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Contact: Abel Campos
Tel: 03 88 41 26 48

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Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Updated action plan (27/09/12)

Communication from Lithuania concerning the case of Paksas against Lithuania (Application No. 34932/04).

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Réunion : 1164 réunion DH (5-7 mars 2013)

Référence du point : Plan d'action mis à jour

Communication de la Lituanie relative à l'affaire Paksas contre Lituanie (requête n° 34932/04)
(anglais uniquement)



**AGENT OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA
TO THE EUROPEAN COURT OF HUMAN RIGHTS**

Gedimino ave. 30/1, LT-01104 Vilnius, tel. +370 5 266 2990,
fax +370 5 262 5940, 266 2863, e-mail e.baltutyte@tm.lt,

M^{me} Geneviève Mayer
Department for the execution
of judgments of the ECHR
Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 STRASBOURG CEDEX

Vilnius, 26 September 2012

Cc: Mr. Gediminas Šerkšnys
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
of the Republic of Lithuania to the Council of
Europe

BY MAIL AND E-MAIL TRANSMISSION

**SUPPLEMENTARY INFORMATION ON THE EXECUTION OF THE
JUDGMENT IN THE CASE PAKSAS v. LITHUANIA**

The Agent of the Government of the Republic of Lithuania to the European Court of Human Rights (hereafter – the Agent of the Government) submits supplementary information concerning the execution of the judgment of the Grand Chamber of the European Court of Human Rights (hereafter – the Court) of 6 January 2011 in the case *Paksas v. Lithuania* (Application No. 34932/04) (hereafter – the Case), in particular, as regards the legislative measures estimated and an individual situation of the applicant.

As regards the legislative measures estimated

It should be reminded, first of all, that following the delivery of the said judgment of the Court, the Prime Minister of Lithuania by the ordinance of 17 January 2011 formed the working group on Preparation of the Proposals for the execution of the judgment of the Grand Chamber of the Court of 6 January 2011 in the case of *Paksas v. Lithuania*. On 31 May 2011 the said Working group concluded *inter alia* that to comply with the judgment of the Court the amendments of the Constitution of Lithuania are necessary in order to remove an 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 from taking the office a member of parliament, that has been found by the Court to be in conflict with Article 3 of Protocol No. 1 to the Convention. The proposals of the Working group were approved at the

meeting of the Government of 6 June 2011 and it was decided to transmit them to the Seimas for further deliberation of possible constitutional amendments¹.

After deliberations of the Committees and the Plenary Session of the Seimas the majority of the Seimas has decided to choose a different way for the solving of the problem. On 22 March 2012 Seimas adopted the Law "On Amendment and Supplementation of Article 2 of the Law on the Seimas Elections" and established that *"The person whom the Seimas by the procedure of impeachment removed from Office or revoked his mandate of a member of the Seimas, shall not be elected as member of the Seimas if less than four years have elapsed since the date of entry into force of the decision to remove him/her from office or to revoke his/her mandate of a member of the Seimas"*. It could be noted that the procedure for amending ordinary legislation is much faster than that of Constitution², which is important taking into consideration the forthcoming parliamentary elections (to be held on 14 October of 2012). During deliberations of the said draft law at the Seimas many members of Parliament expressed their doubts as to improper form of the legislative amendments proposed and right after its adoption a group of the members of Parliament applied to the Constitutional Court with request to examine the constitutionality of the said amendment introduced to the Law on Seimas Elections. It has to be noted that there were also different opinions expressed as regards the term of the restriction of the right to be elected in connection to its proportionality.

