

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



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Date: 31/07/2014

**DH-DD(2014)894**

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Meeting: 1208 meeting (23-25 September 2014) (DH)

Item reference: Communication from the applicant's representative  
(16/06/2014) in the case of Paksas against 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 : 1208 réunion (23-25 septembre 2014) (DH)

Référence du point : Communication du représentant du requérant dans l'affaire  
Paksas contre Lituanie (Requête n° 34932/04)  
**(anglais uniquement)**

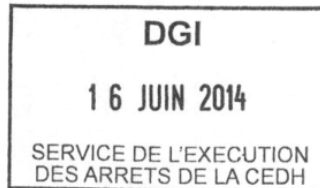
Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**Subject: priority supervision due to refusal of Lithuania to execute the judgment of the ECHR dated 06/01/2011 in case *Paksas v Lithuania*, 34932/04**

Dear Sirs,

It makes already **4 months** from our communication concerning the *de facto* refusal of the Lithuanian Government to execute the judgment of the European Court of Human Rights in case *Paksas v Lithuania*, **3 years and 6 months** from the day of issue of the judgment, and **10 years and 1 month** from the first day of the breach of the Convention. However the respondent State still lives under the violation, and denial of President Paksas right to stand for election.

The injured party would like to ask you to set a deadline for the respondent State to file a response to injured party's communication dated 17/02/2014 and to give this supervision priority under Rule 4, as well as to enter an interim resolution. Unfortunately, otherwise the breach will continue for eternity.

The injured party would like to request putting the issue on the agenda of the Committee for the 1195<sup>th</sup> DH meeting to be held in September 2014 in accordance with Rule 7(1).

In the meantime I would like to inform you that on 25/03/2014 the United Nations Human Rights Committee found that the introduction of the lifelong ban to stand for presidential elections, to be prime minister or minister for impeached President Paksas had breached Article 25 of the International Covenant on Civil and Political Rights **from the very first day of its introduction on 25/05/2004**. Lithuania held new presidential elections in May 2014, but despite the fact that the UN found the breach in March, the injured party was denied the right to stand.

For your information, please find the Views of UN Committee dated 25/03/2014 attached.

The respondent State did not show any intent to execute the Views of the UN Committee in the same manner as they ignore the ECtHR judgment.

Warm regards,

Assoc. Prof. Stanislovas TOMAS, PhD  
Avocat

A handwritten signature in black ink, appearing to be 'S. Tomas', written over a horizontal line.

United Nations

CCPR/C/110/D/2155/2012



## International Covenant on Civil and Political Rights

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**Advance Unedited Version**

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### Human Rights Committee

#### Communication No. 2155/2012

##### Views adopted by the Committee at its 110th session (10-28 March 2014)

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|--|--|
| <i>Submitted by:</i>                     | Rolandas Paksas (represented by counsel, Stanislovas Tomas)                          |
| <i>Alleged victim:</i>                   | Rolandas Paksas  |
| <i>State party:</i>                      | Lithuania  |
| <i>Date of communication:</i>            | 24 June 2011 (initial submission)  |
| <i>Document references:</i>              | Special Rapporteur's rule 97 decision, transmitted to the State party on 6 June 2012 |
| <i>Date of adoption of Views:</i>        | 25 March 2014  |
| <i>Subject matter:</i>                   | Restrictions to the right to participate in public life.                             |
| <i>Substantive issues:</i>               | Right to participate in public life and vote in free and fair elections              |
| <i>Procedural issue:</i>                 | Inadmissibility <i>ratione materiae</i> .  |
| <i>Articles of the Covenant:</i>         | Article 14, paragraphs 1 and 2; article 15; article 25(a), (b), (c).                 |
| <i>Article of the Optional Protocol:</i> | Article 5, paragraph 2 (b), article 3<br>[Annex]                                     |

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (109th session)**

concerning

#### **Communication No. 2155/2012\***

*Submitted by:* Rolandas Paksas (represented by counsel, Stanislovas Tomas)

*Alleged victim:* Rolandas Paksas

*State party:* Lithuania

*Date of communication:* 24 June 2011 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 25 March 2014,*

*Having concluded* its consideration of communication No. 2155/2012, submitted to the Human Rights Committee by Mr. Rolandas Paksas under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Mr. Rolandas Paksas. He claims that Lithuania<sup>1</sup> has violated his rights under articles 14 paragraphs 1 and 2, 15, 25 (a), (b) and (c) of the International Covenant on Civil and Political Rights. Mr. Paksas is represented by Stanislovas Tomas.

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\* The following Committee members participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval, and Mr. Andrei Paul Zlatescu.

The text of an individual opinion by Committee member Mr. Gerald L. Neuman is appended to the present Views.

<sup>1</sup> The Optional Protocol entered into force for Lithuania on 20 February 1992, without reservation.

### **The facts as submitted by the author**

2.1 The author was elected President of the Republic on 05 January 2003 in direct and democratic elections. On 11 April 2003, the author issued Decree no. 40, countersigned by the Minister of the Interior, granting Lithuanian citizenship by way of exception for merits to Lithuania to a Russian businessman Jurij Borisov who had been awarded the Medal of Darius and Girėnas for the merits to Lithuania, for the efforts to glorify the name of Lithuania in the World, and assisting Lithuania in its integration into the World Community of States by the author's predecessor, Valdas Adamkus, with Presidential Decree no. 1373(2001).

2.2 On 6 November 2003, the Lithuanian Parliament (Seimas) requested the Constitutional Court to advise whether Presidential Decree no. 40 was in compliance with the Constitution and the Citizenship Act. The Seimas submitted that the procedure of granting citizenship by way of exception appeared to have been applied inappropriately, considering that Mr. Borisov had no special merit warranting him exceptional treatment and that the author had granted him citizenship as a reward for his substantial financial assistance to his election campaign.

