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Transitional Constitutionalism

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moving from *less to more stable*, but rather from *more to less instable* phases?

The only really positive development in the past years was the complete subordination of the military under democratic control as a consequence of the reforms of the military under Presidents *Alfonsín* and *Menem*, to which, however, the military itself was only willing to agree after having obtained the disputed amnesty laws and pardons.[102] During the chaotic situation at the end of 2001 and early 2002, which left Argentina at the brink of anarchy, the fact that the military did not intervene – nor issue a single declaration – indicated that Argentina's democracy was not in a completely unhealthy state then.[103]

However, most recent developments demonstrate that the country's authoritarian roots do persist and that democratization may be a never-ending *process* rather than an accomplishment to be achieved in a certain moment once-and-for-all:[104] In July 2006, the Argentinean Congress approved a law stipulating that any necessity and urgency decree issued by the president remains valid and in force as long as both houses of Congress do not issue a (combined) veto decision, which is most unlikely to happen in the near future as *Kirchner's* neo-Peronist *Justicialista* party currently holds the majorities. Additionally, Congress may soon enact a law stipulating a reduction of its own budgetary powers: by means of a super-enabling power *(Superpoderes)*, the president's chief-of-staff *(Jefe de Gabinete)* will be allowed to change allocations within the federal budget as long as the total amount of federal expenditures remains unchanged.

These two measures may amount to a *de facto, if not de iure* abolishment of the separation of powers principle. Former President *Alfonsín* was not reluctant to call this new excrescence of *Kirchnerismo* the "near death of democracy at the Río de la Plata".[105]

102 Roniger/Sznajder, *The Legacy of Human-Rights Violations*, 77.

103 Tedesco/Barton, *The State of Democracy*, 133.

104 Sriram, *Confronting Past Human Rights Violations*, 5.

105 Mayrbäurl, *Vor neuer Diktatur am Río de la Plata?* (31 July 2006); Rosemberg, *Los superpoderes, a punto de ser ley* (31 July 2006), downloadable under: http://www.lanacion.com.ar/EdicionImpresa/politica/nota.asp?nota_id=827606.

Vaidotas A. Vaičaitis

Role of Lithuanian Constitutional court during period of "transitional democracy"

I. Brief constitutional history

The state of Lithuania was formed by the unification of several duchies in the Baltic Sea region by Mindaugas, the first King of Lithuania, in the first half of the thirteenth century. In 1569 Lithuania and Poland formed a confederation with a common bicameral parliament and an elected king of so called "Commonwealth (*Rzeczpospolit*a in Polish) of Two Nations" since it comprised the Kingdom of Poland and Grand Duchy of Lithuania. The Commonwealth of Two Nations existed for more than two centuries until 1795, when it was partitioned by Russia, Prussia and Austria.

The modern state of Lithuania was born on 16 February 1918. The Act of Independence of that date proclaimed Lithuania an independent state and the successor to the Grand Duchy of Lithuania. The First Lithuanian Republic lasted until 1940, when the Soviet army occupied the country following a secret agreement between Hitler and Stalin. The first Lithuanian democratic constitution was adopted in 1922. This constitution declared Lithuania a republic with parliamentary form of government. Two later constitutions, which were adopted in 1928 and 1938 after a *coup d'état* in December 1926, strengthened presidential powers and left the country subject to an authoritarian regime.

The secret protocols of Molotov-Ribbentrop Pact (August-September 1939) finally brought about World War II. After Germany had occupied Poland and France, Soviet troops entered Lithuania, Latvia and Estonia on June 1940 and occupied the countries. Lithuania's President, Antanas Smetona, left the country the very next day. In August 1940 Lithuania and the two other Baltic countries were incorporated into the Soviet Union. On 23 June 1941, before German troops occupied the country's territory (Hitler's occupation lasted from 1941 to 1944), a provisional government was formed in Kaunas and proclaimed the restoration of independence. This declaration was never recognized by Hitler and the provisional government was forced to

go underground in August 1941. The second Soviet occupation began in 1944 and was to last until 1990.