By the Ruling of 5 September 2012 of the Constitutional Court the above-mentioned provision of the Law on the Seimas Elections was recognised as in conflict with the Constitution (12 provisions of the Constitution) to the extent that it provides that *"if less than four years have elapsed since his removal from office or the revocation of his mandate of the Seimas member"*. Moreover, in its Ruling of 5 September 2012 the Constitutional Court *inter alia* concluded that³:

„III. 1. <...> Thus, the aforesaid judgment of the European Court of Human Rights means that the provisions of Article 3 of Protocol No. 1 of the Convention insofar as they imply the international obligation of the Republic of Lithuania to guarantee the right of a person, whose mandate of a Member of the Seimas has been revoked under procedure for impeachment proceedings for a gross violation of the Constitution and a breach of the oath, as well as a person who has been removed under procedure for impeachment proceedings for a gross violation of the Constitution and a breach of the oath from the office of the President of the Republic, the President and a justice of the Constitutional Court, the President and a justice of the Supreme Court or the President and a judge of the Court of Appeal, to stand in elections for a Member of the Seimas, are incompatible with the provisions of the Constitution, inter alia the provisions of Paragraph 2 of Article 59 and Article 74 thereof <...>.

2. <...> Under Article 1 of the Convention, the Republic of Lithuania must secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, whereas, under Paragraph 1 of Article 46 of the Convention, the Republic of Lithuania undertakes to abide

¹ Under Article 147 § 1 of the Constitution of Lithuania a motion to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than 1/4 of all the Members of the Seimas or not less than by 300,000 voters, thus such a motion cannot be submitted by the Government.

² Under Article 147 § 1 of the Constitution of Lithuania a motion to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than 1/4 of all the Members of the Seimas or not less than by 300,000 voters. Under Article 148 § 3 of the Constitution amendments 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. Under Article 148 § 4 an amendment of the Constitution which has not been adopted may be submitted to the Seimas for reconsideration not earlier than after one year.

³ Full text of the English version of the Constitutional Court's Ruling of 5 September 2012 is available at an official internet site of the Constitutional Court of the Republic of Lithuania: <http://www.lrkt.lt/dokumentai/2012/r120905.htm>.

by the final judgment of the European Court of Human Rights in any case to which it is a party; it also applies to the rights and freedoms entrenched in Protocol No. 1 to the Convention and to the judgments of the European Court of Human Rights in cases related to these rights and freedoms <...>.

The system of the protection of human rights of the Convention is subsidiary with regard to the national legal systems.

In this context it needs to be noted that the main responsibility for effective implementation of the Convention and protocols thereto falls upon the states, the parties to the Convention and protocols thereto, therefore, they enjoy broad discretion to choose the ways and measures for the application and implementation of the Convention and protocols thereto, inter alia the execution of judgments of the European Court of Human Rights. However, such discretion is limited by the peculiarities (related to the established system of harmonisation of the national (domestic) and international law) of the legal systems of the states, inter alia their constitutions, as well as by the character of the human rights and freedoms guaranteed under the Convention and protocols thereto (inter alia the 15 January 2007 judgment of the Grand Chamber of the European Court of Human Rights in the case of Sisojeva and others v. Latvia (application No. 60654/00); the 18 January 2001 judgment in the case of Chapman v. The United Kingdom (application No. 27238/95) <...>.

5. <...> It has also been mentioned that the constitutional institutes of impeachment, the oath and electoral right are closely interrelated and integrated; the change of any element of these institutes would result in the change of the content of other related institutes, i.e. the system of values entrenched in all aforementioned constitutional institutes would be changed. The legal system of the Republic of Lithuania is grounded on the fact that any law or other legal act, as well as international treaties of the Republic of Lithuania, must not be in conflict the Constitution <...>.

6. On the other hand, it needs to be emphasised that respect to international law, i.e. the observance of international obligations undertaken on its own free will, respect to the universally recognised principles of international law (as well as the principle pacta sunt servanda) are a legal tradition and a constitutional principle of the restored independent State of Lithuania (Constitutional Court ruling of 14 March 2006). The Republic of Lithuania must follow the universally recognised principles and norms of international law inter alia under Paragraph 1 of Article 135 of the Constitution.