2.3 The author informs that on 8 December 2003, the main impeachment initiator, Gintaras Steponavicius, Vice-President of the Lithuanian Parliament, met with Mr. Egidijus Kuris, President of the Constitutional Court and that they discussed the granting of citizenship to Mr Borisov. On 18 December 2003, eighty-six members of the Seimas submitted a proposal to initiate impeachment proceedings against the applicant. On 23 December 2003 the Seimas set up a special commission to investigate the allegations about the author's conduct. On 19 February 2004 the special investigation commission concluded that some of the charges presented against the author were founded and serious, and it recommended that the Seimas institute impeachment proceedings. On the same day, the Seimas requested the Constitutional Court to determine whether the specific acts of the applicant cited by the commission had breached the Constitution.

2.4 On 31 March 2004, the Constitutional Court adopted Ruling no. 14/04 declaring a gross breach of the Constitution and of the author's constitutional oath on three points:

- unlawfully granting citizenship to Mr. Borisov by Decree no. 40 as a reward for the latter's financial support;
- informing Mr. Borisov that the law-enforcement institutions were investigating him and tapping his telephone conversations; and
- exploiting his official status to influence decisions of the private company, Žemaitijos keliai Ltd, concerning the transfer of shares with a view to defending the property interests of certain private individuals close to him.

2.5 On 6 April 2004, the Seimas voted in favour of the impeachment. The author wished to stand as a candidate in the presidential election called for 13 June 2004. On 22 April 2004, the CEC (Central Electoral Committee) found that there was no legal ground to prevent him from standing. However, on 4 May 2004, the Parliament amended the Presidential Elections Act by inserting the following provision: "A person who has been removed from parliamentary or other office by the Seimas in impeachment proceedings may not be elected President of the Republic if less than five years have elapsed since his removal from office." Following this amendment, the CEC refused to register the applicant as a candidate. The issue was forwarded to the Constitutional Court.

2.6 On 25 May 2004, the Constitutional Court held (Ruling 24/04) that disqualifying a person from standing for elections was compatible with the Constitution, but that subjecting such disqualification to a time-limit was unconstitutional. The Court further pointed that the spirit of the Constitution prohibits the author to stand for presidential and parliamentary

elections or to be a Prime Minister, a Minister, a Judge or a State Controller for life. On 15 September 2008 the Lithuanian Parliament amended the Law on Local Self-Government. The author considers that this amendment prohibits him, as an impeached President, to stand for local election.

2.7 On 21 October 2004, the Prosecutor General discontinued the criminal investigation into allegations that the applicant had abused his office as President to influence decisions by the *Žemaitijos keliai* company concerning the transfer of its shares, violating article 228 of the Criminal Code.

2.8 On 13 December 2005, the Lithuanian Supreme Court acquitted the author for the charge of informing Mr. Borisov that the law-enforcement institutions were investigating him and tapping his telephone conversations.

2.9 On 27 September 2004, the author lodged an application against Lithuania to the European Court of Human Rights (ECHR). In its judgment of 6 January 2011,<sup>2</sup> the ECHR held that Lithuania had violated article 3 of Protocol No. 1 considering that the author's disqualification from holding parliamentary office was disproportionate because of its permanent and irreversible nature. The remainder of the applicant's complaints was declared incompatible *ratione materiae* with the Convention. Following the judgment of the ECHR, the Government formed a working group to make proposals for its execution. On 31 May 2011, the Working Group submitted its conclusions stating that it is necessary to remove the irreversible and permanent nature of the disqualification for the persons removed from office following impeachment proceedings for committing a gross violation of the Constitution and breaching the constitutional oath. The proposed constitutional amendments were approved by the Government on 6 June 2011, but the Constitutional Court held them unconstitutional on 5 September 2012.

### **The complaint**

3.1 The author claims a violation of articles 14 paragraph 1, 14 paragraph 2, 15, 19 and 25 (a), (b) and (c) of the International Covenant on Civil and Political Rights.

3.2 The author considers that his complaint must be held admissible because (i) he presented it on 24 June 2011 and therefore did not delay in addressing the Committee after the judgement 34932/04 of the European Court of Human Rights, issued on 06 January 2011; (ii) the right to stand for presidential elections is not covered *ratione materiae* by the European Convention of Human Rights, and was therefore not examined by the European Court.<sup>3</sup>

3.3 With regard to the exhaustion of domestic remedies, the author refers to the amendment of the Law on Local Self-Government adopted on 15 September 2008 introducing a prohibition for an impeached President to stand for local elections. According to the author, domestic litigation on this point would relate to general legislation and would not serve his purpose.

3.4 The author further refers to the Ruling no. 24/04, through which the Constitutional Court interpreted that it shall be prohibited to organize a referendum to determine whether the author violated the Constitution, and whether the lifelong prohibition to stand for election had to be revoked, thereby violating article 25(a) of the Covenant. The author informs that this breach was mentioned in his application before the European court of Human Rights, but was not examined.

<sup>2</sup> See ECHR Judgment, 34932/04, Paksas v. Lithuania, 6 January 2011,

<sup>3</sup> Ibid., para. 72.

3.5 On the merits, the author considers that the lifelong prohibition to stand for presidential and local elections was not established by law, is not objective, is not reasonable, and is disproportional, therefore violating his rights under article 25(a) and (b) of the Covenant. In this respect, the author makes reference to the Committee's jurisprudence in *Dissanayake v. Sri Lanka*, where the Committee recognised that a prohibition to stand for 7 years for a breach of the Constitution is disproportional.<sup>4</sup>

3.6 The author argues that there was no fair trial, and that the requirement of procedural fairness of article 25(c) was violated, including through the meeting held on 8 December 2003 between the Vice-President of the Seimas and the President of the Constitutional Court, where they discussed the granting of citizenship to Mr Borisov. On 16 March 2004, the lawyers of the author submitted a motion for removal of justice Kūris due to this meeting, but it was denied. The author therefore considers that the right to objective impartiality as developed in the jurisprudence of the Committee<sup>5</sup> was breached by the Lithuanian Constitutional Court.