Inspired by signs of the impending collapse of the Soviet empire and a certain political desire to reform the communist party, between 1988 and 1990 underground political, social and religious groups began to surface, and new political groups and movements emerged in the country. The main social-political movement, the *Sąjūdis* with its "independent's program", won the first free post-Soviet occupation elections on 24 February 1990. The first session of the Parliament was held on 10 March 1990. The very next day, 11 March 1990, the Constituent Assembly proclaimed the Act of Restoration of the Independence of the Lithuanian State. This Constituent Assembly (Atkuriamasis Seimas) completed its task by adopting the 1992 Constitution, which was proclaimed after it had been approved in a popular referendum.

II. Form of government

The text of the 1992 Constitution is something of a compromise between the different models of a parliamentary regime and a semi-presidential regime. The final text of the Constitution includes elements of both models. On the one hand, the Government must have the confidence of Parliament and has to resign after parliamentary elections (Arts. 92 and 101), but on the other the President of the Republic is elected directly by the people. The President's tenure in office does not correspond with that of the parliament. He appoints the Prime minister and ministers and the government has to "return its powers" upon the election of the next President (Art. 78, 84 and 92). In other words, the fact that the President of the Republic of Lithuania is directly elected and the existence of a "strong" Constitutional Court with competence to review parliamentary legislation allow us to refer to Lithuania's form of government as what in French legal and political literature is called *parlementarisme rationalisé*[1].

Of course, in practice, the form of government in Lithuania depends very much on the actual political actors, and in particular the President's ability to play an active role in political life and his relationship with the parliamentary majority. The political

1 E.g. see Vaidotas A. Vaičaitis, *Konstitucinių įstatymų fenomenas.* Vilnius, TIC. (2004). English summary p. 170.

regime of the Second Lithuanian Republic can generally be described with the French term of "*cohabitation*", except for the period from 1993 to 1996 when President Algirdas Brazauskas and the parliamentary majority were from the same Labour Democratic Party (former communists). In a ruling on 10 January 1998, the Constitutional Court supported a so-called parliamentarian approach toward the Lithuanian form of government, reasoning that the 1992 Constitution had established a "parliamentarian form of government with some semi-presidential features" and that the government does not have to resign after presidential elections if it receives a new vote of confidence from the parliament. After some academic attempts[2] to criticize the Court's decision that the country has a parliamentarian form of government, and an unsuccessful experiment when President Rolandas Paksas (2003-2004) tried to concentrate political power in his own hands without the support of a majority in the Parliament, it is now settled that the constitutional form of government in the country is a "rationalized parliamentary regime" and it is difficult to imagine a new wind of change in thinking on this subject in the near future[3].

III. Judicial system and legal mentality after break of soviet regime

The Lithuanian legal and judicial system follows the Continental European model as opposed to the common law system. In this context, the Constitution provides that the "justice shall be administered only by courts" (Art. 109). The Constitution does not give a definition of justice, but from other constitutional provisions we can infer that, in this context, it means that justice must be administered justly, i.e. impartially; judges must be independent of other public authorities, political parties and private bodies (Arts. 109, 113, 114); court proceedings must be open to the public (Art. 117); the decisions of the courts must be reasonable, grounded in law and in conformity with the Constitution and values expressed in the Constitution (Arts. 7 and 110).

2 For example, see Egidijus Kūris, *Politinių klausimų jurispridencija ir Konstitucinio teismo obiter dicta ... //POLITOLOGIJA* (1998) No. 1, pp. 3-94.

3 On Lithuanian form of government see, e.g. Raimundas Lopata, *Audrius Matonis, Prezidento suktukas.* Vilnius, VU Tarptautinių santykių ir politikos mokslų institutes (2004) p. 15.

The Constitution naturally gives the judiciary wide discretion to decide what constitutes justice in a particular legal dispute. While the Constitutional Court regards justice as one of the principal moral values on which a modern democracy under the rule of law is founded (e.g. a ruling of 22 December 1995), ordinary courts, and particularly the courts of lower instance, still maintain a very narrow formal-positivistic understanding of the concept of justice.

