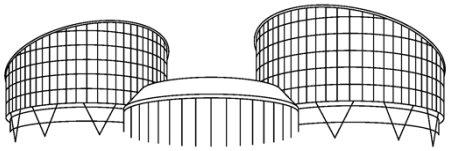

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

ADVISORY OPINION

on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings

Requested by
the Lithuanian Supreme Administrative Court

(Request no. P16-2020-002)

STRASBOURG

8 April 2022

This opinion is final but it may be subject to editorial revision.

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President*,
Jon Fridrik Kjølbro,
Síofra O'Leary,
Yonko Grozev,
Georges Ravarani,
Ksenija Turković,
Valeriu Griţco,
Egidijus Kūris,
Mārtiņš Mits,
Stephanie Mourou-Vikström,
Gabriele Kucsko-Stadlmayer,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking,
Ivana Jelić,
Lorraine Schembri Orland,
Mattias Guyomar, *judges*,

and Johan Callewert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 20 October 2021 and 17 March 2022,

Delivers the following opinion, which was adopted on the last-mentioned date:

PROCEDURE

1. In a letter of 17 September 2020 sent to the Registrar of the European Court of Human Right ("the Court"), the Lithuanian Supreme Administrative Court requested the Court, under Article 1 of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("Protocol No. 16"), to give an advisory opinion on the questions set out at paragraph 7 below.

2. On 5 November 2020 the Supreme Administrative Court provided English translations of the request for an advisory opinion and of relevant enclosures, as requested by the Court. The advisory opinion request is therefore considered to have been lodged on the latter date.

3. On 25 January 2021 the panel of five judges of the Grand Chamber of the Court, composed in accordance with Article 2 § 3 of Protocol No. 16 and Rule 93 § 1 of the Rules of Court, decided to accept the request.

4. The composition of the Grand Chamber was determined on 27 January 2021 in accordance with Rule 24 § 2 (h) and Rule 94 § 1.

5. By letters of 27 January 2021 the Registrar informed the Lithuanian Government ("the Government") and the Commissioner for Human Rights of the Council of Europe that the President of the Grand Chamber was

inviting them to submit to the Court written observations on the request for an advisory opinion, by 22 February 2021 (Article 3 of Protocol No. 16 and Rule 94 § 3).

At the Government's request, the time-limit was prolonged until 1 March 2021, and the Government's written observations were submitted by that date. The Commissioner for Human Rights of the Council of Europe did not avail herself of that right.

6. After the close of the written procedure, the President of the Grand Chamber decided that no oral hearing should be held (Rule 94 § 6).

THE QUESTIONS ASKED

7. The questions asked by the Supreme Administrative Court in the request for an advisory opinion were worded as follows:

> "1. Does a Contracting State overstep the margin of appreciation conferred to it by Article 3 of Protocol No. 1 to the Convention, if it does not guarantee the compatibility of the national law with the international obligations arising from the provisions of Article 3 of Protocol No. 1 to the Convention, which results in preventing a person, who has been removed from office of a Member of the Seimas under the impeachment proceedings, from implementing their 'passive' right to elections for six years?
>
> In case of affirmative response, could such situation be justified by the complexity of the existing circumstances, directly related to providing an opportunity to the legislative body to align the national provisions of the constitutional level with the international obligations?
>
> 2. What are the requirements and criteria implied by Article 3 of Protocol No. 1 to the Convention, which determine the scope of the application of the principle of proportionality, and which the national court should take into account and verify whether they are complied with in the existing situation at issue?
>
> In such situation, when assessing the proportionality of a general prohibition restricting the exercise of the rights provided for in Article 3 of Protocol No. 1 to the Convention, should not only the introduction of the time-limit, but also the circumstances of each individual case, related to the nature of the office from which a person has been removed and the act which resulted in impeachment, be held crucial?"

THE FACTUAL BACKGROUND AND THE DOMESTIC PROCEEDINGS UNDERLYING THE REQUEST FOR AN OPINION

8. The present request for an Advisory Opinion arises in the context of a refusal to register Ms N.V. as a candidate in Seimas elections in 2020. In order to understand the reasons for and basis for that refusal, the Court considers it necessary to set out the following facts.

I. THE FACTS RELATING TO MS N.V.

A. Ms N.V.'s career as a judge and related child custody proceedings

9. From 2007 to 2012 Ms N.V. worked as a judge at the Kaunas Regional Court.

10. Ms N.V. was one of the key protagonists in very high-profile child custody proceedings in Lithuania. Those proceedings have already been examined by the Court in *Stankūnaitė v. Lithuania* (no. 67068/11, 29 October 2019 – regarding Ms N.V. in particular, see paragraphs 70-75 of the judgment; regarding the above-mentioned custody proceedings, see also *Čivinskaitė v. Lithuania* (no. 21218/12, 15 September 2020, in particular paragraphs 5-15)).

B. Ms N.V.'s resignation from the office of judge and her election to the Seimas

11. In May 2012 the Prosecutor General asked the Seimas to lift the immunity enjoyed by Ms N.V. in her capacity as a judge. The Prosecutor General considered that, in connection with the events linked to the above-mentioned child custody proceedings, Ms N.V. could have committed several criminal acts. In June 2012 the Seimas lifted Ms N.V.'s immunity, so that she could be arrested and prosecuted.

12. In June 2012 Ms N.V. asked the President of Lithuania to dismiss her from the office of judge. Having received approval for that step from the Council of Judges, on 2 July 2012 the President granted Ms N.V.'s request for dismissal.

13. In October 2012 Ms N.V. was elected to the Seimas on the list of the "Drąsos kelias" political party, named after Ms N.V.'s late brother, who was also a key protagonist in the aforementioned child custody proceedings. On 16 November 2012 Ms N.V. gave an oath to be faithful to the Republic of Lithuania and acquired all the rights of a representative of the Nation.

C. The criminal proceedings against Ms N.V.

14. In January 2013 the Prosecutor General asked the Seimas to lift the immunity which Ms N.V. enjoyed as a member of the Seimas. The Prosecutor General noted that Ms N.V. was suspected of the following criminal acts, committed during the aforementioned child custody proceedings: contempt of court, failure to comply with a court decision, resistance against a civil servant or a person performing the functions of public administration, abuse of the rights or duties of a guardian, hindering the activities of a bailiff and causing negligible bodily harm. A notice of suspicion was also served on Ms N.V.

15. On 9 April 2013 the Seimas agreed that Ms N.V.'s immunity could be lifted, so that she could be arrested and prosecuted. The same month Ms N.V. fled to the United States of America. In May 2013 the Lithuanian authorities announced a search for Ms N.V.

D. Impeachment proceedings in respect of Ms N.V.

16. In December 2013 impeachment proceedings were instituted in respect of Ms N.V. for failure to perform her duties as a member of the Seimas. During the impeachment proceedings she was not in Lithuania.

17. On 3 June 2014 the Constitutional Court established that between April and November 2013 Ms N.V. had, without a justifiable reason, failed to attend sixty-four plenary sittings of the Seimas and twenty-five sittings of the Seimas Committee on Legal Affairs. The Constitutional Court held that by such actions Ms N.V. had breached the parliamentary oath and grossly violated the Constitution.

The Constitutional Court noted that the fact that a person had left the Republic of Lithuania, was a suspect in criminal proceedings, was being sought by the authorities and might be hiding from a pre-trial investigation in order to avoid criminal liability could not constitute important and justifiable reasons in themselves for the person's failure to attend the sittings of the Seimas and a committee of the Seimas, or to give notice of his or her inability to attend the sittings in question.

18. In impeachment proceedings, and on the basis of the Constitutional Court's conclusion, on 19 June 2014 the Seimas voted to revoke Ms N.V.'s mandate as a member of parliament.

E. Ms N.V.'s extradition to Lithuania and the current state of the criminal proceedings against her

19. On the basis of a request by the Lithuanian authorities, in February 2018 Ms N.V. was arrested in the United States. In April 2018 the United States State Department took a decision to extradite Ms N.V. to Lithuania, and to allow her prosecution for four criminal acts: (1) obstruction of the activities of a judge, prosecutor, pre-trial investigation officer, lawyer or bailiff, (2) resistance to a civil servant or a person performing public administration functions, (3) non-execution of a court judgment, and (4) causing physical pain or a minor health disorder.

20. Ms N.V. was extradited to Lithuania on 6 November 2019, and was initially detained. On 19 November 2019 the Vilnius Regional Court granted a request by Ms N.V. for the imposition of more lenient remand measures, and ordered bail, electronic tagging and seizure of her personal identity documents.

21. According to publicly available information, on 8 July 2021 the Panevėžys Regional Court found Ms N.V. guilty of hindering the activities of a bailiff, resistance against a civil servant, and of causing negligible bodily harm. Ms N.V. was sentenced to one year, nine months and six days' imprisonment, but, having taken into account the time she had already spent in pre-trial detention, it was held that she had already served the sentence. Ms N.V. appealed.

22. According to publicly available information, on 25 January 2022 the Court of Appeal upheld the first-instance court's judgment and dismissed Ms N.V.'s appeal. The Court of Appeal's ruling may be appealed against on points of law to the Supreme Court within a three-month time-limit.

F. Ms N.V.'s attempt to stand in the 2020 Seimas elections

23. In 2020 Ms N.V. asked to be registered as a candidate in the Seimas elections scheduled to take place in October that year.

24. The Central Electoral Commission (hereinafter "the CEC") refused to register her as a candidate. The ground for the CEC's refusal was the fact that in 2014 Ms N.V. had been impeached and removed from her position as a member of the Seimas, which meant that she could never again hold a parliamentary mandate (Article 2 § 5 of the Law on Elections to the Seimas – see paragraph 49 below).

25. Ms N.V. challenged the CEC's decision before the Supreme Administrative Court, which, in turn, asked the Court for an advisory opinion.