3.7 The author argues that the Constitutional Court was biased in two respects: on 5 January 2004, the Constitutional Court made a comment on the New Year speech of the author. On 16 March 2004, the President of the Constitutional Court commented during the hearings that the motion for removal of the judges made by the author could be dismissed without consideration.<sup>6</sup>

3.8 The author further considers that the Seimas exercised a continuous pressure on the Courts. For example, on 25 March 2004, it issued a "Declaration on Actions of President Rolandas Paksas", stating that the finding of author's guilt by the Constitutional Court "was just a matter of time" and that "having regard to the fact that the impeachment proceedings would last for quite a long period, [the Seimas] proposes to Rolandas Paksas of the Republic to resign". According to the author, the Seimas was sure of the outcome of the ongoing impeachment proceedings, thereby breaching article 14 paragraph 2 of the Covenant.

3.9 The author further argues that the Constitutional Court Ruling 24/04 states that the lifelong prohibition for him to stand for elections and to be appointed to offices requiring a constitutional oath is based on a presumption of guilt contrary to article 14 paragraph 2 of the Covenant and was applied retrospectively to him, in breach of article 15 of the Covenant.

3.10 The author further informs that for the first time the lifelong prohibition to hold the office of Prime Minister or Minister was introduced with the Ruling 24/04 of the Constitutional Court on 25 May 2004 and it was established after the acts of the author, but before the end of the impeachment proceedings. The Seimas amended the Parliamentary Elections Act and the Presidential Elections Act accordingly.

3.11 The author considers that the principle of objectivity was violated because of the breach of basic procedural fairness, and because of the discrimination he suffered as compared to political opponents. The author reiterates the arguments developed as to the alleged violation of article 14 of the Covenant, arguing that neither of the two former

<sup>4</sup> See Communication CCPR/C/93/D/1373/2005, *Dissanayake v. Sri Lanka*, views adopted on 22 July 2008, para. 8.5

<sup>5</sup> See Communication CCPR/C/81/D/1015/2001, *Perterer v Austria*, views adopted on 20 July 2004, para.10.4

<sup>6</sup> "The motion for removal might be denied together (with the request for leave to present video evidence), but such a question must be decided in the Deliberation Room. However until now you have not presented the reasons for removal."

presidents were subjected to lifelong restrictions despite granting the citizenship by the way of exception for merits in “much more controversial” cases. Referring to the Committee’s jurisprudence,<sup>7</sup> the author considers that the sanction imposed on him is disproportional and violates article 25 of the Covenant.

3.12 In his further submission dated 9 June 2012, the author argues that the Committee should examine the prohibition to organize a referendum on whether the author had violated the Constitution following the Constitutional Court ruling no. 24/04, and the question whether the lifelong prohibition to stand for election had to be revoked. The author also considers that, while the issue of the right to a fair trial was held inadmissible by the European court of Human Rights, it should be considered admissible by the Committee in compliance with its jurisprudence.<sup>8</sup>

3.13 In this regard, the author considers that the impeachment proceedings were of criminal nature as they were initiated following alleged criminal offenses. The author also observes that according to article 246 of the Seimas Rules of Procedure which were in force from February 1999 to November 2004, the impeachment proceedings must comply with “the principles and fundamental rules of criminal proceedings”. The author further considers that the impeachment proceedings before the Constitutional Court are a “suit at law”, since a group of members of the Parliament officially accused him before the Constitutional Court, and since the recognition of the breach unavoidably led to a removal from office. The author therefore argues that articles 14 and 15 are applicable.

3.14 The author argues that the Constitutional Court had usurped the will of the people, removing their right to vote for the author, and thereby threatening democracy. The author further observes that the Constitution does not include any *expressis verbis* ban to be re-elected after an impeachment.

3.15 The author considers that the Constitutional Court’s Ruling of 5 September 2012 amounts to a refusal to execute the European Court judgement which required the re-establishment of the right to stand for parliamentary elections retrospectively and violates article 25 of the Covenant.

3.16 The author therefore seeks the recognition of violations of article 14 paragraphs 1 and 2, 15, 25 of the Covenant, and the re-establishment of his right to stand for presidential, parliamentary and local elections, and to hold the offices requiring a constitutional oath.

#### **Observations of the State party on the admissibility and merits of the complaint**

4.1 By notes verbale of 21 September 2012 and 5 December 2012, the State party submitted its observations. The State party considers that the communication must be declared inadmissible and without merits in so far as the author’s allegations are incompatible with the provisions of the Covenant and are unsubstantiated.

4.2 The State party considers that the impeachment proceedings are a form of constitutional liability and cannot be equated to disciplinary proceedings against civil servants or to criminal charges<sup>9</sup>. The purpose of the impeachment case instituted against the

<sup>7</sup> The author refers to communication CCPR/C/93/D/1373/2005, *Dissanayake v. Sri Lanka*, op.cit.; communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, views adopted on 17 March 2005; communication CCPR/C/97/D/1392/2005, *Lukyanchik v Belarus*, Views adopted on 21 October 2009, para. 8.5.

<sup>8</sup> The author refers to communications *Boyer v Canada*, 1774/2008, § 4.2 ; *Perterer v Austria*, 1015/2001, § 9.2 and *Lederbauer v Austria*, 1454/2006, § 7.2

<sup>9</sup> See communication No. 1015/2001, *Perterer v. Austria*, Views adopted on 20 July 2004, para. 9.2.



author was to determine whether he had committed gross violations of the Constitution and whether his constitutional oath was breached. The State party considers that these impeachment proceedings did not concern the determination of the author's rights and obligations in a suit at law, but involve the head of State's constitutional liability and therefore lie outside the "criminal" sphere.

4.3 The State party further considers that the author incorrectly argues that the gross violations of the Constitution for which he was removed from office should have been proved in the criminal court. This interpretation perverts the provisions of the Constitution on impeachment, as not all the grounds of the impeachment are related to the commission of a criminal act. According to the Constitution, criminal prosecution cannot be instituted against the President of the Republic as long as he is in office (article 86 of the Constitution).