The Supreme Court is the highest court of general competence and acts as a court of cassation, the court of final instance in civil and penal cases and is competent only to review the application of the law by lower courts. Legislation provides that the Supreme Court publishes a journal of judicial practice *(Teismų praktika)* containing the most important cases and may deliver recommendations to ordinary courts regarding the application of law. According to the *Law on Courts*, lower courts of general competence must take into consideration the jurisprudence of the Supreme Court in analogous cases. Despite the legislator's intention to introduce the concept of *stare decisis* in the judicial system, this common law transplant does not work very effectively in Lithuania. Judges trained in Soviet law schools in particular find it difficult to grasp the idea of *stare decisis* and to apply the principle in analogous cases. It has to be said that the rules of precedent in judgments of the Supreme Court published in the journal of judicial practice are sometimes formulated as an abstract interpretation of a statutory rule detached from the facts of the case. Most often, the concept of *stare decisis* here is understood as a pure citation (quotation) of precedent ruling. The judges of lower courts, therefore, often regard the precedent as an application of an abstract interpretation of a legislative rule but not as a pretext for finding a link between the facts on which the Supreme Court issued a ruling and the facts of the case under consideration.

It has to be said that public confidence in the judicial branch in Lithuania is quite low (with exception of the Constitutional court). This may be explained in part by the fact that the majority of the corps of Soviet-era judges remained in office after independence. Consequently, sixteen years after the reestablishment of democracy, the situation remains that the majority of sitting judges were trained during the period of Soviet occupation and generally find it rather difficult to adapt to the social and legal

changes in society. The formalistic application of law (according to the prevailing concept of legal positivism), without taking into account the provisions and principles of the Constitution, is a common practice adopted in the ordinary courts (especially those of the lower instances). There is no tradition of dissenting opinions in courts in Lithuania, which does not help to improve the rather formalistic reasoning employed by ordinary and administrative courts.

IV. The role of Constitutional court

It is difficult to overestimate the role of the Constitutional court in the Lithuanian political and legal system. As occurred in almost all the new democracies of Central and Eastern Europe, the 1992 Constitution established a strong Constitutional Court (according to the Austro-German model) in order to guarantee constitutionalism, the rule of law and the protection of human rights. The method of selection of justices of the Constitutional court has already proved its effectiveness, which might explain the Court's success in assuming a prominent role and gaining authority among other legal and political actors as well as popular public support. Ordinary legislation provides that, as a rule, prospective justices will be selected from among university professors. This is one of the crucial factors in explaining how the Court has been able to change the entire legal system, and even the legal mentality of political and legal actors in Lithuania through its jurisprudence. Judges of ordinary courts who had been trained and practised in the narrow-minded "Soviet courts" wouldn't have been able to adapt to the new legal concepts of civil society, the rule of law and the democratic state in the immediate aftermath of the Soviet totalitarian regime in the 1990s.

This is the Constitutional court which first (starting from 1993) among judicial branches accepted dialectic judicial reasoning in trying to justify its decisions. Later on, the Supreme Court and other higher courts followed this practice of judicial reasoning. Moreover, the Constitutional court already from the beginning of its existence in 1993 started to use so called "comparative reasoning", completely unknown for Soviet-positivistic judicial reasoning, and was trying to change "the modest civil servant's" image of the judge, which was established under former prevail-

ing positivistic Soviet public order without independent judiciary and without separation of public powers.

To give some examples, for instance in 1998 the Constitutional court, using comparative and ethical judicial reasoning, decided that capital punishment contradicts the Constitution, although it still had strong public support[4]. During the political crisis of "co-habitation" between the newly-elected President of the Republic and the Prime Minister of 1998, this Court had the courage to act as the body of resolution for political dispute. During the so-called "Presidential scandal" in 2003-2004, the role of this Court was crucial in bringing the biggest political crisis of the 2nd Lithuanian Republic to an end.

