there was no legal basis for serious misconduct proceedings. His lawyer also pointed out that the *Seimas* Ethics and Procedures Commission had

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

already considered similar cases, but proceedings for serious misconduct had not been initiated in any of them. He pleaded that casting votes for absent parliamentarians from one's coalition or political group had become general practice in the *Seimas*.

Nevertheless, the Constitutional Court concluded that both Mr Sacharuk and the parliamentarian in question had breached their parliamentary oath and had grossly violated the Constitution, the latter for missing plenary government sessions without justification. However, as the final decision concerning removal of office fell to the *Seimas*, and the necessary number of votes in favour of annulling Mr Sacharuk's mandate was not obtained, Mr Sacharuk preserved his mandate. In contrast, the other parliamentarian's mandate was annulled.

Mr Sacharuk remained a member of the *Seimas* for the whole of his four-year term. Once his term in office was over, and he no longer had political immunity, criminal proceedings were opened.

The Vilnius Regional Court acquitted Mr Sacharuk on 20 July 2015, and that judgment was upheld by the Court of Appeal in May 2016. The courts acknowledged the *Seimas* Ethics and Procedures Commission's conclusion that, as of 27 February 2001, there had been a number of occasions when *Seimas* members would vote in the place of other members of the same coalition or same political group. Witness statements confirmed that there was an unwritten rule for members of a political group to vote unanimously and that voting in place of another parliamentarian was established practice.

Nevertheless, an appeal on points of law lodged by the Prosecutor in December 2016 led to the Supreme Court quashing the ruling of the Court of Appeal and the case being examined again. In June 2017, the Supreme Court in turn convicted Mr Sacharuk of abuse of office and of having used an official document illegally. He was fined 1,882 euros.

Following the lodging of an appeal on points of law in September 2017, a three-judge panel was formed to examine the case in an oral hearing. During the hearing, Mr Sacharuk asked for the panel to be changed on the ground that one of the judges had already examined his criminal case as the presiding judge of the Supreme Court panel the year before. That request was dismissed. The reason given was that the mere fact that that judge had participated in the previous cassation proceedings did not constitute a legal basis for raising doubts as to her impartiality. Mr Sacharuk's appeal was dismissed in a final ruling in February 2018, with the Supreme Court finding that the arguments that voting for absent colleagues in the *Seimas* had been "settled practice" and did not merit criminal liability were unfounded.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, Mr Sacharuk complained that the Supreme Court panel which upheld his conviction in 2018 had not been impartial. He also complained that he was the first parliamentarian who had ever been convicted for voting in the place of another member of the *Seimas*, as up until then this had been the "tradition" or working practice, and that he could not therefore have foreseen that he would be convicted, in breach of Article 7 (no punishment without law) of the European Convention.

The application was lodged with the European Court of Human Rights on 9 August 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),

Davor **Derenčinović** (Croatia),

and also Dorothee **von Arnim**, *Deputy Section Registrar.*

Decision of the Court

Article 6 § 1

The Court noted that Mr Sacharuk had exercised his right to request that Judge D.B. be removed from the panel because she had already examined his criminal case. However, the cassation court had dismissed his request on the grounds that he had not submitted any concrete evidence as to why Judge D.B. might be biased.

The Court found that during the second round of proceedings no new facts had been introduced to enhance the assessment of the facts made during the first round of proceedings. It therefore concluded that the Supreme Court's first ruling judgment contained findings that prejudged the question of Mr Sacharuk's guilt in the subsequent proceedings. Moreover, the Supreme Court's second ruling contained similar language to the first, showing that that court, for the main, had not undertaken a fresh examination of his case.

Although the Government argued that there had been no formal grounds for Judge D.B.'s recusal, the Court observed that, under Article 58 § 1 (4) of the Code of Criminal Procedure, a judge may be removed from a case on the basis of any circumstances which could reasonably raise doubts as to his or her impartiality. The Court concluded that Mr Sacharuk's concern that Judge D.B. might have a preconceived view of his guilt was legitimate, and that his doubts as to the impartiality of the Supreme Court, on account of Judge D.B. being part of the panel for the second ruling, had been justified. There had therefore been a violation of Article 6 § 1 of the Convention.

Article 7

The Court noted that the core of Mr Sacharuk's arguments under Article 7 consisted in maintaining, first, that the domestic courts had unjustifiably extended the reach of the criminal law to his case, given that his actions when voting for his fellow parliamentarian had been consistent with the "tradition" in the *Seimas* to vote for other members of the same political group, and, secondly, that he had been discriminated against because his conviction had been exceptional and thus arbitrary.

The Court accepted Mr Sacharuk's claim that his criminal case had had no precedents, as the *Seimas* Commission had never before decided to refer the matter of the breach of the principle of a single vote to a prosecutor for investigation within criminal proceedings. Nonetheless, it found that the opening of a criminal prosecution against Mr Sacharuk had not violated Article 7. It also agreed with the Supreme Court's argument that, in criminal proceedings, a court had to follow the letter of the law, rather than "wrongful practice or precedents contrary to the law". The Court could not discern any flagrant non-observance or arbitrariness in the application of the law in question to the applicant. Mr Sacharuk could have foreseen that his acts would constitute an offence under the criminal law applicable at the time. There had accordingly been no violation of Article 7 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation of Article 6 § 1 of the Convention constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. Moreover, as he had not made a claim for costs and expenses, no amount was awarded in that respect.

The judgment is available only in English.

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