4.4 The State party argues that even after the Constitutional Court concluded that the author breached his oath and violated the Constitution, he still had a possibility to resign from his office to avoid a full constitutional liability. The specific restriction at issue is applicable only in cases where the Seimas removes a person from office by not less than a 3/5 majority vote following a relevant conclusion of the Constitutional Court. The State party infers that the author did not avail himself of the said opportunity to resign from office. It considers that the final decision of the Parliament is the ground for the adoption of the constitutional sanction and that article 14 of the Covenant is not applicable to proceedings before the Parliament.

4.5 The State party further considers that the acquittal of the author on 13 December 2005 for the disclosure of classified information cannot change the conclusion of the Constitutional Court that the author grossly violated the Constitution.<sup>10</sup> The impeachment procedure does not involve "the determination of any criminal charge" or of "rights and obligations in a suit at law" within the meaning of article 14 of the Covenant. This part of the communication should therefore be declared inadmissible *ratione materiae* under article 3 of the Optional Protocol.<sup>11</sup>

4.6 Should the Committee consider otherwise, the State party argues that the author's allegations concerning alleged violations of article 14 paragraphs 1 and 2 of the Covenant are unsubstantiated. In that regard, the State party considers that the author's communication seeks the re-examination of the legality of the constitutional sanction imposed on him and refers to the jurisprudence of the Committee under which: "it is in principle for the courts of States parties to evaluate the facts and evidence, unless the evaluation of the facts and evidence was manifestly arbitrary or amounted to a denial of justice"<sup>12</sup>. The State party considers that this is clearly not the case of the author's complaints. The State party recalls that Lithuanian law provides for a number of safeguards protecting the persons implicated in impeachment proceedings from arbitrary treatment as the rules of criminal procedure and fair-trial principles apply to impeachment proceedings. While the decision to initiate such proceedings and to adopt a sanction are the prerogative of the Seimas, a political body, it is the task of a judicial body, the Constitutional Court, to rule on whether there has been a violation of the Constitution. If the Court finds no such violation, the Seimas cannot remove the official from office. Furthermore, when sitting in impeachment proceedings, the Seimas is presided over by a judge of the Supreme Court,

<sup>10</sup> Constitutional Court's Conclusion of 31 March 2004.

<sup>11</sup> Communication No. 1419/2005, *Francesko de Lorenzo v. Italy*, Inadmissibility decision of 24 July 2007.

<sup>12</sup> Communication No. 1329-1330/2004, *José Pérez Munuera and Antonio Hernández Mateo v. Spain*, Inadmissibility decision of 25 July 2005.

and it cannot remove a person from office other than by a 3/5 majority of its members in a reasoned decision. Lastly, the applicant was assisted by numerous counsels, and could provide his evidence during public hearings.<sup>13</sup>

4.7 The State party considers that the author has not submitted any reasoned arguments on the alleged arbitrariness and unfairness of the proceedings. As to the alleged bias of the Constitutional Court in its public statement of 5 January 2004 issued in reaction to the author's speech on 31 December 2003, the State party considers that the Court clearly self-restrained from any political polemics.

4.8 As regards the alleged bias resulting from the meeting between the President of the Constitutional Court and the Vice-speaker of the Seimas, the State party considers that these allegations are unsubstantiated as the impeachment proceedings had not been initiated at that time. The State party considers that the Committee's jurisprudence in *Dissanayake v. Sri Lanka*<sup>14</sup> cannot be applied to the author's case because the referred restrictions were not linked to the author's arbitrary conviction and sentence. Additionally, the State party considers that the gravity of the author's unconstitutional conduct cannot be compared to that of Mr. Dissanayake, who was convicted for contempt of court. The State party considers that the present case also differs from the Committee's case of *Bandaranayake v. Sri Lanka*<sup>15</sup> since the restriction imposed on the author's rights resulted of his removal under the constitutional impeachment proceedings (and not following criminal liability), without any kind of arbitrariness.

4.9 As regards the author's complaint under article 14 paragraph 2 for the alleged violation of the presumption of innocence, the State party considers that the author perverts the Lithuanian law in equating the impeachment proceedings to criminal, or disciplinary law issues.

4.10 The State party further considers that in blaming the Seimas for breaching his presumption of innocence, the author did not mention that the declaration made suggesting his resignation from presidential office took place following the invitation made by the author to Mr. Borisov to become his public advisor on 24 March 2004, and the public declaration made the following day by the author on TV to apologize for that invitation which he qualified as "fatal mistake". The State party considers that the declaration of the Seimas responded to the vulnerability of the President, reflected in the conviction of Mr. Borisov for the use of psychological abuse against him. The State party therefore considers that the author's allegations concerning the violation of article 14 of the Covenant are unsubstantiated.

4.11 As to the alleged violation of article 15 of the Covenant for the alleged arbitrary and retrospective application of a constitutional sanction, the State party refers to the Committee's jurisprudence under which article 15 paragraph 1 prohibits retroactive application of laws only in relation to criminal law matters.<sup>16</sup> The measures of removal from office and (consequent) disqualification from standing for elections involve the head of State's constitutional liability and lie outside the "criminal" sphere.

4.12 Should the Committee consider otherwise, the State party maintains that the author's allegations concerning violations of article 15 of the Covenant are unsubstantiated and without merits. The constitutional sanction was not applied retrospectively as it entered into force on the day when the author was removed from office by the Seimas, and procedural

<sup>13</sup> See Judgment of the Grand Chamber of 6 January 2011, Application no. 34932/04, § 102

<sup>14</sup> Op. Cit.

<sup>15</sup> Op. Cit.