V. Ždanoka v. Latvija (lustration case, ECtHR, 2006)

On 16 March 2006, the Grand Chamber of ECtHR issued a final judgment in case of *Ždanoka v. Latvia*[5]. Some facts of the case: Latvian courts, relying on lustration legislation, deprived Mrs. Ždanoka from a right to stand for municipal and parliamentary elections, for she was proved to have "actively participated" in activities of the Latvian Communist Party after the bloody events of January 1991, for which the Communist Party was deemed responsible. It is important to mention here that these Latvian lustration provisions did not provide any transitional period of such restrictions, and that the Latvian Constitutional court in its 30 August 2000 judgment criticized the Parliament of "permanent lustration provision", although it was ruled that it does not contradict the Latvian Constitution. After unsuccessful attempts to vindicate her rights in national courts, Mrs. Ždanoka appealed to the European Court of Human rights. In 2004 the Court ruled that her electoral rights as protected under Article 3, Protocol No. 1 of the Convention had been violated. But two years later the Grand Chamber of this Court (by 13 to 4 votes) decided that there has been no violation of the Convention. It is interesting

4 See e.g. Vaidotas Vaičaitis, *The Constitutional court of the Republic of Lithuania and the death penalty: a note of the judgment of 9 December 1998.* In 26 Review of Central and East European Law (2000) No. 1, pp. 85-106.

5 ECHR, Ždanoka v. Latvia. 17. 06. 2004 and 16. 03. 2006, No. 58278/00.

that the Court's reasoning was based partly on the concept of "transitional democracy".

The Court ruled that said deprivation of one's electoral rights may not be considered acceptable in a country "which has an established framework of democratic institutions going back many decades or centuries", but on the other hand, "it may nonetheless be considered acceptable in Latvia, in view of the historico-political context which led to its adoption, and given the threat to the new democratic order" [133]. Therefore, the ECHR, following the ratio of the Latvian Constitutional court and justifying Latvia's lustration restrictions, said that these restrictions should not be permanent, and the Latvian Parliament "must keep the statutory restriction under constant review" and has to bring it to an end in the near future [135].

Of course, Latvia's "wide margin of appreciation" was also justified because this case was linked with the threat to country's national security, but nevertheless, the idea of "transitional democracy" probably played the principal role here. It seems to me that the latter argument is not purely legal, but a primarily political issue, and the court of justice may have some difficulties in deciding the matter of the country's termination or continuation of democratic transition.

VI. Impeachment of Lithuanian President of the Republic (2004)

The impeachment of Lithuanian President Rolandas Paksas, which occurred in 2004, with its legal and political consequences, may be also described in the terms of "transitional democracy", although it is rather a different case than that of Latvia's.

1. Lithuanian impeachment concept

According to the 1992 Constitution, the Rules of Parliamentary Procedure and the Conclusion of the Constitutional Court on 31 March 2004, there are six steps in the impeachment proceedings of the President:

(i) the formation of a parliamentary impeachment committee, which examines the President's actions and formulates impeachment charges;

(ii) the preliminary stage of the impeachment process, when the parliament approves the impeachment charges, appoints parliamentary prosecutors and delivers the impeachment charges to the Constitutional Court for legal and constitutional evaluation;
(iii) the conclusions of the Constitutional Court on whether the President's actions as formulated in the impeachment charges actually violated the Constitution[6];
(iv) the legal submissions by the parties;
(v) the closing statement by the President of the Republic in the parliament, and
(vi) a vote in parliament on whether to remove the President from office.

a) Impeachment charges and Impeachment body

The Lithuanian Constitution provides for three formal impeachment charges:
(i) gross violation of the Constitution,
(ii) breach of the oath of office, and
(iii) commission of a criminal offence.

First of all, it should be noted that the *Seimas* has the competence to initiate impeachment proceedings and has the power to make the final decision on whether to remove the President from office. Only the *Seimas* is competent to formulate impeachment charges and to appoint the *Seimas'* prosecutors, and only members of parliament may vote to remove the President from office. Accordingly, the institution with power to impeach the President in Lithuania is the *Seimas*.

But another important actor in impeachment proceedings against the President is the Constitutional Court. This is the only court with competence to determine whether there are constitutional and legal grounds for the impeachment. In other words, Parliament may not remove the President from office if the Constitutional Court is of the opinion that the President acted within the

6 According to the Constitution (Arts. 86 and 105) Parliament may only vote to remove the President from office if the Constitutional Court concludes that the latter's violation of the Constitution is *gross*. According to a Conclusion of the Constitutional Court on 31 March 2004, if it concludes that the President did not violate the Constitution or that there was no gross violation – the impeachment process must be terminated.

boundaries of his discretion and did not violate the Constitution. In this case, the role of the Constitutional Court is somewhat similar to that of a grand jury, whereby the Court has the power to pronounce a verdict of "guilty" or "not guilty" on the charges brought against the President. Nevertheless, the Parliament has the constitutional discretion to allow a President who has been found guilty to remain in office, for instance, if the President enjoys sufficient public support.