II. THE FACTS RELATING TO THE CASE OF *PAKSAS v. LITHUANIA* AND ITS CONSEQUENCES

A. The Grand Chamber's judgment in *Paksas v. Lithuania*

26. On 6 April 2004, in impeachment proceedings, the Seimas removed Mr Paksas from the office of President of the Republic of Lithuania on account of gross violations of the Constitution and breach of the oath to the Nation. Subsequently, Mr Paksas expressed his intention to stand as a candidate in the presidential election. On 4 May 2004 the Seimas amended the Law on Presidential Elections, to read that a person who had been removed from a parliamentary or other office by the Seimas in impeachment proceedings could not be elected President of the Republic if less than five years had elapsed since his or her removal from office. However, following an application by a group of members of the Seimas, the Constitutional Court ruled on 25 May 2004 that while disqualifying a person who had been removed from office from standing in presidential elections was compatible with the Constitution, subjecting such a restriction

to a time-limit was not. Accordingly, on 15 July 2004 the Seimas passed an amendment to the Law on Elections to the Seimas, to the effect that any official who had been removed from office in impeachment proceedings was permanently disqualified from being a member of parliament.

In a judgment of 6 January 2011 (*Paksas v. Lithuania* [GC], no. 34932/04, § 112, ECHR 2011 (extracts)), the Court held that the permanent and irreversible nature of Mr Paksas' disqualification from holding parliamentary office was a disproportionate restriction and that therefore there had been a violation of Article 3 of Protocol No. 1.

B. The United Nations Human Rights Committee's Views regarding Mr Paksas' complaint

27. On 25 March 2014, the United Nations Human Rights Committee (hereinafter "the UNHRC") adopted Views in the case of *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012). The UNHRC found that the lifelong disqualification imposed on Mr Paksas lacked the necessary foreseeability and objectivity and thus amounted to an unreasonable restriction under Article 25 (b) and (c) of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), and that Mr Paksas' rights under those provisions had been violated (for details see paragraph 59 below).

C. The execution of the Court's *Paksas* judgment

28. Following the delivery of the Grand Chamber's *Paksas* judgment, on 10 January 2011 the Constitutional Court issued a statement to the effect that in order to execute that judgment and to eliminate the incompatibility between the Constitution and the Convention, appropriate amendments had to be made to the Constitution.

29. Under the Lithuanian Constitution, a constitutional amendment requires a majority of no less than two-thirds of all the members of the Seimas, that is, at least ninety-four out of 141 votes. A draft law must be voted for twice, with not less than three months between the votes. Furthermore, an amendment to the Constitution which has not been adopted may not be submitted to the Seimas for reconsideration until at least one year has elapsed. A law on the amendment of the Constitution cannot come into force earlier than one month after its adoption (Articles 148 and 149 of the Constitution; see paragraph 48 below).

30. In March 2012 the Seimas made an attempt to lift the permanent ban on Mr Paksas' participation in parliamentary elections by amending the Law on Elections to the Seimas, rather than proposing a constitutional amendment. The Law on Elections to the Seimas was amended to provide, in Article 2 § 5, that a person who had been removed from office or whose

mandate as a member of the Seimas had been revoked by the Seimas in impeachment proceedings could not stand for election to the Seimas if less than four years had elapsed since the date on which the relevant decision had taken effect.

31. However, by a ruling of 5 September 2012 the Constitutional Court held that such a limitation in time was unconstitutional. The Constitutional Court held that since the legal system of Lithuania was based upon the principle of superiority of the Constitution, the only possible way indicated in the official constitutional doctrine to remove the incompatibility between Article 3 of Protocol No. 1 to the Convention and the Constitution and to execute the Grand Chamber's *Paksas* judgment of 6 January 2011 was by amending, *inter alia*, Articles 59 and 74 of the Constitution (see also paragraph 56 below).

32. In September 2013 another draft law, in which Article 74 of the Constitution was supplemented with a new second part not specifying the constitutional consequences of the impeachment proceedings in the text of the Constitution itself, but leaving the way open for blanket norms to be provided for by constitutional law[1], was presented to the Seimas. The draft read:

> "A person who has grossly violated the Constitution or breached his or her oath provided for in the Constitution and who has been removed from office or had his or her mandate as a member of the Seimas revoked by the Seimas in impeachment proceedings may be elected or appointed to any office requiring the taking of an oath provided for in the Constitution, upon the expiry of the limitations provided for in constitutional law."

The draft law was not passed by the Seimas owing to an insufficient number of votes.

33. Afterwards, in March 2015, a new draft law amending Article 56 of the Constitution was proposed. It concerned exclusively the office of member of the Seimas and suggested supplementing Article 56 of the Constitution with a new paragraph 3 providing:

> "A person who has grossly violated the Constitution or breached the oath and who has been removed from office or had his or her mandate as a member of the Seimas revoked by the Seimas in impeachment proceedings shall not be elected as a member of the Seimas if less than ten years have elapsed since such removal or revocation."

The draft law was not passed owing to an insufficient number of votes in the Seimas.

34. Acting on the basis of a request for interpretation submitted by a group of members of the Seimas, on 22 December 2016 the Constitutional Court reaffirmed its position that "the only way" to implement the Court's *Paksas* judgment was to amend the Constitution and that "any other way

[1] In the Lithuanian legal system, constitutional laws, adopted by means of a special procedure and by a qualified majority, are of higher legal force than ordinary statutes, but they are not part of the Constitution.

(*inter alia*, the adoption or amendment of laws and other legal acts)" was impossible under the Constitution (see also paragraph 57 below).

The Constitutional Court stated, *inter alia*, that the recommendations of the UNHRC regarding the complaint by Mr Paksas (see paragraph 27 above and paragraph 59 below) had to be taken into account when preparing the relevant constitutional amendments.

35. In 2017 and in 2018 two more draft laws proposing amendments to Article 74 of the Constitution were presented to the Seimas, where they did not gain the necessary number of votes.

36. In September 2019 a new draft law was registered at the Seimas, proposing supplementing Article 74 of the Constitution with a new paragraph 2. It read as follows:

> "A person, who, under the impeachment procedure, has been removed from office or whose mandate as a member of the Seimas has been revoked by the Seimas on account of a gross violation of the Constitution or breach of an oath, may stand for election to the Seimas no earlier than ten years after the removal from office or revocation of the mandate as a member of the Seimas has taken place. Such a person may not be elected as President of the Republic of Lithuania and cannot take up any office specified in the Constitution at the commencement of which, pursuant to the Constitution, an oath provided for in the Constitution must be taken."

37. In April 2020 the Seimas Committee on Legal Affairs decided to reject this draft law, essentially because certain doubts had been expressed by legal scholars as to its conformity with the constitutional provisions as a whole. The plenary Seimas overruled the proposal of the Committee on Legal Affairs and decided to return the draft law to the Committee on Legal Affairs of the newly elected Seimas for further improvement. After the parliamentary elections took place in October 2020, the newly formed Committee on Legal Affairs decided to pause its consideration of the draft law and to ask the Board of the Seimas to suggest that the Government form a working group which would evaluate the aforementioned draft law and present proposals regarding possible alternative constitutional amendments aimed at the implementation of the Court's *Paksas* judgment. In December 2020 the Board of the Seimas rejected the request of the Committee on Legal Affairs to ask the Government to set up the working group and instead suggested that the Committee apply to the political groups (*politinės frakcijos*) and non-attached members of the Seimas for their opinion on the amendment to Article 74 of the Constitution of the Republic of Lithuania.

38. On 8 June 2021 draft law no. XIVP-619 was registered in the Seimas, proposing supplementing Article 74 of the Constitution with a new paragraph 2. It reads as follows:

> "A person, who, under the impeachment procedure, has been removed from office or whose mandate as a member of the Seimas has been revoked by the Seimas on account of a gross violation of the Constitution or breach of an oath, cannot take up an office specified in the Constitution at the commencement of which, pursuant to the Constitution, an oath provided for in the Constitution must be taken, if less than ten

years have passed since the removal from office or revocation of the mandate as a member of the Seimas."

39. On 9 November 2021 the Seimas provisionally approved, by 118 votes to two, an amendment to the Constitution (draft no. XIVP-619(2) (for the text of the amendment, see paragraph 38 above)) abolishing the permanent restriction on the right to be elected as a member of the Seimas or to hold other positions specified in the Constitution after the application of the constitutional sanction.

40. On 18 January 2022 the first vote on draft no. XIVP-619(2) took place in the Seimas, and 131 members of the Seimas voted in favour of the amendment to the Constitution; one member abstained. In a letter of 20 January 2022, the Government indicated that the aforementioned draft law should be scheduled for the second vote (see paragraph 29 above) without delay when the Seimas' spring session began (10 March 2022). They also specified that a law on the amendment of the Constitution could not come into force earlier than one month after it had been passed.

D. The Committee of Ministers' position regarding the execution of the Court's judgment in *Paksas v. Lithuania*

41. In September 2014 the Committee of Ministers "urged the Lithuanian authorities to achieve tangible progress regarding the required constitutional changes and decided to transfer the case to its enhanced supervision procedure".

42. On 6 December 2018 the Committee of Ministers adopted Interim Resolution CM/ResDH(2018)469 in the *Paksas* case. Having regard to the fact that since 2011 four successive amendment proposals had failed in the Seimas, the Committee of Ministers expressed grave concern that, despite the Committee's repeated calls and despite several initiatives to ensure the adoption of the necessary constitutional amendments to lift the permanent ban on participation in parliamentary elections criticised by the Court, no tangible progress had been achieved, so that, almost eight years after the Court's judgment had become final, the situation found to be in breach of the Convention still persisted. The Committee also called upon the authorities and political leaders of Lithuania to redouble their efforts to achieve concrete progress at parliamentary level so that Lithuania could comply with its obligations under the European Convention, and exhorted all concerned to support them in this commitment and to redouble their efforts to ensure that the necessary constitutional amendments were adopted.

