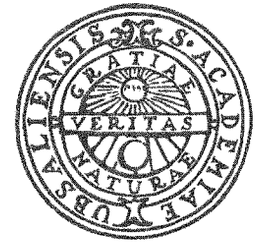
The Uppsala Yearbook

of East European Law

2004



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The Uppsala Yearbook of East European Law 2004

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Statement of Editorial Policy

On 11 March 1985 Michail Gorbachev was elected General Secretary of the Communist Party of the Soviet Union. This was the time when Europe was divided into two. Like Germany, the European Continent consisted of two parts called East and West, the origin being the Yalta Conference of 1945 and its monument, the Berlin Wall. Gorbachev launched a reform process, known as *perestroika*, which not only profoundly influenced developments in his own country, but also the rest of Eastern Europe, eventually leading to the opening of the Berlin Wall on 9 November 1989. This remarkable event in turn catapulted the reform process into unknown directions. Eventually the dissolution of the Soviet Union ensued the collapse of the communist system there, as well as in Eastern Europe. All these countries, which were planned economies with the accompanying legal regulation, are now being transformed into market economies.

The primary focus of the Yearbook is the scholarly study of the legal aspects of this transformation process, its historical roots, the various forms and methods used, the problems and results. Other aspects will also be covered, including economic, political and constitutional aspects. At the same time, the Yearbook strives to be a publication for practising lawyers both in the private and public sectors. It is the firm belief of the Editor and the Advisory and Editorial Board that scholarly analysis and research can – and indeed must – go hand in hand with the practice of law. This is particularly true in a constantly and rapidly developing field such as East European legal systems. In that vein the Yearbook will endeavour to report and analyze leading decisions of courts in all the jurisdictions concerned. It is the ambition of the Yearbook to cover all areas of law, from constitutional law, to criminal, administrative, commercial and civil law, as well as tax law and public and private international law. The present transition process has no historical equivalent, yet it is burdened with the legacies of the past. These legacies must be studied, analysed and assessed so that we may understand what is happening today and what will happen in the future. The Yearbook is concerned with the legal systems of all the former planned economies in the former Soviet Union, Central and Eastern Europe, collectively for present purposes, albeit somewhat imprecisely, referred to as Eastern Europe.

Some observers might take the view that the transition cannot go on forever, that it must be completed at some point. An economist could perhaps argue that with respect to some countries in Eastern Europe the transition must be over when they become members of the European Union, since membership requires a functioning market economy. For the lawyer, however, the transition and its consequences will continue to cast its long shadow over the legal systems concerned for many years – even decades – after membership of the European Union. For example, the building of appropriate and efficient institutions, the education and training of lawyers and the strengthening of the rule of law will take considerable time.

Neither a serious publication, nor scholarship needs to be dull. The Yearbook seeks to be scholarly and practical, lively and readable. The Editor and the Editorial Board wish the Yearbook to remain on the desks of busy lawyers and not to fly past like an autumn leaf in the wind. The Editor and the Advisory and Editorial Board do not necessarily share, nor endorse, any particular view expressed in contributions to the Yearbook. The Yearbook will not shun controversy or unpopular views – indeed controversy is expected and welcomed. It is believed that confronting issues from all sides, rather than avoiding them, is the better way of understanding the past, present and future development of East European legal systems.

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Impeachment of the President of the Lithuanian Republic: The Procedure and its Peculiarities

Vaidotas A. Vaičaitis *

"*The people are the Masters of both Congress and Courts, not to overthrow the Constitution, but to overthrow the men who pervert it*!" Abraham Lincoln

1. Introduction

Before the end of October 2003, few in Lithuania could have thought that political crisis could strike the presidential office, still so popular in Lithuania at that time[1]. Nevertheless, April 6, 2004 is an important day not only for the Lithuanian legal and political system, but also for the political community throughout the world. For the first time in Europe, a democratically-elected head of state was dismissed by the parliament – another directly-elected institution[2].

The impeachment procedure is not only a political process, but also a legal and moral procedure. The parliament becomes in effect a quasi-judicial institution appointing parliamentary prosecutors, conducting the legal proceedings between two parties and guaranteeing the impeached official the right to make the final statement. The political, moral and legal elements here are fundamentally interrelated and it is not possible to delimit them completely. Nevertheless the purpose of this article is to tell a "legal story", insofar as possible, about a highly political process.

2. Form of Government According to the 1992 Lithuanian Constitution

No discussion about impeachment of the Lithuanian president is possible without touching on the Lithuanian form of government. In the 1922 Constitution (the first constitution of the 1st Lithuanian Republic), the *form of government* was established according to the prevailing European continental tradition at the beginning of the 20th

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century. Before the First World War, all three republics in Europe (France, Switzerland, and Portugal) were parliamentary republics. It would thus not be untrue to say that the Lithuanian *form of government* set out in the 1922 Constitution was established according to the pattern of the French 3rd Republic.

The Lithuanian Constitution of 1992 was drafted as a compromise between the protagonists of a parliamentary republic and the advocates of a "strong" president. As a result of this compromise the president is now elected directly by the people, but the government must have the support of a majority of the parliament. The president can dissolve the Parliament only in case of conflict between the Parliament and the Cabinet of Ministers (e.g. when the Seimas passes a vote of no confidence in the Cabinet). The Parliament may remove the President of the Republic only through an impeachment procedure requiring a 3/5 majority of the votes of the Members of the Seimas[3]. Most often, Lithuanian political science has treated the country's form of government as *semi-presidential*. It can be said that this form of government was chosen for its potential to act as a balance among the political powers and has sometimes been called "*parlementarisme rationalisé*"[4]. The question of the Lithuanian form of government, however, is still a controversial issue. According to a 1998 judgment of the Constitutional Court, the Lithuanian form of government is a *parliamentary republic* with some elements of *semi-presidentialism*[5].

[1] The President's popularity rating was about 70% at that time.

[2] Formally, impeachment procedure in the Parliament lasted only 1 month: from March 8 (appointment of *Seimas* Prosecutors and Chairman of the impeachment) till April 6, 2004 (removal of the President from office). But in fact the proceedings and findings of two parliamentary committees should be included in the duration of the impeachment process. The first (*ad hoc*) Parliamentary Committee was formed in November 3, 2003. So in fact the impeachment process of the President lasted five months.

[3] A 3/5 majority instead of 2/3 majority for impeachment of the president can be viewed as a certain element of *parliamentarism* in the 1992 Lithuanian Constitution.

[4] E.g. see Vaidotas A. Vaičaitis. *Konstitucinių įstatymų fenomenas*. Vilnius, TIC. 2004. English summary p. 170.