So we see that in the case of impeachment, the founders of the Lithuanian Constitution did not follow the Austro-German model, which gives the Constitutional court the power to remove the President from office. The procedure for the impeachment of the President in the 1992 Constitution could be said to be a compromise between the American *parliamentary model* on the one hand and the Austro-German *judicial model* on the other.

b) Parliamentary majority required for removing the President from office

As it was already said the drafters of the 1992 Constitution established a form of government which can generally be characterized as a "rationalized parliamentary regime" or "a parliamentary regime with some features of semi-presidentialism". The provisions concerning the impeachment of the President, however, were taken from the parliamentarian draft Constitution of the LDDP (former communist party). Consequently, the parliamentary majority (three-fifths of all members of parliament) required to remove the President from office is the same as for any other senior official, such as members of parliament or judges. The Constitution does not follow the standard approach, whereby a majority of two-thirds of the members of parliament is required to remove the President from office; indeed, if the majority required to impeach the President had been two-thirds, President Paksas could not have been removed from office, since the decision to remove him from office was reached with a margin of just five votes.

c) Legal and political consequences of impeachment

According to the Constitution, the constitutional powers and immunity of the President are not affected, even when impeachment charges have been laid and approved by the Parliament.

This means that throughout the impeachment process, the President continues to hold office in the same way as before the procedure was initiated. During the impeachment proceedings the President can defend himself with all the legal, political and other powers and means at his disposal, thereby limiting the ability of other legal and political actors (primarily the Parliament and the Constitutional Court) to remove him from office.

Until the impeachment of President Paksas, the Lithuanian legal and political circles had no idea what restrictions would be placed on a President who had been removed from office. The Constitution says nothing on this subject. The question remains whether a President who has been removed from office for gross violation of the Constitution and breaching the oath of office may run for office in future presidential elections. The political elite in Lithuania made it clear that an affirmative answer to this question would be contrary to the very idea of civil society, the rule of law and other constitutional principles, and therefore decided to amend the Law on Presidential Elections and the Constitution to prevent a President who was removed from office from running in presidential elections for the next five years. The Constitutional Court, however, rejected the rationale of this *temporary disqualification* from one's passive electoral right and decided that the spirit and principles of the Constitution require not just a temporary but a permanent and complete disqualification of such person from the political arena[7]. The Court's rationale was that a person who has breached the oath to the Nation and been removed from office could never again occupy public office, which is connected with an oath of office by virtue of the Constitution. The Court stated that such a person should never "take an oath to the Nation again, for there would always exist a reasonable doubt, which would never disappear [...], as to whether this person will really perform his duties as President of the Republic, or, in other words, whether an oath repeatedly taken by this person to the Nation would not be fictitious" (25 May 2004, ruling [III.6]).

In this ruling the Court applied the "permanent political disqualification" clause as it is formulated in the US Constitution and said that the President, once removed from office, may not

7 According to the Court, such a person may not stand for any public office which by virtue of the Constitution is linked with an oath of office (the President of the Republic and a member of the national parliament in this case) and may not hold the office of minister.

stand in either future presidential elections or parliamentary elections. Although the Court's implicit *rationale* was based on the idea of *high treason* and *threat to national security*[8], nevertheless, it will be up to the European Court of Human Rights to say in the future whether the application of this restriction satisfies the requirements of the European Convention on Human Rights and its 1st Protocol[9].