43. At the Ministers' Deputies' meeting of 1-3 September 2020, concerning supervision of the execution of the Court's *Paksas* judgment, the Deputies adopted Decision CM/Del/Dec(2020)1377bis/H46-20, in which they noted "the unconditional obligation assumed by Lithuania to abide by

the judgments of the Court" and "strongly reiterated their gravest concern that, despite the Committee's repeated calls and despite several initiatives to ensure the adoption of the necessary constitutional amendments to lift the applicant's electoral disqualification, almost ten years after the Court's judgment [had become] final, the situation found to be in breach of the Convention persist[ed]".

44. By a letter of 17 December 2020, the Government of the Republic of Lithuania informed the Council of Europe's Department for the Execution of Judgments that the legislature was about to pause its consideration of the legislative proposals already presented. A new working group would be formed to work on fresh proposals for constitutional amendments.

45. On 19 April 2021 the Government wrote to the Department for the Execution of Judgments, indicating that the issue of the amendment of Article 74 of the Constitution was still being discussed at the level of the Seimas' internal bodies. The Government also informed the Department that an action plan had been approved in March 2021: a group of legal experts would be formed to draw up conclusions regarding the strengths and weaknesses of the existing proposals to amend the Constitution. Once approved, those conclusions would be put forward for political consideration at the level of the political groups in the Seimas. The Government saw this strategy, aimed at reaching as broad a political consensus as possible, as a means of avoiding "another failure in the voting" in the Seimas.

46. In their communication to the Department for the Execution of Judgments the Government also referred to the present request from the Supreme Administrative Court for an advisory opinion. The Government considered that the questions put forward by the Supreme Administrative Court were directly linked to the *Paksas* judgment. The Court's answers to those questions would provide clear guidelines not only for the Supreme Administrative Court, but also for the Seimas as to the possible scope of restrictions on standing in parliamentary elections. Accordingly, the Government asked the Committee of Ministers to take note of the fact that the Government would refrain from specifying any concrete steps or deadlines regarding the execution of the *Paksas* judgment. Such steps could be taken only after the advisory opinion was delivered.

47. According to the information provided to the Court, the execution of the Court's *Paksas* judgment was examined by the Committee of Ministers at its 1406th Human Rights meeting on 7-9 June 2021. Decision CM/Del/Dec(2021)1406/H46-18, which was adopted at that meeting, states that the Deputies:

> "1. recalled that the Court found a violation of Article 3 of Protocol No. 1 on account of the 'permanent and irreversible nature' of the applicant's disqualification from standing for elections to Parliament, that the Court's judgment became final in

2011 and that the applicant, Mr Rolandas Paksas, continues to be banned from standing for parliamentary elections since 2004;

2. took note that the European Court, on 25 January 2021, accepted a request for an advisory opinion by the Supreme Administrative Court of Lithuania and that the questions put before the Court appear to be of direct relevance for the concrete content of the constitutional amendments necessary to lift the applicant's electoral disqualification and to bring domestic law in line with Article 3 of Protocol No. 1;

3. expressed deep regret that, despite the Committee's repeated calls and the Interim Resolution CM/ResDH(2018)469 and despite several initiatives to ensure the adoption of the necessary constitutional amendments to lift the permanent ban on participation in parliamentary elections criticised by the European Court, more than ten years after the Court's judgment became final, the situation found to be in breach of the Convention still persists;

4. noted with interest however that the legislative process initiated during the previous parliament is still pending before the newly formed Seimas, that an action plan indicating the steps to be taken was adopted, that both the expert group set up as well as the Seimas' Committee for the Future concluded their work ahead of the timeline foreseen, and, in particular, that the latter on 28 May 2021 adopted its final decision indicating that a consensus was achieved among the political parties of the Seimas; further noted that this consensus, reflected in the new Draft law No. XIVP-619 registered in the Seimas on 8 June 2021 [see paragraph 38 above], appears to provide for a viable solution remedying the violation found in the present judgment on the general as well as on the individual level by lifting the permanent nature of the applicant, Mr Paksas', disqualification from standing for elections to parliament as a result of his removal from office;

5. noted further the government's intention to wait for the delivery of the Court's advisory opinion before setting up a timetable defining the next further steps as well as their indication that given the wide political consensus reached there should be no further impediments to adopting the constitutional amendments hereafter;

6. exhorted therefore all national authorities concerned to maintain their efforts to ensure that once the European Court has delivered its advisory opinion the necessary constitutional amendments are adopted without further delay;

7. firmly invited the authorities to continue to prepare the next steps in the legislative process as far as possible, to present their new timetable for its completion as soon as possible after the delivery by the European Court of its advisory opinion and in due time before the next examination of this case, and to keep the Committee of Ministers informed about all relevant developments;

8. decided to resume examination of this case, at one of the two Human Rights meetings after the delivery of the Court's advisory opinion."

RELEVANT DOMESTIC LAW

I. THE CONSTITUTION

48. The Constitution, in so far as relevant, reads:

Article 7

"Any law or other act that contradicts the Constitution shall be invalid. ..."

Article 56

"Any citizen of the Republic of Lithuania who is not bound by an oath or a pledge to a foreign State, and who, on the election day, is not younger than 25 years of age and permanently resides in Lithuania, may stand for election as a member of the Seimas.

Persons who have not served a punishment imposed by a court judgment, as well as persons declared by a court to be legally incapacitated, may not stand for election as a member of the Seimas."

Article 59

"...

An elected member of the Seimas shall acquire all the rights of a representative of the Nation only after taking an oath at the Seimas to be faithful to the Republic of Lithuania.

A member of the Seimas who either does not take the oath in accordance with to the procedure established by law or takes a conditional oath shall lose the mandate of a member of the Seimas. ...

While in office, the members of the Seimas shall follow the Constitution of the Republic of Lithuania, the interests of the State, and their own consciences, and may not be restricted by any mandates."

Article 74

"The President of the Republic, the President and justices of the Constitutional Court, the President and justices of the Supreme Court, the President and judges of the Court of Appeal, as well as any members of the Seimas, who grossly violate the Constitution or breach their oath, or are found to have committed a crime, may be removed from office or have the mandate of a member of the Seimas revoked by a three-fifths majority vote of all the members of the Seimas. This shall be performed in accordance with the procedure for impeachment proceedings, which shall be established by the Statute of the Seimas."

Article 82

"On the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic shall take office after taking an oath to the Nation in Vilnius, in the presence of the representatives of the Nation, the members of the Seimas, to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all. ..."

Article 86

"... The President of the Republic may be removed from office only for a gross violation of the Constitution or a breach of the oath, or when he is found to have committed a crime. The issue of the removal of the President of the Republic from

office shall be decided by the Seimas in accordance with the procedure for impeachment proceedings."

Article 107

"A law (or part thereof) of the Republic of Lithuania or another act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of a decision of the Constitutional Court finding that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal. ..."

Article 110

"Judges may not apply any laws that are in conflict with the Constitution.

In cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or other legal act in question is in compliance with the Constitution."

Article 135

"In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law, shall seek to ensure national security and independence, the welfare of its citizens, and their basic rights and freedoms, and shall contribute to the creation of the international order based on law and justice. ..."

Article 138

"... International treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania."

Article 147

"A petition to alter or supplement the Constitution of the Republic of Lithuania may be submitted to the Seimas by a group of not less than one-quarter of all the members of the Seimas or by no fewer than 300,000 voters. ..."

Article 148

"... Amendments to the Constitution ... must be considered and voted in 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, no fewer than two-thirds of all the members of the Seimas vote in favour thereof.

A failed amendment to the Constitution may not be submitted to the Seimas for reconsideration until one year has elapsed."

Article 149

"...

A law on the amendment of the Constitution shall come into force no earlier than one month after its adoption."

49. The Law on Elections to the Seimas, as amended on 22 March 2012, read:

Article 2. Universal suffrage

"5. A person who has been removed from office or whose mandate as a member of the Seimas has been revoked by the Seimas in accordance with impeachment proceedings may not be elected as a member of the Seimas if less than four years have elapsed since the decision to remove him or her from office or to revoke his or her mandate as a member of the Seimas took effect."

The Constitutional Court, by a ruling of 5 September 2012, declared unconstitutional the part "if less than four years have elapsed since the decision to remove him or her from office or to revoke his or her mandate as a member of the Seimas took effect" (see paragraph 56 below). Thus, the applicable part of Article 2 of the Law now reads:

"A person who has been removed from office or whose mandate as a member of the Seimas has been revoked by the Seimas in accordance with impeachment proceedings may not be elected as a member of the Seimas."

II. THE CONSTITUTIONAL COURT'S CASE-LAW

50. In a conclusion of 24 January 1995, the Constitutional Court held:

"The legal system of the Republic of Lithuania is based on the fact that no law or other legal act, or any international treaties (in this case the Convention), may contradict the Constitution. Otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights and freedoms recognised by the Convention, [a requirement] which is prescribed in Article 13 of the Convention, containing the basis for the implementation of the provisions of the Convention in the internal legal system of every State.

...

When evaluating the contents of the human rights established in the Constitution and in the Convention, it is necessary to take into consideration the methodological basis for coordination of comparative constitutional law and international law. The provisions of the Convention might be ruled to be in conflict with the Constitution if:

(1) the Constitution established a complete and final list of rights and freedoms and the Convention set forth some other rights and freedoms;

(2) the Constitution prohibited some actions and the Convention defined them as one or other right or freedom;

(3) some provision of the Convention could not be applied in the legal system of the Republic of Lithuania because it was not consistent with some provision of the Constitution."

The Constitutional Court found that the provisions of Articles 4, 5, 9 and 14 of the Convention, as well as Article 2 of Protocol No. 4 to the Convention, were in compliance with the Constitution. Following the Constitutional Court's conclusion, the Convention was ratified on 27 April 1995, together with Protocols Nos. 4, 7 and 11.

