

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Date: 08/03/2018

DH-DD(2018)249

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1310th meeting (March 2018) (DH)

Communication from the applicant (08/03/2018) in the case of PAKSAS v. Lithuania (Application No. 34932/04).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1310^e réunion (mars 2018) (DH)

Communication du requérant (08/03/2018) dans l'affaire PAKSAS c. Lituanie (Requête n° 34932/04)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

08 MARS 2018

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Vilnius 03.08.2018

cc. Karolina Bubnyte

Agent of the Government of the Republic of Lithuania
to the European Court of Human Rights
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LT-01104 Vilnius

Advance by e-mail original by courier service

Re: H46-16 Paksas vs. Lithuania (Application 34932/04)
Submission by Agent for Mr. Rolandas Paksas

The CM is informed that the submission dated 02.10.2018 by the Government of the Republic of Lithuania is incorrect but so is the Governments "latest action plan" dated 05.01.2018 ([DD\(2018\)20](#) - Communication from the authorities - Action plan - 05.01.2018) is incomplete and therefore misleading. The events described in the Governments latest submission in no way coincide with the Governments submissions of Sept.29 and Oct.02. What the change of the head of legal affairs at the Seimas in November has to do with the Question with the wrong information submitted to the CM on Oct.02 has to do is difficult to understand. It is nothing, simply yet another attempt to create a picture of activity.

The Governments latest submission again cites the relevant text of the Constitutional Court¹ and tries to sell their opinion that this is the only way out of this dilemma. However the relevant text which only states that a change of the Constitution can be made only in the way foreseen by the Constitution and that this may resolve the conflict between the Constitution and the Convention. This may be true however it refers only to the general measure and has nothing to do with resolving the violation of Human Rights suffered by the Applicant. This violation was committed by a decision of the Constitutional Court which himself stated that it can change this decision if necessary.

There are two ways open to fulfil the Judgement of the ECHR:

- Change of the decision by the court itself²
- Change by the Seimas as foreseen in the Constitution

In support of their position the Governments has alleged that a new draft has been submitted for the Seimas spring session. This is equally wrong. The Government itself has conceded that in order to bring a motion to change the Constitution a majority of ¼ of the Seimas members or more than 300.000.-Nationals is required. The Government has not even alleged that this requirement has

¹ Please see last 2 paras of page 3 and first para of page 4 DH-DD(2018)20

² Decisions of the Constitutional Court carry the rank of the Constitution itself

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been achieved. The requirement has not been achieved nor will be achieved in the near future. The Governments assumption that the necessary majorities for changing the Constitution³ will be met is naïve in particular since this approach has failed 3 times before. The Governments information that a number of senior politicians support a change of the Constitution is irrelevant for the legislative proceeding and in any event it relates only to the general measures and not to restoring the Applicants passive voting rights.

The repetition of false and/or incomplete statements by permanently referring to only one of the possibilities to enforce the Judgement of the ECHR can only been understood as being made on purpose with a political background. The political interest of the Government to avoid the enforcement of the ECHR Judgement is widely known but is of no relevance for the enforcement proceeding which is based on the law and on the law only. Therefore the political reason will not be addressed.

The applicants petition to enforce the ECHR Judgement as to its individual measure remains disregarded.

In spite of the CM's repeated invitation to report on the progress of fulfilling the individual measures no meaningful efforts as to the enforcement of the individual measures made necessary by the Constitutional Courts wrong decision of 25 May 2004 were ever made.

The Government did not provide any information to the CM regarding Art.105 of the Constitution which reads:

Article 105: The Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws: 1) acts of the President of the Republic; 2) acts of the Government of the Republic. The Constitutional Court shall present conclusions: 1) whether there were violations of election laws during elections of the President of the Republic or elections of members of the Seimas; 2) whether the state of health of the President of the Republic allows him to continue to hold office; 3) **whether international treaties of the Republic of Lithuania are not in conflict with the Constitution;** 4) **whether concrete actions of Members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution.**

The Government failed to obtain information from the Court why the Court does not consider a Judgement of the ECHR as a sufficient cause for a review of its own wrong judgement in accordance with Art.105 of the Constitution and why the Constitutional Court finds no significance in the fact that the Republic of Lithuania continuously violates an International Convention which is in conflict with the Constitution.

This makes the latest statement of the Government as being incomplete and and untrue and this is also the case regarding all of the Governments reports on the compliance with the CM's order to report on the realization of individual measures.

Respectfully,

Dr. Eugen Salpius

³ Art.148:..... Amendments of the Constitution concerning other chapters of the Constitution must be considered and voted at the Seimas twice. There must be a break of not less than three months between the votes. A draft law on the alteration of the Constitution shall be deemed adopted by the Seimas if, during each of the votes, not less than 2/3 of all the Members of the Seimas vote in favour thereof.....