VII. Concluding remarks

After the fall of the Berlin Wall and the end of the Cold War, new democracies have emerged in Central and Eastern Europe. At that time some political scientists were starting to talk about the victory of democracy in the region, and even in the entire world. Parliamentary regimes (sometimes with some features of *semi-presidentialism*) were installed in these countries[10]. The very *rationale* of looking for a new form of government in these countries was the wish to arrange a constitutional balance in order to protect new democracies from their former *totalitarianism* experiences. A parliamentary regime was seen as one of the advantages in this sphere. But in order to escape from its

8 Main financial supporter of *Rolandas Paksas* during his presidential election campaign – controversial businessman *Yuri Borisov* (who was suspected of having relationships with "mafia" and Russian secret agencies) revealed the existence of a certain mutual contract between him and President *Paksas*. During one telephone conversation, he described the President as a "political corpse", and threatened to make public this contract, if the President failed to fulfill some commitments to him. Granting Mr. *Borisov* Lithuanian citizenship by decree of the President was one of the agreed points. This dangerous relationship reached its culmination when President *Paksas* announced that he would hire Mr. *Borisov* as his social advisor (Mr. *Borisov* even does not speak Lithuanian!). The post of social advisor was yet another point in an agreement between the President and Mr. *Borisov*. Due to the political storm that immediately followed, the announcement was recalled three hours later.

9 For more information see Vaidotas A. Vaičaitis, *Impeachment of the President of the Lithuanian Republic: the procedure and its peculiarities* in: The Uppsala Yearbook of East European Law 2004 (2005) pp. 248-282.

10 Some elements of semi-presidential form of government can be found in other new Central European democracies: Poland, Romania, Bulgaria, Slovakia, Slovenia. See, e.g., English appendix in Gediminas Mesonis, *Valstybės valdymo forma konstitucinėje teisėje: Lietuvos Respublika Vidurio ir Rytų Europos kontekste.* Vilnius, LTU (2003) pp. 217–218.

disadvantages (as experienced between the Wars) and to provide for the *rule of law* and constitutionalism, some counterbalances have been established in the legal systems of these countries. A strong Constitutional Court, such as those operating in Germany and Austria, was understood as one of the achievements of Western democracy, especially on the Continent. Almost all new Central and Eastern European democracies have established "strong" Constitutional Courts in their legal systems. Only Estonia's Constitutional Review Chamber is a separate Chamber inside the Supreme Court[11].

It is interesting to note that in those countries where there is a Constitutional Court, this court, in the majority of cases, also fulfills the role of impeachment tribunal. In traditional "strong" Constitutional Court countries (e.g., Austria and Germany), this court itself has the competence to dismiss the president from office. Some new democracies in Central and Eastern Europe have followed this *rationale* (e.g., Hungary, the Czech Republic, Slovenia). In other countries in the region (Bulgaria, Romania, Lithuania), the role of the Constitutional Court is to give a legal opinion or conclusion to parliament on unlawful or unconstitutional acts of officials, leaving the "removal from office decision" to members of parliament.

In Lithuania, a Constitutional Court with quite far-reaching jurisdiction was established in 1993. It controls not only the *constitutionality* of statutes of Parliament, but also the *legality* of governmental decrees. It has competence not only for *a posteriori*, but also *a priori* control, e.g., control of constitutionality of international agreements before ratification. It has the competence of a supreme electoral court and also of an impeachment court. Already from the beginning of its existence, the Lithuanian Constitutional Court was seen as a certain constitutional balance between political powers. But its competence as an *impeachment tribunal* was underestimated by Lithuanian legal science before the impeachment case of President Paksas. His impeachment

11 As to the Estonian Constitutional Review Chamber of the Supreme Court, see, e.g., in Caroline Taube, *Constitutionalism in Estonia, Latvia and Lithuania.* Iustus Förlag (2001) pp. 105-108; Liia Hänni, *Constitutional arguments in political decision-making: Estonia*, in: The Constitution as an Instrument of Change. Eivind Smith (ed.), SNS Förlag (2003) pp. 61-63. Only Romania has established a "weak" constitutional court with *a priori* constitutional control – *à la* the French Conseil Constitutionnel.

process has shown that the Lithuanian Constitutional Court can stand as a certain neutral arbitrator in the case of a conflict between two directly-elected bodies: the Parliament and the President. Furthermore, during the political crisis of impeaching the President, the Constitutional Court assumed the role of defender of the democratic and moral values and principles of society[12].