<sup>16</sup> Communication No. 1994/2010, I.S. v. Belarus, Inadmissibility decision of 25 March 2011.

safeguards were respected. Furthermore, the State party argues that the adopted restriction was not unforeseeable: in its ruling of 25 May 2004, the Constitutional Court further developed the concept of the irreversible nature of a constitutional sanction resulting from impeachment, already known since the Ruling of the Constitutional Court of 11 May 1999. If the author had doubts as to the consequences of the constitutional liability, he could have requested the interpretation and revision of this ruling to the Constitutional Court under articles 60 and 61 of the Law on the Constitutional Court.

4.13 New amendments to the Law on the Seimas Elections and to the Law on the Presidential Elections were adopted in May and July 2004, with the aim to specify the constitutional provisions and to lessen the sanction applicable following impeachment proceedings. The Constitutional court declared these provisions unconstitutional. The State party considers that this decision was not unforeseeable for the author and concludes that the alleged violation of article 15 of the Covenant, which should be held unsubstantiated and without merits.

4.14 As regards the alleged violation of article 25 of the Covenant, the State party considers that the scope and content of the constitutional sanction is clearly, precisely and narrowly defined as the prohibition exclusively relates to passive presidential and parliamentary elections rights, and offices requiring constitutional oath. The right to vote and to participate in the conduct of public affairs is not restricted, as demonstrated by the author's political activities after his removal from the presidential office.

4.15 As to the alleged violation of the author's right to initiate a referendum, the State party argues that the impeachment procedure is clearly regulated. The removal of a person or the revocation of his/her mandate and the imposition of subsequent constitutional sanctions cannot be decided by way of referendum. The State party considers that the related author's complaint is incompatible *ratione materiae* with the provisions of the Covenant: the author could have initiated a referendum for the amendment of the respective constitutional provisions under article 9§3 of the Constitution. The State party therefore considers that the author's complaint under article 25(b) of the Covenant is inadmissible and without merits.

4.16 The State party further argues that the author has never been prevented from standing for municipal elections. He was listed as the first candidate of his political party for the Municipality of Vilnius City at the municipal elections of February 2007, and he was a member of the Vilnius City Council from March 2007 to June 2009. The State party also argues that the amendments introduced in 2008 to article 22 of the Law on Local Self-Government do not affect the author's right in so far as the oath introduced for new members of Self-government Council is different to the constitutional oath. The author's claim under article 25 related to his inability to stand for municipal elections are therefore without merits.

4.17 As regards the author's inability to stand for parliamentary elections, the State party considers that the author does not refer to any particular elections where he would have been prevented from exercising his right. The State party considers that, in compliance with the jurisprudence of the Committee<sup>17</sup>, the author cannot claim to be a victim within the meaning of article 1 of the Optional Protocol.

4.18 Should the Committee consider otherwise, the State party argues that the author failed to exhaust domestic remedies with regard to his inability to stand for parliamentary elections. If the author had expressed his will to become a member of the Seimas in

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<sup>17</sup> Communication No. 1038/2001, *Dáithí Ó Colchúin v. Ireland*, inadmissibility decision of 28 March 2003.

October 2004 and 2008 and the Supreme Electoral Commission would have refused to register him as a candidate, he could have applied to the administrative courts for the alleged interference with his right. The Committee is therefore precluded from considering this part of the communication pursuant to article 5, paragraph 2 (b) of the Optional Protocol. The State party argues that this position is supported by the recent reforms adopted by the Government following the judgement of the European Court of Human Rights.

4.19 The State party further considers that the young democratic regime of Lithuania justifies that the existing constitutional sanction be maintained “even though it might appear excessive in a well-established democracy”. Only eight years have elapsed since the author’s removal from the presidential office. The restriction to stand for elections can still be regarded as reasonable and proportional to the constitutional offences he committed. Constitutional amendments were proposed and approved by the Government on 6 June 2011 and transmitted to the Seimas. It was decided to make relevant changes to the Law of the Seimas Elections, and relevant constitutional amendments will be introduced in the nearest future.

4.20 As regards the alleged violation of article 25 (b) of the Covenant for the restriction to stand for the presidential elections, the State party refers to the jurisprudence of the Committee under which the exercise of the right to vote and to be elected may not be suspended or excluded except on objective and reasonable grounds established by law,<sup>18</sup> and compatible with the purpose of the law.<sup>19</sup> The State party reiterates that no criminal liability was applied to the author, and that only his passive right to stand for the presidential elections was restricted. Although of an irreversible nature, the constitutional restrictions are proportionate to the aim pursued and with the gravity of the related breaches. The State party concludes that the author has failed sufficiently to substantiate his claim under article 25(b), which should therefore be held inadmissible under article 2 of the Optional Protocol.

4.21 As to the reasonableness of the constitutional restriction to stand for presidential elections, the State party reiterates that its aim is to prevent any person who has grossly violated the Constitution and breached his/her constitutional oath from holding the office provided for in the Constitution. It relates to the same office from which the author was removed. The aim of the impeachment procedure being to protect and strengthen the democratic constitutional order and national security, it must be considered as reasonable. Similar restrictions of a permanent nature actually exist in the legislation of other democratic states (see United States, the Czech Republic, the Slovak Republic, and the Republic of Poland).

4.22 The State party further highlights that the constitutional restriction to stand for presidential elections only applies to categories of persons which are clearly defined in the law, and there is no doubt that, as former President of the Republic, the author belongs to that group. The constitutional restriction could therefore not be qualified as discriminatory. The State party further recalls that seven similar procedures were initiated since the restoration of independence of Lithuania to other Presidents in function. The restriction at issue is precisely worded; it applies in the same way to anyone and it is objective.<sup>20</sup>

<sup>18</sup> General Comment No. 25 on Article 25, para. 4.; communication No. 1134/2002, *Fongum Gorji-Dinka v. Cameroon*, op.cit.

<sup>19</sup> Communication No. 500/1992, *Josze Debreczeny v. the Netherlands*, views of 3 April 1995.

<sup>20</sup> General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, CCPR/C/21/Rev.1/Add.7, para. 4.