[5] Some elements of semi-presidential form of government can be found also in other new Central European democracies: Poland, Romania, Bulgaria, Slovakia, Slovenia. See, e.g., English appendix in Gediminas Mesonis.

But the *form of government* is more a political than a legal issue and, in reality, depends not only on the phenomenon of *cohabitation,* as is the case in France, but also on how active the president, the prime minister and the Seimas each are in exercising their discretion. The first President of the 2nd Lithuanian Republic, Mr. Algirdas Brazauskas, was a rather passive actor on the political stage and during his tenure of 1993–1998 the Lithuanian form of government was very close to a *parliamentary republic* (some scholars even called it "premierism"). By contrast, Mr. Valdas Adamkus, President of the Republic during 1998–2003, was more politically active. Some authors are of the opinion that President Adamkus even negated the aforementioned judgment of the Constitutional Court, when he forced Prime Minister Gediminas Vagnorius to resign after their mutual conflict[6].

After the January 2003 presidential elections, the newly elected President, Rolandas Paksas, attempted to create the image of an "active president of the people". When the political scandal concerning the presidential office erupted at the end of 2003, he even started a *political voyage* through all the municipalities of the country in order to gain some popular support during his impeachment process. It was only his removal from office that stopped this presidential populist voyage. It has to be said that, during the presidential scandal, some voices from the legal and political communities advocated amending the constitution with a view to diminishing the powers of the president, transferring the method of his election to the parliament, and changing the Lithuanian form of government to a pure *parliamentary regime*. In the end, however, the Lithuanian legal system and the form of government survived the biggest political crisis of 2nd Lithuanian Republic without any substantive amendments.

3. Impeachment Process of Lithuanian President Rolandas Paksas

The relevant provision of the Lithuanian Constitution is

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Valstybės valdymo forma konstitucinėje teisėje: Lietuvos Respublika Vidurio ir Rytų Europos kontekste. Vilnius, LTU. 2003. p. 217–218.

[6] See, e.g., Raimundas Lopata, Audrius Matonis. *Prezidento suktukas*. Vilnius. VU Tarptautinių santykių ir politikos mokslų institutas. 2004. p. 15.

Article 86(2), which reads:

> *The President of the Republic may be removed from office only for*
> *i) gross violation of the Constitution,*
> *ii) breach of the oath of office, or*
> *iii) commission of a criminal offence.*
> *The Parliament (Seimas) shall resolve issues concerning dismissal of the President of the Republic from office according to impeachment proceedings.*

The impeachment story began on October 30, 2003. It was a rather cool and breezy Thursday in Lithuania. People were already preparing themselves for the coming weekend – All Saints Day, so important for Lithuanians, when everyone goes out to visit the graves of their relatives, to be with family, and to contemplate the ancient Roman words *memento mori.* No one would have thought that this Thursday meant the beginning of *mors politicus* for Rolandas Paksas, President of the Republic of Lithuania. That Thursday, the Speaker of the Parliament (the Seimas) Artūras Paulauskas decided to introduce to the chairs of parliamentary factions a Memorandum of the Security Service, dated 21 October 2003, "On negative tendencies and threats to national security". Information in this memorandum concerned relationships between international criminal organizations and officials of the President's office[7]. When one daily newspaper

[7] This Memorandum was addressed to the President, the Speaker of the Parliament, and the Prime Minister. In the Memo four threats to national security were mentioned. First, penetration of "aggressive Russian capital" to strategically important Lithuanian sectors: electric energy, gas, petrol, and transport (this Russian capital penetration was related to accession of Lithuania to NATO and the EU and with intention to enter Western markets). Second, penetration of international criminal organizations in Lithuania. Third, Lithuania was to be used as a third country for distribution of binary used military production; Fourth, Lithuania was to be used as a third country to finance illegal financial operations - contraband, money laundering, and terrorism. The Memorandum also pointed out that: a) Mr. Yuri Borisov, a member of the pro-presidential party, the biggest financial sponsor of Mr. Rolandas Paksas during his presidential election campaign, the chief of the company Avia Baltika, having a contract to supply Sudan with helicopter parts for military purposes, and using his influence – seeks

published the contents of the memorandum, it launched the biggest political scandal in the 2nd Republic of Lithuania after re-establishing independence in 1990.

On November 3, 2003 the Seimas formed an *Ad hoc* Parliamentary Investigation Committee *On Possible Threats to National Security*[8] in order to examine:

> the influence of the President's *milieu* on the President himself, possible links between the President's *milieu* and the criminal world, and the contents of a contract between the President and Mr. Yuri Borisov, if such contract existed[9].

According to the Statute On Parliamentary Procedure, the Seimas can form any kind of *Ad Hoc* control or investigation committee as a part of its parliamentary control function. This Committee completed its task on December 2, 2003. Proceedings of the *Ad Hoc* Committee were the focus of public interest. Moreover, sittings of the Committee interviewing civil servants were conducted in public and broadcast by

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to discredit officials from the President's environment; b) the relationship of Mr. Remigijus Ačas, adviser to the President, with the international criminal world; c) Mr. Remigijus Ačas, the President's adviser on national security, together with Mrs Renata Smailytė, acting as a mediator, gave information to certain private companies concerning privatization and other matters and made exceptional conditions for their business. The conclusion stated that the President's adviser Mr. Remigijus Ačas is *vulnerable*, and in the sphere of national security could be influenced by certain interest groups. The text of the Memorandum is taken from R. Lopata, A. Matonis. Op.cit. p. 293–299.

[8] This *Ad hoc* Committee was composed of nine members: five from the governing coalition (three from the social-democrat faction, and two – from social-liberal), two from the liberal faction, one from the conservative party, and one from the neo-presidential liberal-democratic party. The chairman of the *Ad Hoc* Committee was a social democrat, the Chairman of the Judicial Committee - Mr. Aloyzas Sakalas.

[9] Before formation of the *Ad hoc* Committee, the Speaker of the Parliament provided the possibility for MPs to listen to telephone conversations of Mr. Yuri Borisov, where he described the President as a "political corpse", and threatened to make public a certain mutual contract if the President failed to fulfill some commitments to Mr. Yuri Borisov. On November 3, 2003 some extracts from these telephone conversations were published in the daily newspaper *Lietuvos Rytas*.

national TV and radio channels[10]. President Paksas had been invited to testify at the Committee sittings, but he did not appear, maintaining that the president is not under parliamentary control and relying on his immunity status[11].