51. In a ruling of 11 May 1999, the Constitutional Court noted:

> "1. ... Impeachment is one of the means of self-protection of a civic society. In the constitutions of democratic States, impeachment is treated as a special procedure by which the question of the constitutional responsibility of an official is decided. Providing for a special procedure for dismissal of the highest officials from office or for revocation of their mandate ensures public and democratic scrutiny of their activities; alongside this, these officials are granted additional guarantees so that they can fulfil their duties on the basis of the law.
>
> 2. Impeachment is linked to strict requirements. First, it may only be applied to certain officials who are, as a rule, listed in the Constitution (Head of State, the highest officials of the executive and judicial powers, and also members of parliament in some States). Second, impeachment is permissible only if there are specially established basis for it. As a rule, such bases are a breach of the oath, violation of the Constitution, treason, and crimes of various degrees of gravity. Third, in most cases impeachment proceedings take place in Parliament pursuant to rules characteristic of a judicial investigation, while a qualified majority of votes is necessary to adopt the decision. Fourth, the effect of successful impeachment proceedings is a specific constitutional sanction: the removal of a person from office or the revocation of his or her mandate. Thus, impeachment does not entail application of criminal liability even though a crime may constitute its basis.
>
> Special requirements for impeachment are determined by the status of impeached officials. As a rule, they are empowered not by Parliament, nor are they accountable to the latter. Parliament is entitled to remove from office those officials who are responsible and accountable to it in accordance with some other procedure, but not impeachment. Meanwhile, impeachment proceedings are always characteristic of judicial proceedings enabling the substantiation of the decision concerning the application of the constitutional sanction by means of a thorough, objective and public investigation of the circumstances of the case. ... The necessity of proceedings of a judicial nature is also based on the fact that the constitutional sanction applied in accordance with the procedure for impeachment is irreversible in nature."

52. In a ruling of 30 December 2003, the Constitutional Court noted:

> "7. Paragraph 1 of Article 82 of the Constitution establishes the content of the oath of the elected President of the Republic to the Nation: the elected President of the Republic must swear to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his office, and to be equally just to all.
>
> ... [T]he oath of the elected President of the Republic reflects the main values enshrined in the Constitution, which are linked by the Nation with the office of the President of the Republic.
>
> ...
>
> 9. The oath of the elected President of the Republic is not a mere formal or symbolic act. Taking account of the fact that the institution of the oath of the President of the Republic and the content of the oath are established in the Constitution, the oath of the

President of the Republic has constitutional significance and gives rise to constitutional legal effects.

...

The act of the oath of the elected President of the Republic is also legally significant owing to the fact that from the moment that the elected President of the Republic takes the oath, the powers of the former President of the Republic expire.

...

The act of the oath of the President of the Republic is also legally significant owing to the fact that from the moment of taking the oath, a duty arises for the President of the Republic to act only as he is obliged to by the oath taken to the Nation. A breach of the oath is one of the grounds on which the President of the Republic may be removed from office in accordance with the procedure for impeachment proceedings (Article 74 of the Constitution). ... [A] breach of the oath is, at the same time, a gross violation of the Constitution, while a gross violation of the Constitution is, at the same time, a breach of the oath."

53. In a conclusion of 31 March 2004, the Constitutional Court noted:

"... [T]he opportunity consolidated in the Constitution to remove the President of the Republic from office in accordance with the procedure for impeachment proceedings is a form of public, democratic control over the activities of the President of the Republic, a means whereby the constitutional liability of the President of the Republic is engaged before the Nation, [and] one of the means of self-defence of the democratic civil society against abuses by the President of the Republic within the sphere of the powers established for him. ... [T]he institution of impeachment proceedings against the President of the Republic is permitted only for a gross violation of the Constitution or a breach of the oath, or upon disclosure of the commission of a crime ..."

54. In a ruling of 25 May 2004, the Constitutional Court noted:

"... A State official must enjoy the confidence of the citizens – the State community. ... One of the forms of ... public democratic control [over the activity of State officials so that the citizens can trust them] is ... impeachment [, which is] one of the measures of self-protection of the State community, the civil Nation, a means whereby it may defend itself from the aforementioned highest-ranking officials of State power who ignore the Constitution and the law, in such a manner that they are prohibited from holding certain offices, as they do not fulfil their obligation unconditionally to abide by the Constitution and the law, and to uphold the interests of the Nation and the State of Lithuania, and who have disgraced State power by their actions.

...

... [T]he oath of the President of the Republic is not a mere formal or symbolic act; it is not only a solemn utterance of the words of the oath and the signing of the act of the oath.

... [T]he President of the Republic, ... by taking an oath to the Nation, publicly and solemnly accepts an obligation to act in line with the obligations of the oath and to breach the oath under no circumstances; when the President of the Republic has taken the oath, a duty arises for him to act only as he is obliged to by the oath given to the Nation, and to breach this oath under no circumstances. ...

...

A gross violation of the Constitution or a breach of the oath undermines the trust in the institution of the President of the Republic and, at the same time, it weakens the trust in State power as a whole and in the State of Lithuania. Impeachment, when a person who has grossly violated the Constitution, or breached the oath, is removed from the office of the President of the Republic, is one of the ways of protecting the State as the common good of society as provided for in the Constitution.

... [U]nder the Constitution, a person in respect of whom the Seimas – following a finding by the Constitutional Court that he, as President, has committed a gross violation of the Constitution and breached the oath – has applied the constitutional sanction, namely removal from office, may not evade constitutional liability through fresh presidential elections, a referendum or any other means. ...

...

The Constitution does not provide that, after a certain time has elapsed, a President of the Republic whose actions have been recognised by the Constitutional Court as having grossly violated the Constitution, and who has been found to have breached the oath and has been removed from office by the Seimas for a breach of the oath and a gross violation of the Constitution, may be treated as though he had not breached the oath or committed a gross violation of the Constitution. [A President who has been removed from office in impeachment proceedings] will always remain someone who has breached his oath to the Nation and grossly violated the Constitution, and who has been dismissed as President of the Republic for those reasons.

... A person who was elected President of the Republic, who took the oath of the President to the Nation, and who subsequently breached it and thus grossly violated the Constitution, and who was ... removed [in impeachment proceedings] from office by the Seimas, the representative body of the Nation, may not, under the Constitution, take an oath to the Nation once again, as there would always exist a reasonable doubt, which would never disappear, related to the certainty and reliability of his repeatedly taken oath, and thus related to whether the person taking the oath would really perform his duties as President of the Republic in the manner prescribed by the oath to the Nation, and whether that person would not breach the oath to the Nation again – in other words, whether the oath repeatedly taken by that person to the Nation would not be fictitious.

...

The removal from office of the President of the Republic, as well as of any other person indicated in Article 74 of the Constitution, who has breached the oath and grossly violated the Constitution, in accordance with the procedure for impeachment proceedings, is not an end in itself. The purpose of ... impeachment is not only a one-off removal of such persons from office, but it is much broader: its purpose is to prevent the persons who have grossly violated the Constitution and breached the oath from holding an office provided for in the Constitution, the commencement of which ... is subject to taking the oath specified in the Constitution. The content of the constitutional sanction (constitutional liability) applied under the procedure for impeachment proceedings comprises both the removal from office of the person who has grossly violated the Constitution and breached the oath, and the consequent prohibition on such a person holding in the future an office provided for in the Constitution which a person may begin to hold only upon taking the oath set forth in the Constitution. The aforementioned prohibition on holding an office provided for in the Constitution which a person may begin to hold only upon taking the oath set forth in the Constitution is not a repeated punishment of the person who has grossly violated the Constitution and breached the oath, or a second ‘punishment’ imposed on

the person for the same violation of the Constitution, but a constituent part of the constitutional sanction – the removal from office, the deep essence of impeachment as a measure of self-protection of the State community and the civil nation, and the constitutional liability – its aim and purpose being to ensure that a person who has grossly violated the Constitution and breached the oath, and has been removed from office by the Seimas for that reason, can never hold an office the commencement of which is subject to the taking of the oath specified in the Constitution.

...

The Constitution also consolidates the legal regulation whereby a person whose mandate as a member of the Seimas has been revoked in accordance with the procedure for impeachment proceedings for a gross violation of the Constitution and a breach of the oath, or whereby a person has been removed from the office of the President of the Republic, the President or a justice of the Constitutional Court, the President or a justice of the Supreme Court, or the President or a judge of the Court of Appeal, for a gross violation of the Constitution and a breach of the oath, under the Constitution, may never stand for election as the President of the Republic or a member of the Seimas, may never hold office as a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, a judge of any other court, a member of the government, or the State Controller [Auditor General] – that is to say, may not hold an office provided for in the Constitution, the taking up of which, pursuant to the Constitution, is linked to taking the oath set forth in the Constitution.

The Constitution consolidates the legal regulation whereby a person who has been removed from the office of the President of the Republic by the Seimas in accordance with the procedure for impeachment proceedings for a breach of the oath and a gross violation of the Constitution may never [again] stand for election as the President of the Republic. A different interpretation of the provisions of the Constitution would make the institution of constitutional impeachment for a gross violation of the Constitution and a breach of the oath legally meaningless, pointless; it would be incompatible with the essence and purpose of constitutional liability for a breach of the oath and a gross violation of the Constitution, with the essence and purpose of the oath established in the Constitution as a constitutional value, as well as with the requirement, which emerges from the overall constitutional legal regulation, that all the institutions executing State power and other State institutions be formed only from the citizens who without reservations obey the Constitution adopted by the Nation, and who, while in office, unconditionally uphold the Constitution, the law, and the interests of the Nation and the State of Lithuania. A different interpretation of the provisions of the Constitution would be inconsistent with both the constitutional principle of a State under the rule of law and the constitutional imperative of an open, just and harmonious civil society.

...