4.23 The State party highlights the particular responsibilities of the President of Lithuania, expected to set an example. It argues that the author still does not acknowledge the gravity and seriousness of the breaches he committed, and concludes that the author expects the European Court of Human Rights and the Human Rights Committee to justify the gross violations he consciously made. It considers that the imposed restriction is proportionate with the seriousness of the acts, and is neither discriminatory nor arbitrary.

4.24 As regards the alleged violation of article 25 of the Covenant regarding the author's inability to become a judge or a State controller, Prime Minister or a Minister, the State party considers that the author has not provided any arguments or evidence. It reiterates the arguments presented as to the inapplicability of article 14 of the Covenant *ratione materiae* and considers that this communication has nothing in common with the right not to be arbitrarily dismissed from public service.<sup>21</sup> The State party also submits that the author's claims related to his inability to become a judge or a State controller are merely hypothetical, because he does not meet specific requirements of eligibility to any of these offices. It therefore considers that the author has no actual grievance to claim under article 25 of the Covenant and that his claim is inadmissible under article 1 and 2 of the Optional Protocol. As to the author's complaint regarding his inability to become a Minister or a Prime Minister, the State party considers that the author does not demonstrate that he actually intended to stand for these positions and was prevented to do so. Accordingly, he cannot claim to be a "victim" within the meaning of article 1 of the Optional Protocol.

#### **Author's comments on the State party's observations**

5.1 On 30 November 2012 and 22 December 2012, the author provided comments on the State party's submissions. The author specifies that he had never talked about the possibility to appoint Mr. Borisov as public advisor to the President, but only as "voluntary (unpaid) adviser", and that this appointment never actually took place.

5.2 With regard to the argument of the State party that the author did not intend to stand for presidential elections or to become a minister during the last eight years, the author considers that such intents would have been inefficient since the ruling of the Constitutional Court of 25 March 2004 was very clear. Additionally, while the political party led by the author became part of the Government coalition after the parliamentary elections of October 2012, the author could not become a minister since the lifelong prohibition is still in force.

5.3 The author maintains that the impeachment proceedings applied to his case were criminal as the sanctions imposed were both deterrent and punitive. He therefore considers that articles 14 and 15 of the Covenant apply, and that the State party failed to present any substantial counterargument to that regard.

5.4 With regard to the violation of article 14 paragraph 1 of the Covenant, the author considers that the State party was biased when it tried to justify the statement of the Constitutional Court on 5 January 2004 maintaining that the Constitutional Court "refrained from political polemics", whereas the Court had actually participated into the related "political polemics" through its statements.

5.5 The author also argues that the State party presents false facts when trying to defend itself as to the meeting of the Constitutional Court President with the Vice-president of the Seimas., and he considers that the pressure of the Seimas was not on ordinary courts, but on the Constitutional Court.

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<sup>21</sup> The State party refers to communication No. 1376/2005, *Soratha Bandaranayake v. Sri Lanka*, Views of 24 July 2008.

5.6 The author considers that the lifelong prohibition to stand for elections and to be a minister was justified only by a presumption of guilt, in breach of article 14 paragraph 2 of the Covenant. And that the Seimas declaration of the 25 March 2004 was made in breach of the presumption of innocence, before the Constitutional Court ruling of 31 March 2004. He argues that in voting the Declaration, the Seimas intended to punish the author for his political opinion.

5.7 Considering the State party's statement that he could have addressed the Constitutional Court for an interpretation of the sanction while in office, the author comments that he did not do so because the prohibition did not exist at that time. In introducing the sanction in question, the State party breached article 15 of the Covenant. Additionally, the author considers that article 15 was breached by the "conviction" by the Constitutional Court, while he was acquitted by the Supreme Court regarding the alleged disclosure of State secret, while the alleged abuse of office to influence decisions of private company Zemaitijos keliai was discontinued, and while the investigation of the alleged buying of citizenship by Mr. Borisov was never started. The author considers that his "conviction" results from an obvious error of assessment and constitutes a denial of justice breaching the principle *nulla poena sine lege* by the Constitutional Court.

5.8 The author further argues that the State party violates article 25(b) of the Covenant through the Ruling of the Constitutional Court of 5 September 2012, which declared unconstitutional the March 2012 amendment of the ordinary Law on Seimas Elections. The author considers that this decision amounts to a refusal to execute the European Court judgement requiring the re-establishment of the right to stand for parliamentary elections retrospectively.

5.9 As to his right to become minister, State controller or judge, the author argues that he has sufficient university background to become a State controller and that he may acquire the necessary qualification to become a judge.

5.10 Finally, the author considers that "elections" obviously cannot declare a person innocent, and that the State party's statement to that regard tries to mislead the Committee. The author nevertheless considers that both "elections" and "referenda" may lead to an amendment to the Constitution and that the Constitutional Court prohibited referenda to avoid such amendment.

#### **Additional observations of the State party**

6.1 By submission dated 15 March 2013, the State party made additional comments, maintaining its position that the author's complaints as to the alleged violations of articles 14 paragraph 1 and (2), 15, 23 (a), (b), (c), are incompatible with the Covenant and are unsubstantiated.

6.2 The State party reiterates that the aim and purpose of the impeachment proceedings is to protect the state community and is therefore different to criminal proceedings.

6.3 The State party argues that it did not suggest the author to apply to the Constitutional Court for the construction of a constitutional sanction, but for the revision of the irreversible nature of the constitutional sanction under review.

6.4 The State party considers that the author's statements as to the alleged influence of the Seimas on the Constitutional Court are grounded on his personal beliefs as in its decision of 31 March 2004, the Constitutional Court did not refer to the invitation made by the author to Mr. Borisov, nor to the declaration made by the Seimas suggesting the author to resign from office.

6.5 The State party recalls that the Special Investigation Commission concluded that the charges brought against the author are grounds to institute the impeachment proceedings in

the Seimas. It highlights that the allegations that the author had unlawfully granted Lithuanian citizenship to Mr. Borisov was only one of the grounds for the impeachment.