It is interesting to note that formation of the *Ad hoc* Committee was not formally part of the impeachment procedure. The conclusions of this Committee were more of a political than a legal character e.g., that the President is "vulnerable" and that this fact poses a threat to national security of the country. On the other hand, it is difficult to overestimate the role that the conclusions of the *Ad hoc* Committee played in the impeachment process. The conclusions in general reflected negatively on the President of the Republic and were approved by more than 3/5 of the members of Parliament. This had a huge influence on the impeachment results[12]. The *Ad hoc* Committee in its findings of December 2, 2003 concluded that:

> 1. The Russian-registered company *Almax,* with alleged links to the Russian secret service, had been and still was exerting influence on the Presidential Office, seeking to influence and control political

[10] According to some political experts, these TV transmissions gave rise to a new phenomenon of "reality show" for the Lithuanian population. I can agree that, during this political scandal, the political transparency of political life reached the highest standards in Lithuania. See Raimundas Lopata, Audrius Matonis. *Prezidento suktukas*. VU Tarptautinių santykių ir politikos institutas. 2004, p.p.98, 201. It has to be said that at one time the task of the *Ad hoc* Committee faced real difficulty, for the Procurator's office did not want to give permission to have access to secret information (mostly telephone conversations). The General Procurator maintained that this information formed part of the pre-judicial investigation and could not be made public; moreover, at first he was of the opinion that telephone conversations with the President had to be destroyed, for laws do not permit investigation of the President of the Republic. Later on he changed his opinion.

[11] According to the Lithuanian Constitution (Art. 86(1)), the President enjoys judicial immunity – he or she cannot be prosecuted for criminal or administrative abuses while in office.

[12] According to the Lithuanian Constitution, more than 3/5 of the votes of members of the Parliament are required to remove the President from office. Therefore, this was a political sign for the President that the Parliament had enough votes to impeach him from office.

processes in Lithuania, shaping the structure of the Presidential Office and determining its staff, as well as trying to gain more influence over the President, in pursuit of Mr. Yuri Borisov's interests.

2. The President's relations with Mr. Yuri Borisov were specific. Driven by political, economic, and personal motives and with support from the Russian company *Almax*, Mr. Yuri Borisov exerted influence on the activities of the Presidential Office and on the President's decisions. Thus, Mr. Yuri Borisov had secured favorable conditions for his business, which, among other things, included trading in spare parts for military helicopters with countries supporting terrorism. Until that point in time, the President had failed to publicly disassociate himself from Mr. Yuri Borisov and had implicitly vindicated him by his actions. The extent of Mr. Yuri Borisov's influence on the President was made clear by the fact that the President, being aware of Mr. Yuri Borisov's threats, granted him citizenship under an "accelerated procedure".
3. Individuals of dubious reputation and ties with the criminal world and shadowy business structures, had exerted influence on the Presidential Office and sought to have the "top law officials" replaced.
4. The President and some Advisors to the President had used unacceptable influence on privatizations and certain private business operators.
5. The President had tolerated his advisors' lack of competence, interference with the activities of other public institutions and abuse of their power, which disturbed state administration.
6. Classified information had been leaked, through the President and his Advisors, to those individuals who were not authorized to know it, including individuals under criminal investigation.

As a final finding it was concluded that:

"The President has been and still is *vulnerable*. Taking into account the special status and responsibility of the President, and his role in domestic and foreign policies, this poses a threat to the national security of the country"[13].

Such wording of the *Ad hoc* Committee's final conclusion is very similar to the wording of the Security Service's Memorandum mentioned above. The difference is that the threat to national security came not from the President's adviser, but from the *vulnerability* of the President himself[14]. It should be mentioned that the *Ad hoc* Committee had worked very *speedily,* taking only one month to make its findings. During this month it had interrogated 44 persons, becoming acquainted with a large amount of information, including, in particular, records of telephone conversations. Such speed is unusual for this kind of parliamentary inquiry when one considers, for instance, that the Hutton Committee in Great Britain took seven months to investigate issues concerning the suicide of the Iraq arms expert Mr. David Kelly! Based on the conclusions of the *Ad hoc* Committee, the impeachment process was put in motion.

4. Constitutionality of the Conclusions of the *Ad Hoc* Committee

On December 2, 2003 the Seimas, in Resolution No IX-1868, approved the findings and final conclusions of the *Ad hoc* Committee[15]. After this it was clear that formal impeachment procedure would be commenced. Before the Seimas resolution had been passed, however, a group of politicians (from the pro-presidential liberal-democrat faction and some representatives of other pro-presidential factions) challenged the authority of the *Ad H*oc Committee[16] and a number of the conclusions that it had reached.

[13] This conclusion of the *Ad Hoc* Committee was presented with a large annex of evidence.

[14] One member of *Ad hoc* Committee from the pro-presidential party delivered a dissenting opinion, in which he declared that the *Ad hoc* Committee had acted *ultra vires*. According to him, this Parliamentary Committee (which is not a Special Impeachment Committee) had no jurisdiction to exercise its parliamentary control towards the President of the Republic.

[15] 70 MPs voted "pro", 16 "against" and 10 kept "neutral" (there are 141 members of one-chamber Lithuanian Parliament).

[16] According to the Constitution (Art. 106(1)), 1/5 of MPs (as a rule – the

This group of parliamentarians brought an application to the Constitutional Court challenging certain provisions of the *Law On the Seimas Ad Hoc Investigation Committees*[17] and the December 2, 2003 Seimas Resolution *On the Conclusion of the Parliamentary Ad Hoc Investigation Committee on Possible Threats to National Security*. The group of parliamentarians challenged the constitutionality of the following provisions of the law:

1. The provision of the law granting an *Ad hoc* Investigation Committee the right to obtain all documents, data bases and information including documents, data bases or information which are commercial in nature, or are related to a bank or concern official *secrets*.
2. The provision of the law stipulating that an *Ad hoc* Investigation Committee can obtain information and explanations "from all public institutions", irrespective of whether these institutions are or are not subordinate to the Seimas. According to law, when information concerns a judicial case or other important matter and is dealt with by the Procurator's office, the Supreme Audit office, the Security Service or by a pre-judicial investigation institution, this information may be subject to investigation by the Committee only with consent of the institution concerned.
3. The provision of the law providing that the *Ad hoc* Investigation Committee can invite officials from all public institutions to the sittings of the Committee, including those who are not subordinate to the Parliament.

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opposition) have the right to challenge the constitutionality of any Act of Parliament before the Constitutional Court.

[17] The *Law On Seimas Ad Hoc Committees* was adopted in 1999. It has been amended twice: one amendment had already been passed when the presidential scandal started. The Amendment of November 6, 2003 declared that in principle sittings of the Committee are public, but if the Committee hearings are related to state (official) secrets, then the Committee must organize closed-door sittings.

