

CASE OF PAKSAS v. LITHUANIA - Application no. 34932/04 (2011)

In the Grand Chamber's judgment in the **CASE OF PAKSAS v. LITHUANIA** 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 Convention

I. Principal Facts

The applicant, Rolandas Paksas, is a former President of Lithuania who was removed from office by Parliament following impeachment proceedings 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 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. 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 Elections Act, to the effect that anyone who had been removed from office following impeachment proceedings was disqualified from being a member of parliament.

II. Complaints and procedure

Relying on 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.

III. Decision of the Court

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.

Assessing the proportionality of the interference, the Court observed on the one hand that, 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.

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.

IV. Just satisfaction

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

V. Dissenting Opinion

The dissent disagree with the majority that the applicant's complaint under the Article 3 of Protocol No.1 was admissible and well-founded. It argued that since no judicial remedy was available, the final domestic decision was, at the latest and at best from the applicant's perspective, the Act of 15 July 2004. That date constitutes the starting-point for the six-month period. In his application the applicant did not raise, even in

substance, the complaint concerning his ineligibility to stand for election to the Seimas. He did not raise that complaint until 30 September 2005, one year later, in a supplement to his application.

The judgment finds only a “narrow” violation. The conviction of the majority is that lifelong disqualification from standing for election is excessive and thus unacceptable. And the case-law generally takes a strict approach to prohibitions of this type. However, the allegations against the applicant were not trivial either, and it was the national parliament which, following a ruling by a high-level court, removed him from office and passed the impugned Act. In such a specific and delicate field as electoral law, and in a case involving the complex relations between the different public authorities, subject to the ultimate scrutiny of the electorate, and thus the sovereign people, I would advocate restraint; the State has a wide discretion, and therefore it seems to me that the legitimate European supervision in this case should be restricted or limited.