6.6 As to the author's complaint that the text of the Constitution did not include an *expressis verbis* ban on re-election after impeachment, the State party argues that the official constitutional doctrine is part of the Constitution. The author's statement that the judgment of the European Court of Human Rights of 6 January 2011 required re-establishing his right to stand for parliamentary elections retrospectively is misleading and incorrect. The Constitutional Court clearly recognized the duty to remove the incompatibility of the provisions of article 3 of Protocol No. 1 of the Convention with the Constitution, and possible constitutional amendments are under review. Finally, the State party highlights that the Constitutional Court did not prohibit a referendum to prevent amending the Constitution in regard to the restriction at issue. The statement of the Court in its 25 May 2004 ruling is related exclusively to the finality and non-disputability of its conclusion in respect to a concrete person against whom impeachment procedures had been initiated. It does not mean that the constitutional legal regulation governing the impeachment procedure and its consequences may not be changed by way of referendum or ordinary legislative procedure.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its Rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

7.2. The Committee has to ascertain in accordance with article 5, paragraph 2(a) of the Optional Protocol whether the same matter is being examined under another procedure of international investigation or settlement. The Committee notes that the European Court of Human Rights on 6 January 2011 (application No. 34932/04) decided that the author's permanent and irreversible disqualification from holding parliamentary office violated his right to stand for parliamentary elections. The author challenges the Constitutional Court's subsequent Ruling of 5 September 2012 as a refusal to execute the European Court Judgement. The Committee notes that, according to Article 46, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the execution of final judgments of the European Court of Human Rights **is supervised by the Committee of Ministers of the Council of Ministers** and considers that this matter is currently being actively examined under another procedure of international investigation or settlement. Accordingly, the Committee considers that the part of the communication which relates to the author's life-time disqualification from parliamentary office is inadmissible under article 5, paragraph 2(a) of the Optional Protocol in the present circumstances.

7.3. The Committee notes, however, that the remainder of the author's claims to the European Court of Human Rights which related to his disqualification from office other than parliament was declared incompatible *ratione materiae* with the European Convention. The Committee recalls that the concept of 'the same matter' has to be understood as including the same author, the same facts and the same substantive rights. The Committee notes, that article 25, paragraphs (b) and (c) have no equivalent in the European Convention and its Protocols as regards access to public office other than the legislature and therefore concludes that the communication does not concern the same matter in the sense of article 5, paragraph 2(a) of the Optional Protocol. The Committee also recalls that when adhering to the Optional Protocol, Lithuania did not enter a reservation to article 5, paragraph 2(a). Accordingly, the Committee concludes that it is not prevented under article 5, paragraph 2 (a) from considering these claims.

7.4. As regards the alleged prohibition to stand for local elections as a result of the amendments to the Law on Local Self-Government adopted on 15 September 2008, the Committee notes the argument of the State party according to which the amendments do not affect the author's right to stand for local elections since the oath introduced for new members of Self-government Council is different from the constitutional oath which the author is prevented from taking. The Committee considers that the author has not sufficiently substantiated his claims with regard to local elections and declares this claim inadmissible in accordance with article 2 of the Optional Protocol.

7.5. As regards the disqualification from serving as Judge or a State controller, the Committee notes the State party's argument that the author is not affected by this disqualification because he does not satisfy the specific prerequisites for these offices. The Committee notes that the author has not obtained a legal education and not shown any concrete steps to get such education in the future. The Committee concludes that the author has not shown that he could be considered a victim of a violation of the Covenant with regard to the disqualification from these offices. This part of the communication is declared inadmissible in accordance with article 1 of the Optional Protocol.

7.6 The Committee notes the author's argument according to which the impeachment proceedings under review were linked to the alleged criminal offenses and were therefore of a criminal nature. The Committee also notes that the author claims a violation of article 14 paragraphs 1 and 2 of the Covenant, resulting from an alleged collusion between the court's President and the member of the Seimas who had initiated the proceedings against him, and from the pressure exercised on the Constitutional court. The Committee notes that, under the Lithuanian Constitution, the President is immune from criminal liability, but can be removed from office and held constitutionally liable through impeachment proceedings<sup>22</sup> and that the Seimas is the only authority mandated to decide whether the person against whom the proceedings were initiated should be removed from office.<sup>23</sup>

7.7 The Committee recalls that the right to a fair and public hearing by a competent, independent and impartial tribunal is guaranteed in cases regarding the determination of criminal charges against individuals or of their rights and obligations « in a suit at law ». It further recalls that there is no determination of rights and obligations in a suit at law where the persons concerned are confronted with measures taken against them in their capacity as persons subordinated to a high degree of administrative or parliamentary control,<sup>24</sup> such as the impeachment procedure. In the case under review, the impeachment procedure was initiated by the Seimas as a parliamentary procedure, independently of the criminal procedures being followed against the author.

7.8 Similarly, the outcome of the impeachment proceedings was not to charge the author with a "criminal offence" and to hold him "guilty of a criminal offence" within the meaning of article 15 of the Covenant. Accordingly, the author's claims under articles 14 and 15 of the Covenant are incompatible *ratione materiae* with the provisions of the Covenant and inadmissible under article 3 of the Optional Protocol.

7.9 As regards the alleged violation of article 25 concerning the impeachment procedure and adopted restrictions, the Committee notes the argument of the State party according to which the author could have applied to the Constitutional Court for an interpretation of its ruling of 11 May 1999, holding that the constitutional sanction imposed in the context of

<sup>22</sup> Articles 74 and 86 of the Constitution.