4. The provisions of the Seimas Resolution stipulating that "*classified information leaked, through the President and his advisors, to those individuals who were not authorized to know it, including individuals under operational investigation*"; that "*the President and some advisors to the President have used unacceptable influence on privatizations and certain private business operators*"; that "*the President has tolerated his advisors' lack of competence, interference with the activities of other public institutions and abuse of their power, which disturbed state administration.* Politicians argued that these provisions of the Resolution concerned "criminal offences" contained in the Criminal Code and that the *Ad hoc* Committee had no discretion to make a "legal evaluation" of the said actions. As such, the Committee was claimed to have violated the presumption of innocence and to have acted *ultra vires*.

In a judgment from May 13, 2004, the Constitutional Court decided that that the said provisions of the law and the Seimas Resolution did not contradict the Constitution. As to the applicants' first allegation, the Court said that all information, even if classified as official secrets, was necessary for the investigation of the *Ad hoc* Committee to fulfill its task. Regarding the second allegation, the Court said that the obligation to render information to the Committee could not be interpreted in such a way as to violate judicial independence. Concerning the third allegation, the Court decided that the said provision did not contradict the Constitution and that officials not subordinate to the Seimas (e.g., the President of the Republic) were entitled to decide by themselves whether or not to come to sittings of the Committee. As to the fourth allegation, the Court held that "legal formulations and qualifications of the *Ad hoc* Committee are not legally binding on the judicial branch and cannot be treated as having the power of *res judicata*, and the Seimas has discretion to approve or not approve findings of the Committee". On these grounds, the Court concluded that the challenged provisions of the law and of the Seimas Resolution did not contradict the Constitution.

5. The Judgment of the Constitutional Court of 30 December 2003, concerning the constitutionality of the Presidential Decree granting Lithuanian citizenship to Mr. Yuri Borisov

At the same time as forming the *Ad hoc* Committee *On Possible Threats to National Security,* the parliament filed an application requesting the Constitutional Court to investigate whether part of the 11 April 2003 Presidential Decree No.40 *'On Granting Citizenship of the Republic of Lithuania by Way of Exception'*, whereby citizenship of the Republic Lithuania was granted to Mr. Yuri Borisov by way of exception, was in conflict with the Constitution and with the Law on Citizenship.

All hearings of the Court were open to the public and broadcast by national TV and radio stations. Witnesses called to the court included Mr. Borisov himself, the former minister of Internal Affairs, municipality officers, advisors of the President and the President himself.

The judgment of the Constitutional Court was of great importance for all future impeachment procedures. Here the Court proclaimed not only that the Presidential Decree at issue was unconstitutional, but moreover raised in its *obiter dicta* certain issues concerning impeachment of the President. In particular, the Court let it be understood that President Paksas, by unlawfully granting Lithuanian citizenship to Mr. Borisov had committed a violation of the Constitution. Finally, the ruling stated that the Decree was in conflict with:

> the principle of equality of all people (Article 29 of the Constitution),
> the constitutional provision that "*the elected President of the Republic ... shall take an oath ... to be equally just to everybody*" (Article 82),
> the constitutional provision that the President has a prerogative to grant Lithuanian citizenship according to the order *prescribed by law* (Art. 84, Item 21),
> the constitutional principle of a state under the *rule of law*, and
> the Lithuanian Law on Citizenship:

> a) by the unlawful form of the Decree[18],
> b) by unlawful procedure of Mr. Borisov making an oath to the Republic of Lithuania[19],
> c) because Lithuanian citizenship was granted without the requirement of having *merits* to the Republic of Lithuania as prescribed by Law[20].

It is of great importance that in this judgment the Constitutional Court for the first time broadly dealt with the issue of the oath of a public official and the oath of the President of the Republic. The Court declared that Article 82 of the Constitution establishes the content of the oath to the Nation of the president-elect of the Republic. That is, an individual elected president must swear to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfill the duties of office, and to be equally just to all. According to the Court, "the peculiarity of the oath of the elected President of the Republic is that the oath to the Nation reflects the most important and *universal constitutional values*, from which the President of the Republic cannot deviate" and that "the oath of the elected President of the Republic is not a mere formal or symbolic act" (2003 12 30 judgment [VI. 7-9]).

In its judgment, the Court also declared that gross violation of the Constitution amounts at the same time to breach of the oath of the office, and *vice-versa.* In other words, in all cases where a public officer has committed a breach of the oath of office, such action will also constitute a gross violation of the Constitution.

6. The Special Parliamentary Impeachment Committee

Subsequent to the Conclusions of the Ad hoc Committee, the

[18] The minister of Internal Affairs did not countersign the Decree, as prescribed by the Constitution, no Citizenship council (consultative institution) was formed, etc.

[19] Mr. Borisov had given an oath before the decree granting him citizenship was published.

[20] According to art. 16 of the Law On Lithuanian Citizenship the President can grant Lithuanian citizenship by way of exception (without ordinary requirements of naturalization) to person "for special merits to the Republic of Lithuania".

Seimas adopted its Resolution of December 23, 2003 *On setting up a Special Impeachment Committee*. The Parliament had thus decided to start impeachment proceedings against the President. The Statute on Parliamentary Procedure allows the Impeachment Committee to be composed of members of the Parliament and legal professionals in equal parts. It was decided that the Committee be composed of 12 members: six MP's and six professional jurists[21]. The Committee was asked to conclude its task by February 13, 2004. This date was later extended to February 19. Accordingly, on February 19, 2004 the Committee adopted a Resolution *On the proposal to start impeachment of the President of the Republic of Lithuania, Rolandas Paksas*. The Committee formulated six charges in this Resolution against the President of the Republic:

Charge 1. Mr. Rolandas Paksas, while in office as President of the Republic, having no right to take and have any commitments to private persons incompatible with the interests of the Nation and the State of Lithuania, undertook such commitments to Mr. Yuri Borisov, has been influenced by the latter and acted not in the interests of the Nation and the State of Lithuania, but in the interests of a private person, namely: Mr. Rolandas Paksas undertook to perform, after he became President of the Republic, actions incompatible with the interests of the Nation and the State of Lithuania for the benefit of Mr. Yuri Borisov in return for financial and other notable support rendered by the latter, as a result of which, first, by rewarding him for said support, he unlawfully granted citizenship of the Republic of Lithuania to this person by Presidential Decree No. 40 of 11 April 2003; second, the President of the Republic was and is bound and affected by other commitments to Mr. Yuri Borisov.