In its Conclusion of March 31, 2004 the Constitutional Court stated that the constitutional provision requiring Parliament to make an impeachment decision "on the basis of this conclusion" legally binds the Seimas. The latter cannot continue impeachment proceedings if the conclusion states that the official did not violate the Constitution. On the other hand, the Constitutional Court acknowledges the Seimas' discretion to remove or not to remove an official from office when the former states that the official has breached the Constitution and the oath of office. Nevertheless, the Court's *ratio* was that in a democratic state under the rule of law, an official who has breached the Constitution and the oath of office should not remain in the office.

Furthermore, the Constitutional Court in its later judgment of May 25, 2004 limited the political rights of a removed President. It clarified that, once the President (or other public official) has been convicted by the Constitutional Court of having violated the Constitution and having breached the oath of office and has been removed from office by the Seimas, he can never occupy any political office which by virtue of the Constitution is linked to an oath of office[13].

Some observers take the view that in modern Lithuania, during its 16 years since the reestablishment of democracy, a stable political system has not yet emerged and that this is the consequence of a certain *moral crisis* in society after 50 years of occupation and Soviet ideology. One set of "moral values" has been destroyed, but other ones have not yet emerged. This unstable social environment is useful for all sorts of populist leaders. It may, therefore, be suggested that the most interesting role of

12 The role of the Constitutional Court during the presidential impeachment crisis can be illustrated by the fact that during five months it delivered five highly important rulings concerning the constitutionality of the impeachment process.

13 The Constitution foresees an oath of office for the following officers: the President of the Republic, members of parliament (Seimas), ministers, judges and the President of the National Audit Office.

the Constitutional Court, as revealed during the impeachment process, is its role of a certain *high court of honor*! During the political crisis, the Constitutional Court was brave enough to interpret a moral phenomenon, "oath of office", and to say that, even in modern liberal society, an *oath of office* is not just one's inner concern or a formal and fictitious act. According to the Court, the presidential oath morally binds his activities while he is in office. So one must appreciate the Court's attempts to start building a certain system of moral values in the Lithuanian political and legal environment.

In sum, the Lithuanian Constitutional Court, like its Latvian colleague, in periods of transitional democracy works as a certain institutional buffer in helping society and public bodies to adopt to new social and public changes and to soften the negative consequences of this transition.

Elisabeth Handl

East Timor's Transitional Justice Process under Scrutiny

I. Introduction

In April 2006, the dismissal of nearly a third of the Timorese armed forces led to the eruption of killings, rioting and gang violence in and around Dili, the capital city of East Timor.[1] The United Nations Security Council (UNSC) expressed deep concern over the security situation in the young nation,[2] and in the words of the United Nations Secretary-General (UNSG), the recent eruption of violence made the United Nations (UN) experience that *"the building of institutions on the basis of fundamental principles of democracy and rule of law is not a simple process that can be completed within a few short years."*[3] Furthermore, the UNSG conceded that *"the UN will have to go back to Timor-Leste in a much larger form than we are at the moment."*[4]

The UN presence in East Timor began in June 1999, when the UNSC established the United Nations Mission in East Timor (UNAMET) with the mandate to organize and conduct a popular consultation, in which the population of East Timor could choose between a special autonomy within Indonesia and independence from Indonesia.[5] East Timor had been under Indonesian rule since 1975, when Indonesia invaded East Timor shortly after the colonial power Portugal had withdrawn. Throughout the period of Indonesian occupation, the population of East Timor had been subject to severe human rights violations.[6] The agreement

1 Note that the country's official English name is "Democratic Republic of Timor-Leste", while "East Timor" and "Timor-Leste" – though both commonly used – are only short forms.
2 UNSC Res. 1677 (May 12, 2006), 1690 (June 20, 2006).
3 UN Press Release of June 13, 2006.
4 UN Press Release of June 13, 2006.
5 UNSC Res. 1246 (June 11, 1999).
6 For an account see e.g. Trotter, *Like Lambs to the Slaughter: The Scope of and Liability for International Crimes in East Timor and the Need for an International Criminal Tribunal*, 7 New Eng. Int'l & Comp. L. Ann. 31 (37ss) (2001).