... [T]he Constitution consolidates the organisation of institutions executing State power and the procedure for their formation, in such a way that all the institutions which execute State power – the Seimas, the government, the President of the Republic, the judiciary – as well as other State institutions, are formed only from the citizens who without reservations obey the Constitution adopted by the Nation and who, while in office, unconditionally uphold the Constitution, the law, the interests of the Nation and the State of Lithuania. ... [W]here a person has been removed [in impeachment proceedings] from the office of the President of the Republic ... for a gross violation of the Constitution and a breach of the oath under the Constitution, [that person] may never [again] stand for election as President of the Republic or a

member of the Seimas, may never hold office as a justice of the Constitutional Court, a justice of the Supreme Court, a judge of the Court of Appeal, a judge at any other court, a member of the government, the State Controller – that is to say, may not hold an office established in the Constitution, the commencement of which, in accordance with the Constitution, is linked with taking the oath set forth in the Constitution.

...

[U]nder the Constitution, a person in respect of whom the Seimas, following the conclusion of the Constitutional Court that the President of the Republic has committed a gross violation of the Constitution and breached the oath, has applied the constitutional sanction, namely removal from office, may not evade constitutional liability through a fresh election of the President of the Republic, a referendum, or any other means. ... [N]either a referendum, nor a fresh election of the President of the Republic can be and, under the Constitution, is a way of expressing the trust or mistrust of the citizens in the Seimas, which, in accordance with the procedure for impeachment proceedings, has removed the President of the Republic from office. ..."

55. In a ruling of 14 March 2006, the Constitutional Court noted:

"... [T]he observance of international obligations undertaken of [the State's] own free will, and respect for 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.

... [T]he Constitutional Court has held that the international treaties ratified by the Seimas acquire the force of a law [that is, a statute] (see the Constitutional Court's conclusion of 24 January 1995 ...).

This doctrinal provision cannot be construed as meaning that, purportedly, the Republic of Lithuania may disregard its international treaties if a different legal regulation is established in its laws or constitutional laws from that established by international treaties. Quite to the contrary, the principle entrenched in the Constitution that the Republic of Lithuania observes international obligations undertaken of its own free will and universally recognised principles of international law implies that in cases when national legal acts (*inter alia*, laws or constitutional laws) establish a legal regulation which competes with that established in an international treaty, then the international treaty should be applied. ..."

56. In a ruling of 5 September 2012, the Constitutional Court noted:

"[I]n the course of the implementation of the international obligations of the Republic of Lithuania in domestic law, regard must be had to the principle of the superiority of the Constitution entrenched in paragraph 1 of Article 7 thereof. As has been emphasised by the Constitutional Court, 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 with the Constitution, since paragraph 1 of Article 7 of the Constitution provides: 'Any law or other act that contradicts the Constitution shall be invalid.' In itself, this constitutional provision cannot invalidate a law or an international treaty, but it requires that the provisions thereof do not contradict the provisions of the Constitution...; otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights of the parties to international treaties which arise from those treaties, and this in its turn would hinder the fulfilment of obligations arising from international treaties that have been concluded... This also applies to the Convention (and the Protocols

thereto); otherwise, the Republic of Lithuania would not be able to ensure the legal protection of the rights and freedoms recognised by the Convention...

5. It has been mentioned that it may be possible to deviate from Constitutional Court precedents created through the adoption of decisions in cases of constitutional justice and to create new precedents only in cases when this is unavoidably and objectively necessary, constitutionally grounded and reasoned; it is impossible and constitutionally impermissible to reinterpret the official constitutional doctrine (the provisions thereof) so that the official constitutional doctrine would be modified, if by doing so the system of values entrenched in the Constitution is changed, the guarantees protecting the supremacy of the Constitution in the legal system are reduced and the concept of the Constitution as a single act and harmonious system is denied.

[In] establishing the ... legal regulation in paragraph 5 (wording of 22 March 2012) of Article 2 of the Law on Elections to the Seimas, which ignores the concept of constitutional liability for a gross violation of the Constitution and a breach of the oath as set out in the Constitutional Court ruling of 25 March 2004, and disregards the fact that, under the Constitution, a person who has grossly violated the Constitution and breached the oath, and for that reason, under the procedure for impeachment proceedings, has been removed from office or had his or her mandate as a member of the Seimas revoked, may never stand for election as, *inter alia*, a member of the Seimas, the legislature tried to overrule the power of the Constitutional Court ruling of 25 May 2004 and violated the prohibition, which stems from ... the Constitution, in repeatedly establishing, by passing corresponding laws and other subsequent legal acts, a legal regulation which is not in line with the concept of the provisions of the Constitution set forth in the ruling of the Constitutional Court, or with the principle of integrity of the Constitution ..., [and] the principle of supremacy of the Constitution ..., exceeded its powers enshrined in the Constitution and violated the constitutional principles of separation of powers and a State based on the rule of law.

Taking account of the arguments set forth, the following conclusion must be drawn:

(1) the provision of paragraph 5 (wording of 22 March 2012) of Article 2 of the Law on Elections to the Seimas, which reads 'if less than four years have elapsed since the decision to remove him or her from office or to revoke his or her mandate as a member of the Seimas took effect' is in conflict with ... the Constitution, as well as with the constitutional principle of a State based on the rule of law;

...

In this context it needs to be noted that the main responsibility for effective implementation of the Convention and the Protocols thereto falls upon the States Parties to the Convention and the Protocols thereto; therefore, they enjoy broad discretion to choose the ways and measures for the application and implementation of the Convention and the 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 States' legal systems, *inter alia* their constitutions, as well as by the character of the human rights and freedoms guaranteed under the Convention and Protocols thereto (see, *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), and the 18 January 2001 judgment in the case of *Chapman v. the United Kingdom* (application no. 27238/95).

...

Consequently, in itself the judgment of the European Court of Human Rights may not serve as the constitutional basis for reinterpretation (modification) of the official constitutional doctrine (the provisions thereof) if such reinterpretation, in the absence of corresponding amendments to the Constitution, changes the overall constitutional regulation (*inter alia* the integrity of the constitutional institutions – impeachment, the oath and electoral rights) in essence, and also if it disturbs the system of values entrenched in the Constitution and diminishes the guarantees of protection of the superiority of the Constitution in the legal system.

...

In the context of the constitutional justice case at issue, it needs to be noted that pursuant to 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 to 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."

57. In its ruling of 22 December 2016, the Constitutional Court noted:

"29. ... [R]espect for international law, that is, the observance of international obligations undertaken of [the State's] own free will and respect for the universally recognised principles of international law (as well as the principle *pacta sunt servanda*), is a legal tradition and a constitutional principle of the restored independent State of Lithuania ... Respect for international law is an inseparable part of the constitutional principle of a State based on the rule of law, whose essence is the rule of law ... [I]n the course of the implementation of international obligations of the Republic of Lithuania in domestic law, regard must be had to the principle of superiority of the Constitution entrenched in paragraph 1 of Article 7 thereof ...

31. In the context of this case it must be underlined that both in order to remove the incompatibility between the Constitution and the provisions of Article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they imply an international obligation of the Republic of Lithuania to guarantee the right to stand for election as a member of the Seimas of a person who has been removed from office in impeachment proceedings for a gross violation of the Constitution or a breach of the oath or of a person who, in impeachment proceedings for a gross violation of the Constitution or a breach of the oath, has been removed from the office of the President of the Republic ..., and to implement the European Court of Human Rights' judgment of 6 January 2011, there is only one way which is set out in the Constitutional Court's official doctrine – to amend the related provisions of the Constitution. Any other way (*inter alia*, the enactment or amendment of laws and other legal acts) is impossible under the Constitution.

32. ... [U]nder the Constitution, *inter alia* its Article 135 § 1, the Republic of Lithuania should also take account of the recommendations formulated in the Views of the United Nations Human Rights Committee."

RELEVANT INTERNATIONAL MATERIALS

58. The International Covenant on Civil and Political Rights, ratified by the Republic of Lithuania on 20 November 1991, reads as follows:

Article 2

"1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted."

Article 25

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

59. In its Views regarding the complaint by Mr Paksas, on 25 March 2014 the UNHRC held:

"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 from being a candidate in presidential elections, or being a prime minister or a minister, amount to a violation of the Covenant.

...

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 and not reasonable, and are disproportionate. In this regard, the Committee notes the statements made by the Constitutional Court on 5 January 2004 and on 16 March 2004, insinuating the responsibility of the author prior to 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 Central Electoral Committee authorized the author to stand in 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 in presidential elections for a period of five years after those proceedings. Following that amendment, the Central Electoral Committee refused to register the author as a candidate. On 25 May 2004, the Constitutional Court held that such a 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 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 the offices of President, Prime Minister, Minister, Judge or State Controller. In view of the foregoing, the Committee considers that the lifelong disqualifications on being a candidate in presidential elections, or on being a prime minister or minister, were imposed on the author following a rule-making process that was 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 revision of the lifelong prohibition of the author's right to be a candidate in presidential elections or to be a 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."

THE COURT'S OPINION

I. PRELIMINARY CONSIDERATIONS

60. Under Article 1 § 1 of Protocol No. 16, designated highest courts or tribunals may request the Court to give advisory opinions on "questions of

principle relating to the interpretation and application of the rights and freedoms defined in the Convention and the Protocol's thereto". Pursuant to Article 1 § 2 of Protocol No. 16, a highest court or tribunal may do so "only in the context of a case pending before it".

61. The Court reiterates that, as stated in the Preamble to Protocol No. 16, the aim of the advisory opinion procedure is to further enhance the interaction between the Court and national authorities and thereby reinforce the implementation of the Convention, in accordance with the principle of subsidiarity. The aim of the procedure is not to transfer the dispute to the Court, but rather to give the requesting court guidance on Convention issues when determining the case before it. The Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law, or to rule on the outcome of the proceedings. Its role is limited to furnishing an opinion in relation to the questions submitted to it. It is for the requesting court or tribunal to resolve the issues raised by the case and to draw, as appropriate, the conclusions which flow from the opinion delivered by the Court for the provisions of national law invoked in the case and for the outcome of the case (see *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother*, request no. P16-2018-001, French Court of Cassation, § 25, 10 April 2019 ("*Advisory opinion P16-2018-001*")).