[21] According to Article 236 of the Statute on Parliamentary Procedure, such lawyers must comprise one-third to one half of the Committee members. As a rule, there may be no more than 12 members of the Committee. Members of Parliament by factions: two Social democrats, two Liberals, one Conservative, and one Social liberal (three from the governing parties and three from the opposition). The chairman of the Committee was appointed as jurist and non-politician, the Deputy Chairman was an MP (social democrat). It is interesting that the Council of Judges, relying on the principle of division of powers, decided that court judges could not be members of the Impeachment Committee. Therefore six professional jurists were chosen from among judges' assistants and officials from the procurator's office.

Therefore, the President of the Republic, Rolandas Paksas, has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

Charge 2. Mr. Rolandas Paksas, while in office as President of the Republic, did not ensure the protection of a state secret, namely: on 17 March 2003, meeting with Mr. Yuri Borisov, the President of the Republic knowingly hinted to him that the Secret Service was conducting an investigation against him and tapping his telephone conversations. Therefore, the President of the Republic, Rolandas Paksas, has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

Charge 3. Mr. Rolandas Paksas, while in office as President of the Republic by giving unlawful orders to his advisors and by other actions exerted unlawful influence on decisions of private persons, namely: in 2003, seeking to enforce the property interests of private persons close to him, the President of the Republic, Rolandas Paksas, gave orders to his advisor, Mr. Visvaldas Račkauskas, to seek to influence decisions of heads and shareholders of the company "Žemaitijos keliai" concerning the transfer of shares to persons close to Mr. Rolandas Paksas. The President of the Republic was aware that unlawful influence was being exerted by making use of his name as President of the Republic, and took no measures to prevent this. Therefore, the President of the Republic, Rolandas Paksas, has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

Charge 4. Mr. Rolandas Paksas, while in office as President of the Republic, has committed actions incompatible with the principle of coordination of public and private interests, namely: as compensation for financial and other support, guided by personal interests, but not those of the Nation and the State of Lithuania, he unlawfully granted citizenship of the Republic of Lithuania to Mr. Yuri Borisov by Presidential Decree No. 40 of 11 April 2003; on 17 March 2003 while meeting with Mr. Yuri Borisov, he knowingly hinted to him that the Secret Service was conducting an investigation against him and tapping his telephone conversations, also, in 2003, seeking to enforce the property interests of private persons close to him, by making use of his status, exerted influence on decisions of

heads and shareholders of the company "Žemaitijos keliai" concerning transfer of shares to persons close to him. Therefore, the President of the Republic Rolandas Paksas has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

Charge 5. Mr. Rolandas Paksas, while in office as President of the Republic, discredited public authority, namely: guided by personal interests but not those of the Nation and the State of Lithuania, he unlawfully granted citizenship of the Republic of Lithuania to Mr. Yuri Borisov by Presidential Decree No. 40 of 11 April 2003 in return for financial and other support rendered by the latter, thereby, for unlawful purposes illegally applying Presidential discretion to grant citizenship of the Republic of Lithuania and thus discrediting the authority of the institution of the President of the Republic; also, the President of the Republic has discredited the authority of the Seimas and the Constitutional Court by public statements regarding the conclusions of the *Ad hoc* Parliamentary Investigation Committee *On Investigation of Possible Threats to Lithuanian National Security* and the ruling of Constitutional Court from 30 December 2003. Therefore, the President of the Republic, Rolandas Paksas, has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

Charge 6. Mr. Rolandas Paksas, while in office as President of the Republic, gave unlawful orders to his advisors and did not take action to prevent *abuse of power* by his advisors, namely: in 2003, Mr. Rolandas Paksas, while in office as President of the Republic, by failing to follow the procedure and grounds established by law, gave an unlawful order to his advisor Mr. Remigijus Ačas to collect information about the private lives of persons, as a result of which Mr. Remigijus Ačas and Mr. Evaldas Vaitkus, advisors to the President of the Republic, gave unlawful instructions to the Special Investigation Service[22] to collect information about the private lives of 44 persons; also, in 2003, Mr. Rolandas Paksas, while in office as President of the Republic, gave orders to his advisor Mr. Visvaldas Račkauskas to influence, by making use of his official position, decisions and

[22] Specialioji Tyrimo tarnyba (STT) – is a special security agency, dealing with combating and monitoring corruption in public service.

shareholders of the company "Žemaitijos keliai" with regards to the transfer of shares to persons close to Mr. Rolandas Paksas. Therefore, the President of the Republic, Rolandas Paksas, has committed a gross violation of the Constitution and a breach of the oath of the President of the Republic.

It is important to note here that the Parliament did not formulate any charge on *perverting the course of justice*, notwithstanding the fact that the President while testifying in the Constitutional Court had declared that he had had no contract with Mr. Yuri Borisov, which was later revealed to be untrue[23].

Sittings of the Special Impeachment Committee (as opposed to the sittings of *the Ad Hoc* Investigation Committee) were closed-door sittings, for the investigation was based of secret information, most of this being telephone conversations provided by the Security Service[24].

According to Article 105 of the Lithuanian Constitution, the Constitutional Court is competent to make a determination on whether specific actions of an official, against whom impeachment proceedings have been commenced, violate the Constitution. The Seimas decided to ask for such a conclusion from the Court (by Resolution of February 19) in order to confer *legal* character[25] on the impeachment procedure.

[23] Compare with President Bill Clinton's case, where "perversion of the course of justice" was the most important argument for impeachment. But the wording of "plot" and "I will not resign" were tactics which President Rolandas Paksas' team probably borrowed from the Clinton case. It has to be said that Mr. Borisov publicly confessed to the existence of an agreement between him and the President. Granting Mr. Borisov Lithuanian citizenship was one of the agreed points. This dangerous relationship reached its culmination when President Paksas announced that he appointed Mr. Borisov as his social advisor (Mr. Borisov 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 only three hours later.

[24] According to Article 238 of the Statute of Parliamentary Procedure, sittings of the Special Impeachment Committee should *usually* be closed.

[25] It was not so clear whether application to the Constitutional Court during the impeachment procedure according to the Constitution is a legal *obligation* or just a *possibility*.

Specifically, the Seimas asked whether actions of the President of the Republic, presented by the Special Impeachment Committee in the form of six charges, were in conformity with the Constitution.

The question then arose as to whether the Seimas could commence impeachment proceedings before the determination of the Constitutional Court was given. The majority of the Parliament answered affirmatively. Therefore, on March 8, 2004 an impeachment procedure was commenced in the Parliament, but the public hearings were adjourned until the Conclusion of the Constitutional Court was obtained. The Chief Justice of the Supreme Court, Vytautas Greičius, was called to chair the impeachment proceedings[26].