In the context of the constitutional justice case at issue it needs to be noted that from Paragraph 1 of Article 135 of the Constitution a duty arises for the Republic of Lithuania to remove the aforesaid incompatibility of the provisions of Article 3 of Protocol No. 1 of the Convention with the Constitution, inter alia the provisions of Paragraph 2 of Article 59 and Article 74 thereof. While taking account of the fact that, as mentioned, the legal system of Lithuania is grounded upon the principle of superiority of the Constitution, the adoption of the corresponding amendment(s) to the Constitution is the only way to remove this incompatibility."

Thus, taking into consideration the said Ruling of the Constitutional Court of 5 September 2012, presumably, the relevant constitutional amendments will be introduced as the necessity for such an introduction flows now not only from the obligation to *observe the international commitments assumed* by Lithuania under the European Convention on Human Rights but also from the legal power of the rulings of the Constitutional Court. It is now clearly stated in an official doctrine of the Constitutional Court that the only way to eliminate the inconsistency that arose between the provisions of Convention and the Constitution is to adopt a respective amendments of the Constitution. An official interpretation of the Constitution given in respective rulings and decisions of the Constitutional Court confers rights and duties to the State institutions (including the Seimas) and other persons, it cannot be ignored or changed by other state institutions,

the acts of the Constitutional Court have compulsory force. Though, taking into consideration 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 (as it was underlined in Partly dissenting opinion of judge Costa joined by judges Tsotsoria and Baka annexed to the judgment of the Grand Chamber), the adoption of necessary constitutional amendments might take somewhat time.


As regards an individual situation of the applicant

Upon the introduction of the said legislative amendments to the Law on the Seimas Elections of 22 March 2012, the applicant was included as No. 1 in the list of candidates submitted by the political party Order and Justice (chaired by him) to the Supreme Electoral Commission for registration to the forthcoming elections to the Seimas to be held on 14 October 2012. By the decision adopted on 3 September 2012 the Supreme Electoral Commission, taking into consideration the principle of legal certainty, suspended the registration of R. Paksas until the adoption of the decision of the Constitutional Court as to the constitutionality of the Law "On Amendment and Supplementation of Articles 2 of the Law of the Seimas Elections" (of 22 March 2012). The representative of the political party Order and Justice appealed the said decision of the Commission to the Lithuanian Supreme Administrative Court. By the decision adopted on 11 September 2012 the Supreme Electoral Commission took into account the Ruling of the Constitutional Court of 5 September 2012, and refused to register R. Paksas as a candidate for the forthcoming elections to the Seimas. The Lithuanian Supreme Administrative Court by its decision of 12 September 2012 rejected the complaint submitted by the representative of the political party Order and Justice against the said decision of the Supreme Electoral Commission of 3 September 2012 to suspend the registration of the applicant to the forthcoming Seimas elections. The complaint was rejected, taking into consideration the fact that by the decision adopted on 11 September 2012 the Supreme Electoral Commission took into account the Ruling of the Constitutional Court of 5 September 2012, and refused to register R. Paksas as a candidate for the forthcoming elections to the Seimas. In the view of the Lithuanian Supreme Administrative Court, as the complaint was not filed against the decision of 11 September 2012, any material interest has been lost by the complainant in contesting the intermediate decision of 3 September 2012.

In the Government's view it does not follow from the judgment of the Court that in remedying an individual situation of the applicant he was to be allowed to participate in the very first elections to the Seimas to be held upon the adoption of the said judgment. In this regard the Government would like to note that the finding of a violation of Article 3 of Protocol No. 1 was related solely to the applicant's *permanent and irreversible* disqualification from standing for election to Parliament without any references of what term and scope of the restriction exactly should be. As it has been stated in the judgment of *Paksas v. Lithuania*, "the margin of appreciation in this area is wide, seeing that there are numerous ways in organising and running the electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision" (see § 96 of the judgment).

The Agent of the Government will keep the Committee of Ministers informed on further developments in the legislative process.

Respectfully,


Elyvyra Baltutytė
Agent of the Government of the
Republic of Lithuania to the
European Court of Human Rights