62. The Court has also inferred from Article 1 §§ 1 and 2 of Protocol No. 16 that the opinions it delivers under this Protocol must be confined to points that are directly connected to the proceedings pending at domestic level. Their value also lies in providing the national courts with guidance on questions of principle relating to the Convention that are applicable in similar cases (ibid., § 26).

63. The Court notes that the Seimas elections of October 2020, which formed the backdrop of Ms N.V.'s complaint, have already taken place. However, her case, which concerns interference with her right to stand for election, is still pending before the Supreme Administrative Court. The Court notes that the questions on the consequences of impeachment, as formulated by the Supreme Administrative Court in its request for an advisory opinion, clearly also touch on the situation created by the Grand Chamber's *Paksas* judgment, the execution of which is still pending. The Court also has regard to the most recent decision by the Committee of Ministers regarding the execution of the *Paksas* judgment, in which the Deputies noted the Government's initial intention to wait for the delivery of the Court's advisory opinion before proceeding with further steps for the execution of that judgment. The Deputies also decided to resume the examination of the execution of that judgment after the advisory opinion had been delivered by the Court (see paragraph 47 above). Hence the Court

finds that the questions raised by the Supreme Administrative Court remain pertinent and should therefore be addressed by the Court. At the same time, the Court would stress that Protocol No. 16 was not envisaged as an instrument to be used in the context of execution.

64. Lastly, the Court would point out that although in their observations the Government referred to certain criminal proceedings against Ms N.V. (see paragraphs 21 and 22 above), by the date of the adoption of this opinion, those proceedings had not yet been the subject of a final judicial determination. As a consequence, the Court will not have regard to those proceedings.

II. THE QUESTIONS ASKED BY THE SUPREME ADMINISTRATIVE COURT

65. The questions asked by the Supreme Administrative Court read as follows:

> "1. Does a Contracting State overstep the margin of appreciation conferred to it by Article 3 of Protocol No. 1 to the Convention, if it does not guarantee the compatibility of the national law with the international obligations arising from the provisions of Article 3 of Protocol No. 1 to the Convention, which results in preventing a person, who has been removed from office of a Member of the Seimas under the impeachment proceedings, from implementing their 'passive' right to elections for six years?
>
> In case of affirmative response, could such situation be justified by the complexity of the existing circumstances, directly related to providing an opportunity to the legislative body to align the national provisions of the constitutional level with the international obligations?
>
> 2. What are the requirements and criteria implied by Article 3 of Protocol No. 1 to the Convention, which determine the scope of the application of the principle of proportionality, and which the national court should take into account and verify whether they are complied with in the existing situation at issue?
>
> In such situation, when assessing the proportionality of a general prohibition restricting the exercise of the rights provided for in Article 3 of Protocol No. 1 to the Convention, should not only the introduction of the time-limit, but also the circumstances of each individual case, related to the nature of the office from which a person has been removed and the act which resulted in impeachment, be held crucial?"

66. The Court considers it appropriate to start by answering the second question, which relates to the case pending before the Supreme Administrative Court, this circumstance being a requirement of Article 1 § 2 of Protocol No. 16.

67. In formulating its opinion the Court will take due account of the written observations and documents produced by the various participants in the proceedings (see paragraphs 2 and 5 above). Nevertheless, it stresses that its task is not to reply to all the grounds and arguments submitted to it

or to set out in detail the basis for its reply; under Protocol No. 16, the Court's role is not to rule in adversarial proceedings on contentious applications by means of a binding judgment but rather to provide the requesting court or tribunal with guidance enabling it to ensure respect for Convention rights when determining the case before it (see *Advisory opinion P16-2018-001*, cited above, § 34).

A. The second question asked by the Supreme Administrative Court

68. The Court considers that the Supreme Administrative Court is asking, in substance, which criteria are to be applied by a competent Lithuanian court in the assessment of whether, in the concrete circumstances of a given case, the ban preventing a former member of the Seimas who has been removed in impeachment proceedings from standing for election to the Seimas has become disproportionate with the consequence that it breaches Article 3 of Protocol No. 1.

69. The Court observes that the questions submitted by the Supreme Administrative Court have been asked in the context of a complaint lodged by Ms N.V., who is challenging the refusal by the Central Electoral Commission to register her candidacy in the 2020 elections to the Seimas.

70. However, it would appear that the legal ban preventing Ms N.V. from being registered as a candidate for election to the Seimas is the direct consequence of the Lithuanian legal regulations on impeachment, which the Court in *Paksas* (cited above, §§ 109 and 110) found to be in breach of Article 3 of Protocol No. 1 on the ground that a general and unlimited ban, as laid down in those regulations, amounted to a disproportionate sanction. This assessment is confirmed by the wording of the first question submitted by the Supreme Administrative Court ("which results in preventing a person ..."). By the date of adoption of this advisory opinion, the Lithuanian authorities had not yet executed the *Paksas* judgment (see the Committee of Ministers' Resolution CM/ResDH(2018)469, referred to in paragraph 42 above, the Committee of Ministers' Decision CM/Del/Dec(2020)1377bis/H46-20, referred to in paragraph 43 above, and the Committee of Ministers' Decision CM/Del/Dec(2021)1406/H46-18, referred to in paragraph 47 above).

71. The Supreme Administrative Court indeed considered, in the light of the case-law of the Constitutional Court (see paragraphs 24 and 56 above), that the law on impeachment which had been applied to Mr Paksas, a former President of the Republic, was equally applicable to the situation of Ms N.V., who had had her mandate as a member of the Seimas revoked in impeachment proceedings. This was because both functions required the taking of an oath under the Constitution.

72. However, the Court understands the Supreme Administrative Court's second question as implying that the national court considers itself

to be called upon to determine the question whether, having regard to all relevant circumstances, the impact of the unlimited ban on the personal situation of Ms N.V. has become disproportionate for the purposes of Article 3 of Protocol No. 1 to the Convention.

73. Against this background, the Court understands the second question asked by the Supreme Administrative Court as a request for guidance on the criteria which are relevant for the purpose of that determination. In keeping with the object and purpose of Protocol No. 16, the Court will answer it from the perspective of the requesting court, this being without prejudice to any legislative initiatives by the Seimas with a view to remedying the problem created by the failure to execute the *Paksas* judgment (see paragraph 40 above). However, before addressing the Supreme Administrative Court's second question, the Court will recapitulate the case-law relating to the issues involved in the case at hand, in the light of which the requirements flowing from the Court's judgment in *Paksas* are to be understood.

1. The Court's case-law

(a) The right to stand for election under Article 3 of Protocol No. 1

(i) *The judgment in the case of* Paksas v. Lithuania

74. In *Paksas* (cited above, §§ 97-112) the Court ruled that the applicant, a former President of Lithuania who had been removed from office in impeachment proceedings, had suffered interference with the exercise of his right to stand for election, having been deprived of any possibility of running as a parliamentary candidate. The interference had been in accordance with the law, *inter alia* with the Constitutional Court's ruling of 25 May 2004. The measure was intended to preserve the democratic order, which constituted a legitimate aim for the purposes of Article 3 of Protocol No. 1 (ibid., §§ 98-100).

75. Without underplaying the seriousness of the applicant's alleged conduct in relation to his constitutional obligations or questioning the principle of his removal from office as President, the Court held that the interference had had significant consequences as he had been barred 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. Lithuania's position in this area constituted an exception in Europe since, in the majority of the Council of Europe's member States, impeachment had no direct effects on the electoral rights of the person concerned, or there were no direct consequences for the exercise of the right to stand in parliamentary elections, or the permissible restrictions required a specific judicial decision and were subject to a time-limit (ibid., §§ 103 and 106).

76. In assessing the proportionality of such a measure, decisive weight had to be attached to the existence of a time-limit and the possibility of reviewing the measure in question. The need to provide for a review was, moreover, linked to the fact that consideration should be given to the historical and political context in the State concerned. Since that context would undoubtedly evolve, not least in terms of the perceptions which voters might have of the circumstances that had led to the introduction of such a general restriction, the initial justification for the restriction could subside with the passing of time. In the *Paksas* case, however, not only was the restriction unlimited in time, but the rule on which it was based was set in constitutional stone. The applicant's disqualification from standing from election accordingly carried a connotation of immutability that was hard to reconcile with Article 3 of Protocol No. 1. Moreover, the fact that the legislative process whereby the measure was introduced had been strongly influenced by the specific circumstances was an additional indication of the disproportionate nature of the restriction. All these factors, especially the permanent and irreversible nature of the applicant's disqualification from holding parliamentary office, led the Court to conclude that the restriction was disproportionate (ibid., §§ 109-12).

(ii) Other case-law

77. The Court has consistently held that democracy constitutes a fundamental element of the "European public order", and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 141, 17 May 2016; *Mugemangango v. Belgium* [GC], no. 310/15, § 67, 10 July 2020; and *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 382, 22 December 2020).

78. Regarding the broad margin of appreciation which the States have in the sphere of electoral rights, the Court held as follows in *Gitonas and Others v. Greece* (1 July 1997, § 39, *Reports of Judgments and Decisions* 1997-IV):

> "39. The Court reiterates that Article 3 of Protocol No. 1 implies subjective rights to vote and to stand for election. As important as those rights are, they are not, however, absolute. Since Article 3 recognises them without setting them forth in express terms, let alone defining them, there is room for 'implied limitations' (see the *Mathieu-Mohin* and *Clerfayt v. Belgium* judgment of 2 March 1987, Series A no. 113, p. 23, para. 52). In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of

their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (ibid.).

More particularly, the States enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, including criteria for disqualification. Though originating from a common concern - ensuring the independence of members of parliament, but also the electorate's freedom of choice -, the criteria vary according to the historical and political factors peculiar to each State. The number of situations provided for in the Constitutions and the legislation on elections in many member States of the Council of Europe shows the diversity of possible choice on the subject. None of these criteria should, however, be considered more valid than any other provided that it guarantees the expression of the will of the people through free, fair and regular elections."