<sup>23</sup> Articles 246 to 258 and 260 of the Statute of the Seimas; Article 74 and Article 107 § 3 of the Constitution

<sup>24</sup> See General Comment No. 32, op.cit., para.17, communication No. 1015/2001, *Perterer v. Austria*, para. 9.2 (disciplinary dismissal).



impeachment proceedings was “of an irreversible nature”. The Committee further notes the position of the State party that the author could have resigned to avoid the impeachment procedure and its outcome. The Committee also notes the argument of the author according to which an application to the Constitutional Court would have been ineffective, as there was no doubt as to the meaning of the phrase “of an irreversible nature”, and that under article 107 of the Lithuanian Constitution, the decisions of the Constitutional Court have statutory force and are final. In this respect, the Committee shares the analysis of the European Court of Human Rights according to which a prior request to the Constitutional Court for clarification of whether removal from office entailed lifelong restrictions « could not [...] have prompted an examination of the applicant's particular situation [...]. It would also have required him to resign voluntarily as President and thereby to accept such a restrictive condition that the remedy in question could not in any event be regarded as “accessible” ». The Committee therefore considers that the author has exhausted all available domestic remedies with regard to the alleged violations of article 25, and that these claims are admissible. The Committee therefore proceeds to a consideration of the merits.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 Regarding the author's claims under article 25 of the Covenant, the issue before the Committee is whether the lifelong disqualifications adopted against him to be a candidate in presidential elections or to be a Prime Minister, or a Minister, amount to a violation of the Covenant.

8.3 The Committee recalls that article 25 of the Covenant recognizes and protects the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law, which are objective and reasonable, and incorporating fair procedures.<sup>25</sup>

8.4 The Committee notes the State party's argument that the constitutional sanction restricting the author's rights is proportionate to the gravity of his unconstitutional conduct. It also notes the author's argument that the lifelong disqualifications adopted against him were not established by law, not objective, not reasonable, and are disproportional. In this regard, the Committee notes the statements of the Constitutional Court on 5 January 2004 and on 16 March 2004, insinuating the responsibility of the author before the outcome of the proceedings under review. The Committee also notes that on 6 April 2004, when the Seimas decided to remove the author from his office of President, no legal provision expressly stated that he could be barred from standing for election as a result. Accordingly, on 22 April 2004, the CEC authorized the author to stand for the June 2004 presidential election. However, on 4 May 2004, the Seimas introduced an amendment to the Presidential Elections Act stating that anyone who had been removed from office following impeachment proceedings was prevented from standing for presidential elections during five years after these proceedings. Following this amendment, the CEC refused to register the author as a candidate. On 25 May 2004, the Constitutional Court held that such disqualification was compatible with the Constitution but that subjecting it to a time-limit was unconstitutional, adding that it applied to any office for which it was necessary to take

<sup>25</sup> See General Comment No. 25, CCPR/C/21/Rev.1/Add.7, paras. 3, 4, 16

a constitutional oath. On 15 July 2004, the Seimas adopted an amendment to the Elections Act, through which anyone removed from office following impeachment proceedings became ineligible as a Member of Parliament, and could not stand for offices of President, Prime Minister, Minister, judge or State controller. In view of the foregoing, the Committee considers that the lifelong disqualifications to be a candidate in presidential elections, or to be Prime Minister or Minister, were imposed on the author following a rule-making process highly linked in time and substance to the impeachment proceedings initiated against him. Under the specific circumstances of the instant case, the Committee therefore considers that the lifelong disqualifications imposed on the author lacked the necessary foreseeability and objectivity and thus amount to an unreasonable restriction under article 25 (b) and (c) of the Covenant, and that the author's rights under these provisions have been violated.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's rights under article 25 (b) and (c), of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including through the revision of the lifelong prohibition of the author's right to be a candidate in presidential elections, or to be Prime Minister or Minister, in light of the State party's obligations under the Covenant. Additionally, the State party is under the obligation to take steps to avoid similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### Individual opinion by Committee member, Mr. Gerald L. Neuman (partially dissenting)

I fully agree with the Committee's rulings on admissibility. In particular, it is important for the proper performance of the Committee's functions that litigants who have already prevailed in the European Court of Human Rights not be permitted to bring the same issue as a communication under the Optional Protocol merely to seek a second opinion.<sup>1</sup>

Regarding the merits, I would stress the narrowness of the Committee's holding, which results from the unusual manner in which the author's permanent disqualification from standing for certain offices was enacted. The decision should not be misunderstood as calling into question permanent disqualification of impeached office-holders for future elections based on well-established ground rules. A wide variety of states, for example, provide expressly in their constitutions for ineligibility after impeachment as an authorized or mandatory consequence.<sup>2</sup>

Even though the holding is narrow, I disagree with the Committee's conclusion in paragraph 8.4 of its Views that, under the circumstances, the author's permanent ineligibility to stand again for election to the particular office of President violates article 25 of the Covenant.

Impeachment is an extraordinary means for protecting the democratic political process against an otherwise unremovable President who abuses the powers of the office. Impeachments are rare and difficult. An impeachment is not merely a vote of no confidence that contemplates renewed elections to test the President's popular support. It is both reasonable and foreseeable that a President removed by impeachment could be ineligible ever to stand again for election to that sensitive office.

Permanent ineligibility after impeachment is also not a disproportionate consequence for abuse of the office. This Committee has observed that permanent disqualification of citizens who have been convicted of crimes from participating in the political process *as voters* may violate article 25.<sup>3</sup> Stricter requirements for candidates who seek to exercise great power over others can still be reasonable and proportionate under article 25. If Presidents who have successfully completed one or more terms can be permanently ineligible for reelection for the sake of ensuring a healthy and competitive political system, then surely Presidents who have been removed for abusing their offices can also be permanently barred.

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<sup>1</sup> Cf. communication no. 712/916, *Smirnova v. Russian Federation*, Views adopted 5 July 2004, paras. 9.3-9.4 (finding that the author was no longer a "victim" with regard to an issue on which she had prevailed in the European Court of Human Rights).

<sup>2</sup> See, for example, the constitutions of Angola (art. 65(3)); Argentina (sec. 60); Bangladesh (art. 48(4)); Colombia (art. 175(2)); Madagascar (art. 132); the Philippines (art. XI, sec. 3); Slovakia (art. 107); South Africa (art. 89(2)); Timor-Leste (sec. 79); United States of America (art. I, sec. 3).

<sup>3</sup> General comment No. 25, para. 14.