7. Impeachment of the President in the Parliament – the different Stages

7.1 Introduction

According to the Statute On Parliamentary Procedure of the Seimas, impeachment procedure in the Parliament consists of five stages:

(i) preliminary part,
(ii) inquiry,
(iii) legal submissions,
(iv) the defendant's final statement concerning the articles of impeachment, and
(v) voting for removal of a convicted official.

But according to the conclusion of the Constitutional Court delivered on 31 March 2004 (which will be discussed later) the *inquiry stage* of the impeachment process applies only when a public official has committed a crime. Accordingly, it may be said that in the

[26] According to the Statute of Parliamentary Procedure (Art. 246), *Impeachment proceedings shall be presided over by the Chief Justice of the Supreme Court or another Justice thereof, or the Chief Justice of the Constitutional Court or another judge thereof.* Mr. Kęstutits Urbaitis – another Justice of the Supreme Court – was called to be a deputy-chairman of the impeachment.

case of impeachment of the president, five impeachment stages in the Parliament should be followed (after formation of the Parliamentary Impeachment Committee):

i) preliminary part (approving impeachment charges, appointing Parliamentary Prosecutors, and the reference to the Constitutional Court);
ii) Conclusion of the Constitutional Court on violation of the Constitution and oath of presidential office by president's concrete actions, formulated in impeachment charges;
iii) legal submissions of the parties;
iv) the President's final statement, and
v) voting by the Parliament for removal of the President from office.

7.2 Preliminary Part of Impeachment Proceedings

As we have seen, on March 8 2004 the *preliminary part* of the impeachment proceedings was started. It lasted only 13 minutes. Upon announcing the commencement of the impeachment proceedings, the Seimas became an *impeachment institution*, presided over by the Chief Justice of the Supreme Court. According to the Statute On Parliamentary Procedure (Art. 246) impeachment proceedings in the Seimas must be public. In fact, they were broadcast by national television and radio.

The Special Impeachment Committee also decided who, on behalf of the Committee, should present the impeachment charges and carry out other functions of the *Seimas Prosecutors* during the impeachment proceedings (the Committee may appoint up to seven Prosecutors – Members of Parliament). The Impeachment Committee appointed five MP's as Seimas Prosecutors from among six Members of Parliament acting on the Committee[27]. Four attorneys at law[28] represented the President of the Republic in this part of the

[27] One parliamentarian, a member of the Impeachment committee, refused to be a Seimas Prosecutor, saying that he did not agree with some charges against the President.
[28] In the later stages of the impeachment there were six attorneys representing the President.

procedure. The Seimas Prosecutors submitted a proposal to adjourn the proceedings until delivery of the Conclusion of the Constitutional Court. The Representatives of the President agreed with this proposal and the Chairman decided to adjourn the impeachment proceedings accordingly.

7.3 Conclusion on Impeachment Charges of the Constitutional Court

The Constitutional Court delivered its Conclusion on March 31, 2004. It was not quite clear whether the Court was required to examine witnesses and all factual questions or whether it had only to decide on legal matters, using information from other institutions. The Court decided not to discuss the facts of the case *de novo*, but on the other hand felt that it had to call at least some witnesses *viz.*, the President's National Security Advisor, the attorney at law of Mr. Borisov, the President's legal adviser and the President himself. The proceedings were open to the public (it was directly broadcast by the public television channel, LTV) and were conducted as ordinary adversarial proceedings involving two parties, namely, the Seimas and the President. Unfortunately the President did not comply with the summons of the Court requiring him to testify, instead invoking his immunity and deciding not to participate in the judicial proceedings[29]. The proceedings were of great importance to the whole impeachment process, because this was the only stage where the Seimas Prosecutors could prove the facts leading to the impeachment, with the President's defense having the chance to prove the opposite. Therefore, during the *Conclusion on impeachment* proceedings, the members of the Constitutional Court became a Grand Jury, for they were deciding an *issue viz.*, whether the President had violated the Constitution and breached the oath of office.

The Court had to examine the six charges set out above, as presented by the Special Impeachment Committee, and had to deliver a legal determination as to whether the specific actions of the President of the Republic, as formulated by the Committee violated

[29] But some months ago he was present (as a witness) during the proceedings of the Constitutional Court in the case on the constitutionality of the Presidential Decree granting Lithuanian citizenship to Mr. Borisov.

the Constitution.

On March 31, 2004 the Court delivered its decision, in which it approved the first four charges, simply reformulated as three. As already noted, according to the Lithuanian Constitution the impeachment of a public official can be commenced only on the grounds of :

i) gross violation of the Constitution,
ii) breach of the oath of office, and
iii) a criminal offence.

The impeachment procedure may only be commenced by the Parliament (the Seimas). The Court stated that a pre-judicial *inquiry* during the impeachment procedure can be invoked only when the legal basis for impeachment is a criminal offence, but not for violation of the Constitution or breach of the oath. Notably, the Constitutional Court stated that it alone had jurisdiction to conclude whether a particular public official has violated the Constitution or not. According to the Court, the Parliament has no such authority; the latter can only decide to remove or not to remove a public official from office by the impeachment procedure[30]. The determination of a violation of the constitution and whether this violation is gross is a legal issue and can be resolved only by the judicial branch. On the other hand, the Court stated that removing a public official from office is a political issue and can be done only by a political institution, namely, the Parliament. The Parliament (the Seimas) has the discretion to decide whether or not to remove a public official even after the Constitutional Court has concluded that he has committed a gross violation of the Constitution[31].

[30] As this impeachment process showed – because of immunity status – the President of the Republic cannot be removed from office, relying on a charge of a criminal offence. This means that in the case of impeachment of the President – only the Constitutional Court is competent to deal with it and the only charge against the president can be – gross violation of the Constitution and breach of the oath of office.

[31] But in reality it is very difficult to imagine how the Parliament can keep an official in office after the Constitutional Court's conclusion that he has violated the Constitution or has breached the oath of office. According to Art. 107(3) of the Constitution, the Seimas' decision has to be *founded on the conclusion* of the Constitutional Court.

The Court stated, however, that if it reaches a conclusion to the effect that a public official has not violated the Constitution, then Parliament cannot remove him from office.