79. In *Mugemangango* (cited above), the Court held in addition:

"73. The margin of appreciation in this area is wide (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 61, ECHR 2005-IX, with further references). There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe (ibid., § 61; see also *Ždanoka* [*v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV], and *Sitaropoulos and Giakoumopoulos* [*v. Greece* [GC], no. 42202/07, § 66, ECHR 2012]). Thus, the Court has held that any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be regarded as unacceptable in the context of one system may be justified in the context of another. It has, however, emphasised that the State's margin of appreciation in this regard is limited by the obligation to respect the fundamental principle of Article 3 of Protocol No. 1, namely 'the free expression of the opinion of the people in the choice of the legislature' (see *Mathieu-Mohin and Clerfayt*, cited above, § 54; *Podkolzina* [*v. Latvia*, no. 46726/99, § 33, ECHR 2002-II]; *Tănase v. Moldova* [GC], no. 7/08, § 157, ECHR 2010; and *Cernea v. Romania*, no. 43609/10, § 40, 27 February 2018)."

80. In *Mugemangango* (cited above), the Court also underlined its subsidiary role regarding the establishment of facts, whilst reiterating its power to verify whether the State had complied with its obligations under Article 3 of Protocol No. 1:

"71. In accordance with the subsidiarity principle, it is not for the Court to take the place of the national authorities in interpreting domestic law or assessing the facts. In the specific context of electoral disputes, the Court is not required to determine whether the irregularities in the electoral process alleged by the parties amounted to breaches of the relevant domestic law (see *Namat Aliyev* [*v. Azerbaijan*, no. 18705/06, § 77, 8 April 2010]). Nor is the Court in a position to assume a fact-finding role by attempting to determine whether the alleged irregularities took place and whether they were capable of influencing the outcome of the elections. Owing to the subsidiary nature of its role, the Court needs to be wary of assuming the function of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *Davydov and Others* [*v. Russia*, no. 75947/11, § 276, 30 May 2017]). On the other hand, it is for the Court to determine whether the requirements of Article 3 of Protocol No. 1 have been observed and to satisfy itself, from a more general standpoint, that the respondent State has complied with its obligation to hold elections under free and fair conditions and has ensured that individual electoral rights were exercised effectively (see *I.Z. v. Greece*, no. 18997/91, Commission decision of

28 February 1994, Decisions and Reports 76-A, p. 65; *Babenko v. Ukraine* (dec.), no. 43476/98, 4 May 1999; *Gahramanli and Others v. Azerbaijan*, no. 36503/11, § 72, 8 October 2015; and *Davydov and Others*, cited above, § 276)."

(b) The concept of "implied limitations"

81. In *Selahattin Demirtaş* (cited above, §§ 387-88), the Court underscored the principle of implied limitations:

"387. The Court further reiterates that the rights enshrined in Article 3 of Protocol No. 1 to the Convention are not absolute (see *Etxeberria and Others v. Spain*, nos. 35579/03 and 3 others, § 48, 30 June 2009). There is room for 'implied limitations', and the Contracting States have a wide margin of appreciation in this sphere (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Podkolzina* [cited above], § 33; *Sadak and Others* [*v. Turkey (no. 2)*, no. 25144/94 and 4 other applications, § 31, 11 June 2002]; and *Kavakçı* [*v. Turkey*, no. 71907/01, § 40, 5 July 2007]). However, it is for the Court to finally determine whether the requirements of Article 3 of Protocol No. 1 have been complied with. It has to satisfy itself that the limitations imposed on the exercise of the rights under Article 3 of Protocol No. 1 do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52).

388. The concept of 'implied limitations' means that the traditional tests of 'necessity' or 'pressing social need' which the Court uses in the context of its analyses under Articles 8 to 11 of the Convention are not applied in cases concerning Article 3 of Protocol No. 1. Rather, the Court first sets out to ascertain whether there has been arbitrary treatment or a lack of proportionality. Next, it examines whether the limitation has interfered with the free expression of the opinion of the people (see *Mathieu-Mohin and Clerfayt*, cited above, § 52, and *Ždanoka*, cited above, § 115)."

(c) Legitimate aim

82. Unlike Articles 8, 9, 10 and 11 of the Convention, Article 3 of Protocol No. 1 does not itself set out a list of aims which can be considered legitimate for the purposes of that Article (see *Tănase*, cited above, § 164).

83. The Court reiterated this in *Paksas* (cited above, § 100), where it held that the prohibition imposed on the applicant was the consequence of his removal from office in impeachment proceedings, the purpose of which, according to the Statute of the Seimas, was to determine the constitutional liability of the highest-ranking State officials for acts carried out while in office which undermined the authorities' credibility. The measure thus formed part of a self-protection mechanism for democracy through public and democratic scrutiny of those holding public office, and pursued the aim of excluding from the legislature any senior officials who, in particular, had committed gross violations of the Constitution or breached their oath provided for in the Constitution. The measure was thus intended to preserve the democratic order, which constituted a legitimate aim for the purposes of Article 3 of Protocol No. 1 (see also, *mutatis mutandis*, *Ždanoka*, cited above, § 118).

84. In *Tănase* (cited above, §§ 166 and 167), the Court referred to the aim of ensuring loyalty to the State and distinguished between loyalty to the State and loyalty to the government. While the need to ensure loyalty to the State might well constitute a legitimate aim which justified restrictions on electoral rights, the latter could not. The Court also considered that loyalty to the State in principle encompassed respect for the country's Constitution, laws, institutions, independence and territorial integrity.

85. More recently, in *Xhoxhaj v. Albania* (no. 15227/19, § 413, 9 February 2021), which concerned a lifetime ban on re-entering the judiciary, imposed in respect of a judge of the Constitutional Court on the grounds of serious ethical violations, the Court considered that judges, and especially those occupying posts entailing a high degree of responsibility such as the posts in which the applicant wished to resume employment, wielded a portion of the State's sovereign power. The lifetime ban imposed on the applicant and other individuals removed from office on grounds of serious ethical violations was not inconsistent with or disproportionate to the legitimate objective pursued by the State to ensure the integrity of judicial office and public trust in the justice system.

(d) Impact of the political and historical context

86. In *Tănase* (cited above), the Court acknowledged that any electoral legislation must be assessed in the light of the historical and political context of the country concerned, but that restrictions on electoral rights should be individualised as time passes. It stated:

> "156. As regards the passive aspect of Article 3 of Protocol No. 1, the Court has emphasised the considerable latitude which States enjoy in establishing criteria on eligibility to stand for election. In *Ždanoka* (cited above, § 106), the Court explained:
>
> '... although [the criteria] have a common origin in the need to ensure both the independence of elected representatives and the freedom of choice of electors, these criteria vary in accordance with the historical and political factors specific to each State. The multiplicity of situations provided for in the constitutions and electoral legislation of numerous member States of the Council of Europe shows the diversity of possible approaches in this area. Therefore, for the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned ...'
>
> 157. Similarly, in *Podkolzina* [cited above], § 33 ..., the Court observed that for the purposes of applying Article 3, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another. However, it emphasised that the State's margin of appreciation in this regard was limited by the obligation to respect the fundamental principle of Article 3 of Protocol No. 1, namely 'the free expression of the opinion of the people in the choice of the legislature' (see also *Mathieu-Mohin and Clerfayt*, cited above, § 47, and *Melnychenko v. Ukraine*, no. 17707/02, § 55, ECHR 2004-X).
>
> 158. In assessing the limitations of the latitude afforded to States, the Court in *Aziz* [*v. Cyprus*, § 28, 22 June 2004] noted:

> 'Although ... States enjoy considerable latitude to establish rules within their constitutional order governing parliamentary elections and the composition of the parliament, and ... the relevant criteria may vary according to the historical and political factors peculiar to each State, these rules should not be such as to exclude some persons or groups of persons from participating in the political life of the country and, in particular, in the choice of the legislature, a right guaranteed by both the Convention and the Constitutions of all Contracting States.'
>
> 159. Applying these principles, the Court considered in *Ždanoka* (cited above, §§ 119-35), that historical considerations could provide justification for restrictions on rights intended to protect the integrity of the democratic process by, in that case, excluding individuals who had actively participated in attempts to overthrow the newly established democratic regime. However, the Court suggested that such restrictions were unlikely to be compatible if they were still applied many years later, at a point where the justification for their application and the threats they sought to avoid were no longer relevant. Subsequently, in *Ādamsons* [*v. Latvia* (no. 3669/03, §§ 123-28, 24 June 2008]), the Court emphasised that with the passage of time, general restrictions on electoral rights become more difficult to justify. Instead, measures had to be 'individualised' in order to address a real risk posed by an identified individual."

The Court also specified that where an immediate threat to democracy or independence had passed, measures that were concerned with identifying a credible threat to the State interest in particular circumstances based on specific information should be preferred to operating on a blanket assumption that a certain category of persons posed a threat to national security and independence.

87. Regarding the time-limit for restrictions on electoral rights, the Court held in *Ždanoka* (cited above):

> "135. It is to be noted that the Constitutional Court observed in its decision of 30 August 2000 that the Latvian parliament should establish a time-limit on the restriction. In the light of this warning, even if today Latvia cannot be considered to have overstepped its wide margin of appreciation under Article 3 of Protocol No. 1, it is nevertheless the case that the Latvian parliament must keep the statutory restriction under constant review, with a view to bringing it to an early end. Such a conclusion seems all the more justified in view of the greater stability which Latvia now enjoys, *inter alia*, by reason of its full European integration ... Hence, the failure by the Latvian legislature to take active steps in this connection may result in a different finding by the Court (see, *mutatis mutandis*, *Sheffield and Horsham v. the United Kingdom*, 30 July 1998, § 60, *Reports* 1998-V; see also the follow-up judgment to that case, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, §§ 71-93, ECHR 2002-VI)."