The Court also pointed out that the impeachment procedure cannot be started for conviction of *any* violation of the Constitution, but only for a *gross* violation. The Court referred to its 30 December 2003 ruling to the effect that *breach of the oath of public office* is a gross violation of the Constitution and *vice-versa*, that a gross violation of the Constitution in all cases constitutes a breach of the oath of public office. Therefore, in every case the Court needs to examine both the *content* and the *circumstances* of the specific actions of the public official in question. Finally, it was concluded that the President of the Republic of Lithuania *grossly* violated the Lithuanian Constitution (and breached the oath of office) in the following way:

1) When, by issuing Decree No. 40 of 11 April 2003, he unlawfully granted citizenship of the Republic of Lithuania to Mr. Yuri Borisov for financial and other support rendered by the latter.[32]
2) When he knowingly hinted to Mr. Yuri Borisov that he was under surveillance by the Security Service and that his telephone had been wiretapped.
3) When, seeking to further the property interests of private persons close to him, he gave orders to his advisor, Mr. Visvaldas Račkauskas, to attempt to influence, decisions of heads, and shareholders, of the company "Žemaitijos keliai" concerning the transfer of shares to persons close to Mr. Rolandas Paksas[33].

[32] This statement of the Court was based on the 30 December 2004 ruling

[33] The President, in order to take over the shares of the company "Žemaitijos keliai", during a telephone conversation with his former business partner Mr. A. Drakšas proposed using "extraordinary measures" and to "press to the end" the heads of the other company "Šiaulių plentas", so that they transfer shares to persons close to the President of the Republic.

As concerns other charges, the Court noted that public statements by the President concerning conclusions of the Parliamentary *Ad hoc* Committee *On Investigation on Possible Threats to National Security* and the 30 December 2003 Constitutional Court ruling, were not in conflict with the Constitution, for they could be justified by the constitutional *right of free speech.*

In its conclusion, the Court added, as *obiter dicta*, that the President had also violated the duty of coordination of private and public interests, prescribed by the *Act on Coordination of private and public interests in the public sector.*

7.4 Legal Submissions of the Parties

In its Conclusion from March 31, 2004, the Constitutional Court stated that legal submissions during the impeachment procedure can only concern the removal of an official from office, but not the issue of whether he has violated the Constitution, breached the oath, or committed a criminal offence. The Court affirmed that according to the Constitution it is for the Court to resolve *legal matters* while the Parliament is confined to deciding on *political matters*.

The Seimas Prosecutors brought three charges against the President, which the Constitutional court acknowledged as gross violations of the Constitution and breaches of the oath of the office: i) unlawful and unconstitutional grant of Lithuanian citizenship to Mr. Yuri Borisov, ii) breach of the duty of coordination of public and private interests, and iii) disclosure of state secrets.

All five Prosecutors arrived at the same conclusion *viz.*, to remove President Paksas from office.

The President's defence tried to gain time by arguing that, according to the Statute On Parliamentary Procedure, it was also necessary to have an "inquiry stage". Lawyers for the President requested:

i) that all secret information (especially, telephone conversations) which was the subject of inquiry by the Special Impeachment Committee be made

public;

ii) a declaration from the Supreme Court on whether Seimas Prosecutors in making impeachment charges against the President of the Republic are entitled rely on secret information (e.g. telephone conversations) obtained from the Security Services and intended for other persons and not for the purpose of "spying on" the President of the Republic, and

iii) that 26 witnesses, from high officials to various businessmen, be called.

Lawyers for the President also questioned the legality of the whole impeachment procedure by suggesting that an *Ad hoc* Investigation Committee is not authorized as an impeachment institution by law. Another criticism concerned the second charge, that "the President *hinted* to Mr. Yuri Borisov that he was under surveillance by the Security Services". In this regard, it was argued that "dropping a hint" is not an action on which impeachment charges can be based.

Some of the President's lawyers did not agree with the reasoning of the Constitutional Court and maintained that prominence cannot be given in the impeachment procedure to the Conclusion of the Constitutional Court. In summary, the President's lawyers arguments involved criticism of the work of the two Parliamentary Committees, attempts to disregard the findings and conclusion of the Constitutional Court and to negate the latter's role in the impeachment procedure[34].

7.5 Final Statement by the President of the Republic

According to the Statute On Parliamentary Procedure of the Seimas, the last word is to be granted to the public official undergoing the impeachment procedure. Therefore, after brief closing remarks

[34] The President's lawyers were arguing that according to the Lithuanian Constitution (as is also the case in the US) – the role of the Grand Jury is to be played by the Parliament and not by the Constitutional Court, while the Court in its Conclusion attributed this role to itself.

by the Seimas Prosecutors and the presidential lawyers, the President of the Republic was granted the "final statement". In his speech he accused his opponents of creating a conspiracy against the President, which, according to him, was based on lies and illusions. He pointed to the work of the Parliament, the Security Service and previous presidents, indirectly calling them corrupt and biased against the interests of the Lithuanian people, and even referred to them as "the real threats to the democratic system" of Lithuania. President Paksas insisted that the so-called "conspiracy" against him was created because he promised to fight the "system of corruption" within the country, thereby "scaring the elite, which then decided to remove the rightfully elected president." He also tried to draw parallels between his impeachment trial and the Alfred Dreyfus case, which took place at the end of the XIX century in France. The only "charge" that agreed to was that he had made a mistake in appointing Mr. Borisov as his adviser and had "used unbecoming vocabulary in speaking with his childhood friend[35]". He tried to appeal to members of parliament and to people across the country by asking, "are the errors of a few hours worth an impeachment"? These political errors, according to the President, could not form a legal basis for impeachment.

7.6 Voting for Removal of the President from Office

After the President's speech, Members of the Parliament voted (by secret ballot) for all three charges separately. According to the Statute On Parliamentary Procedure of the Seimas, an officer is removed from office if more than 3/5 of the MPs (non less than 85 of 141) vote for his removal on one charge. The first two charges (concerning granting Lithuanian citizenship to Mr. Borisov and concerning "dropping a hint" to Mr. Borisov that the latter was under supervision by the Security Service) collected 86 votes, while the third charge (concerning influence in the process of taking over a private company's shares) collected 89 votes of the MPs. Therefore, after this vote the chairman of the proceedings announced that as of April 6, 2004 Rolandas Paksas was to be removed from the office of President of the Republic of Lithuania.

[35] Here the President probably was making a reference to his telephone conversation with his former business partner Mr. Algirdas Drakšas, when suggesting to him to take all "extraordinary measures" in order to take over the shares of one private company.