(e) Procedural safeguards

88. For the purpose of supervising the compatibility of an interference with the requirements of Article 3 of Protocol No. 1, the Court must scrutinise the relevant domestic procedures and decisions in detail, in order to determine whether sufficient safeguards against arbitrariness were afforded to the applicant and whether the relevant decisions were

sufficiently reasoned (see *Abil v. Azerbaijan*, no. 16511/06, § 34, 21 February 2012).

89. In *Mugemangango* (cited above) the Court referred to the need for the body determining electoral disputes to be impartial:

> "96. The Court reiterates that, as it has consistently held, electoral disputes do not fall within the scope of Article 6 of the Convention since they do not concern the determination of 'civil rights and obligations' or a 'criminal charge' (see *Pierre-Bloch v. France*, 21 October 1997, §§ 51 and 53-59, *Reports of Judgments and Decisions* 1997-VI; *Cheminade v. France* (dec.), no. 31599/96, ECHR 1999-II; and *Riza and Others* [*v. Bulgaria*, nos. 4855/10 and 48377/10, § 184, 13 October 2015]). Nevertheless, in view of the fact that Article 3 of Protocol No. 1 seeks to strengthen citizens' confidence in Parliament by guaranteeing its democratic legitimacy ..., the Court considers that certain requirements also flow from that Article in terms of the impartiality of the body determining electoral disputes and the importance that appearances may have in this regard.
>
> 97. In the context of the right to free elections secured by Article 3 of Protocol No. 1, the requisite guarantees of impartiality are intended to ensure that the decision taken is based solely on factual and legal considerations, and not on political ones. The examination of a complaint about election results must not become a forum for political struggle between different parties (see, *mutatis mutandis*, *Georgian Labour Party v. Georgia*, no. 9103/04, § 108, ECHR 2008)."

2. Relevance of these principles to the facts relating to the present advisory opinion

90. The Court refers to its finding in *Paksas* according to which in assessing the proportionality of a general measure restricting the exercise of the rights guaranteed by Article 3 of Protocol No. 1, decisive weight should be attached to the existence of a time-limit and the possibility of reviewing the measure in question. The need for such a possibility is linked to the fact that the assessment of this issue must have regard to the historical and political context in the State concerned; since this context is capable of evolving, not least in terms of the perceptions which voters may have of the circumstances that led to the introduction of such a general restriction, the initial justification for the restriction may subside with the passing of time (see *Paksas*, cited above, § 109; see also *Ždanoka*, § 106, and *Mugemangango*, § 73, both cited above).

91. The Court also observes that under Article 3 of Protocol No. 1 to the Convention, States have a wide margin of appreciation in regulating the right to stand for election. In particular, they enjoy considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, and the criteria may vary according to the historical and political factors peculiar to each State (see *Gitonas and Others*, cited above, § 39). However, these rules should not be such as to exclude some persons or groups of persons from participating in the political life of a country and in the choice of the legislature (see *Aziz*, cited above, § 28). Moreover, even if legitimate considerations may provide justification for restrictions on the

right to stand for election, such restrictions may become incompatible with Article 3 of Protocol No. 1 when applied long after the threat to democracy which had justified their earlier application has ceased to be relevant in light of the greater stability enjoyed by the country concerned, for example by reason of its full European integration (see *Ždanoka*, cited above, § 135). The Court has also recognised that, with the passage of time, general restrictions on electoral rights become more difficult to justify, thus requiring restrictive measures to be individualised (see *Ādamsons v. Latvia*, no. 3669/03, § 125, 24 June 2008, and *Tănase*, cited above, § 159). Thus, the margin of appreciation enjoyed by the States in this field is not unlimited, and it remains for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been met (see *Gitonas and Others*, cited above, § 39).

92. It follows from this that the reference in *Paksas* (cited above, § 109) to the weight to be attached to the existence of a time-limit and the possibility of reviewing the ban in question is not necessarily to be understood as requiring these two elements to be combined. Nor does it specify whether the time-limit applicable in a given case should be set in the abstract or on a case-by-case basis. What matters in the end is for the ban in question to remain proportionate within the meaning of the *Paksas* judgment. This can be achieved by way of an appropriate legislative framework or judicial review of the duration, nature and extent of such a ban as applicable to the person concerned, performed on the basis of objective criteria and having regard to the particular circumstances of that person as they present themselves at the time of the review. The Court notes in this context that the findings in *Paksas* that a lifelong disqualification, on account of its permanent and irreversible nature, was a disproportionate restriction does not in itself imply that a decision to refuse to allow a person to stand for election, at the time of such a refusal, will necessarily amount to a disproportionate restriction. Whether that is the case will depend on an individual assessment of the refusal and the specific circumstances of the case based on objective criteria, including the individual's past and current behaviour.

93. Under the circumstances, the Supreme Administrative Court considers itself therefore to be called upon to determine whether or not the total duration of the ban on the exercise by Ms N.V. of a parliamentary mandate has exceeded what is acceptable under Article 3 of Protocol No. 1. In this connection, the Court makes clear that under Protocol No. 16, its role is limited to providing an opinion on the scope and content of provisions of the Convention upon a request by the highest national courts. It is not for the Court to take a stance on whether the national court is in a position to apply the Convention in a pending case taking account of rules of a constitutional nature, by which all domestic courts are obliged to abide.

94. In this connection, and turning to the criteria which are relevant in deciding that issue, in the Court's opinion they should be objective in nature and allow relevant circumstances connected not only with the events which led to the impeachment of the person concerned, but also – and primarily – with the functions sought to be exercised in the future by that person to be taken into account in a transparent way. This is because the purpose of the impeachment and the subsequent ban is not primarily to impose another sanction on the person concerned in addition to a criminal sanction which may already have been imposed, but to protect parliamentary institutions. The relevant criteria should therefore be identified mainly from the perspective of the requirements of the proper functioning of the institution of which that person seeks to become a member, and indeed of the constitutional system and democracy as a whole in the State concerned (see paragraph 83 above).

95. This comes down to evaluating the objective impact which that person's potential membership of the institution concerned would have on the latter's functioning, having regard to such considerations as the past and current behaviour of the person who has been removed from office in impeachment proceedings and the nature of the wrongdoing which led to his or her impeachment, but also – and more importantly – the institutional and democratic stability of the institution concerned, the nature of the latter's duties and responsibilities, and the likelihood of the person in question having the potential to significantly disrupt the functioning of that institution, or indeed of democracy as a whole in the State concerned. Aspects such as that person's loyalty to the State, encompassing his or her respect for the country's Constitution, laws, institutions and independence, may also be relevant in this respect (see *Tănase*, cited above, §§ 166 and 167). It is in the light of all those aspects that a determination should be made as to the appropriate and proportionate length of a ban precluding persons who have been removed from office in impeachment proceedings from being eligible for any function to which the ban applies.

96. Lastly, the procedure leading to such a determination in an individual case should be surrounded by sufficient safeguards designed to ensure respect for the rule of law and protection against arbitrariness. This will include the need for the procedure to be held before an independent body and for the person concerned to be heard by the latter and be provided with a reasoned decision (see, *mutatis mutandis*, *Abil*, § 34, and *Mugemangango*, § 96, both cited above).

B. The first question asked by the Supreme Administrative Court

97. The first question asked by the Supreme Administrative Court reads as follows:

> "1. Does a Contracting State overstep the margin of appreciation conferred to it by Article 3 of Protocol No. 1 to the Convention, if it does not guarantee the compatibility of the national law with the international obligations arising from the provisions of Article 3 of Protocol No. 1 to the Convention, which results in preventing a person, who has been removed from office of a Member of the Seimas under the impeachment proceedings, from implementing their 'passive' right to elections for six years?
>
> In case of affirmative response, could such situation be justified by the complexity of the existing circumstances, directly related to providing an opportunity to the legislative body to align the national provisions of the constitutional level with the international obligations?"

98. In the light of its answer to the second question posed by the Supreme Administrative Court, the Court understands the first question essentially as asking whether the Supreme Administrative Court should take into account the difficulties encountered by the Lithuanian authorities in executing the judgment given by the Court in the *Paksas* case.

99. The Court reiterates that the legal ban preventing Ms N.V. from being registered as a candidate for election to the Seimas is the direct consequence of the Lithuanian constitutional and statutory regulations on impeachment, which the Court in *Paksas* (cited above, §§ 109 and 110) found to be in breach of Article 3 of Protocol No. 1.

100. The Court notes the recent developments within the Seimas as regards the constitutional amendment process whereby the Seimas provisionally approved on 9 November 2021 an amendment to the Constitution taking account of the Court's judgment in the *Paksas* case, as well as the first vote on the amendment which took place on 18 January 2022 securing the necessary two-thirds majority in favour of the amendment. According to the Government, the draft amendment will be scheduled for a second vote during the Seimas' spring session, beginning on 10 March 2022 (see paragraphs 39 and 40 above). Taking these elements into account, as well as the limitations inherent in the system of advisory opinions under Protocol No. 16 to the Convention when it comes to issues relating to the execution of the Court's judgments, the Court does not consider it appropriate to give an answer to the first question posed by the Supreme Administrative Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Delivers the following opinion:

> The criteria which are relevant in deciding whether or not a ban on the exercise of a parliamentary mandate in impeachment proceedings has exceeded what is proportionate under Article 3 of Protocol No. 1 should be objective in nature and allow relevant circumstances connected not only with the events which led to the impeachment of the person

concerned but also – and primarily – with the functions sought to be exercised by that person in the future to be taken into account in a transparent way. They should therefore be identified mainly from the perspective of the requirements of the proper functioning of the institution of which that person seeks to become a member, and indeed of the constitutional system and democracy as a whole in the State concerned.

Done in English and in French, and delivered in writing on 8 April 2022, pursuant to Rule 94 §§ 9 and 10 of the Rules of Court.

Johan Callewaert Deputy to the Registrar	Robert Spano President