8. Comments on the Impeachment of the Lithuanian President

8.1 The President's immunity and the impeachment procedure

As already noted, the very idea of impeaching a president (as a special removal-from-office procedure) is, as a rule, connected with his immunity. According to Article 86(1) of the Lithuanian Constitution: "The President may neither be arrested nor charged for criminal or administrative charges". It is true that another provision of Article 86(2) states that the President can be removed from office for "*conviction of commission of a crime*". However, as President Paksas' impeachment has shown, the constitutional immunity provision (that he cannot be charged for criminal offences) protects him from the possibility of introducing impeachment charges against him for criminal offences. Therefore, one constitutional provision limits another constitutional provision, *viz.*, that the president can be removed from office for "committing a criminal offence". This means that in reality there are only two impeachment charges for the Lithuanian president: gross violation of the Constitution and breach of the oath of office. This also forces us to rethink the very *rationale* for the president's constitutional immunity and the meaning of this immunity.

8.2 Public officials in Lithuania who can be removed from office by the impeachment procedure, and the principle of sovereignty of the people (nation)

In Lithuania, the impeachment procedure dismissing a public official from office is used only for senior officials. According to Article 74 of the Constitution, this special removal procedure may be used not only for the President of the Republic, but also for members of parliament, judges of ordinary/administrative courts and justices of the Constitutional Court. To a large degree this echoes the idea of the *sovereignty of the people* and the principle of *separation of powers*, laid down in Articles 2 and 5 of the Constitution.

8.3 Misdeeds that can form the legal basis for impeachment of the President of Lithuania

Prior to the impeachment of President Paksas, Lithuanian legal science made no distinction between impeachment charges

concerning any particular public official. As already noted, the Lithuanian Constitution foresees three impeachment charges:

gross violation of the Constitution,
breach of the oath of office, and
commission of a criminal offence.

This is so, irrespective of the public official being impeached. The impeachment of President Paksas shows that, in practice, the third impeachment charge could not be used for the President of the Republic, since he enjoys constitutional immunity. Accordingly, the only institution competent to make a legal assessment of impeachment charges is the Constitutional Court. Pre-judicial investigation institutions have no right to undertake criminal proceedings against the President. It thus appears that, if the Lithuanian President commits a serious crime (e.g. high treason), then the Constitutional Court should not apply this charge as a Criminal Code offence, but may interpret it as a gross violation of the Constitution and a breach of the oath of office.

Another point to mention here is the peculiarity of the *impeachment charges* in Lithuania. As noted, "violation of the Constitution" and "high treason" are impeachment charges that can most often be found in the texts of various different constitutions. However, there are very few countries in the world where "breach of the oath of office" is an impeachment charge[36]. This is probably the case because an "oath" is, primarily, a moral phenomenon (usually sworn by God or a person's conscience) and it is difficult to determine whether someone has breached an oath[37]. In order to avoid this difficulty in its determination of whether President Paksas

[36] Besides Lithuania, the author knows also of Armenia where "breach of the oath of office" is the president's impeachment charge.

[37] Historically, an oath used to be a religious act of swearing – a certain "contract" or "covenant" with God, which was used not only by religious people, but also by laypersons, especially – by the king, the sovereign or other political leader. In a democracy, an "oath" is connected with certain high public offices (the president, a member of parliament, minister, judge etc), which does not have a superior "boss" and is used in order to bind him/her, first and foremost, morally and politically.

had "breached the oath of office", the Lithuanian Constitutional Court decided to look to the particular wording of this oath[38] and to link it with the separate impeachment charge of "gross violation of the Constitution". The Court found that *breach of the oath of office* in all cases amounts to *gross violation of the Constitution* and, *vice-versa, i.e.* that a gross violation of the Constitution in all cases constituted a breach of the oath of office.

The final peculiarity of the Lithuanian impeachment charges is that in order to remove an official from office, it is not enough to find a "violation of the Constitution" by an official, but this violation of the Constitution must be "gross". The Constitutional Court in its conclusion stated that not all "violations of the Constitution" can be treated as "gross violations". It noted that, in order to treat a violation of the Constitution as a "gross violation", the very *content* and *circumstances* of the President's actions must be evaluated. The Constitutional Court gave some examples of when a violation of the Constitution might be treated as "gross", e.g.: (i) "when the president held office in bad faith, (ii) acted not in the interests of the Nation and the state but in his personal interests or in the interests of individual persons or their groups, (iii) acted for purposes incompatible with the Constitution and laws or with the public interest or knowingly failed to exercise the constitutional duties of the President of the Republic" (31 03 2004 Conclusion [III.8]).

These are very broad and general definitions of "gross" violation of the Constitution. It must be pointed out that *gross* violation of the Constitution (and breach of the oath of the presidential office) has in this case been interpreted, first of all, from the perspective of President Paksas' *vulnerability* to and *dependence* on Mr. Borisov, which were deemed by the *Ad Hoc* Parliamentary Committee to constitute a threat to national security. In the absence of this adjudged threat to national security, it would appear that the Constitutional Court would not have concluded that President Paksas had committed a *gross* violation of the Constitution or had breached the *oath* of

[38] "Elected President of the Republic ... takes an oath to the Nation, swearing to be loyal to the Republic of Lithuania and the Constitution, to conscientiously fulfill the duties of the President and to be equally just to everybody" (Article 82(1) of the Constitution).

office. In other words, it seems likely that the Constitutional Court only affirmed impeachment charges against the President on the basis that Mr. Borisov, to whom the President revealed information that the former was under supervision by the Security Service and to whom Lithuanian citizenship was unlawfully granted, had been suspected of having relationships with "mafia" and foreign secret agencies[39]. Therefore, even if the drafters of the Lithuanian Constitution agreed on a broader concept of the impeachment charges than, for instance, is the case in France where the only presidential impeachment charge is *high treason,* and despite not including the "high treason" charge in the text of the Constitution, we nevertheless see a shade of "high treason" in the Court's interpretation, when interpreting the very idea of impeachment charges of the President.

8.4 Institution(s) competent to impeach the Lithuanian President: the Parliament or the Constitutional Court?

First of all, it should be noted that the Parliament (Seimas) has the right to initiate impeachment proceedings and has the discretion to take a "final decision" in such matters[40]. The Parliament has a right to formulate impeachment charges and to appoint Seimas Prosecutors. Only members of Parliament can remove the President from office. Accordingly, it appears that the impeachment institution in Lithuania is the Parliament (Seimas).

But another important actor in the President's impeachment in Lithuania was the Constitutional Court. Only this court has the right to determine whether there is a constitutional and legal basis for impeachment. In other words, the Parliament cannot remove the President from office if the Constitutional Court is of the opinion that the President acted within the boundaries of his discretion and did not violate the Constitution or, if a violation had occurred, it could not be

[39] Similar suspicions existed also concerning the President's National Security Adviser Mr. Remigijus Ačas.

[40] In its 15 April 2004 judgment, the Constitutional Court said that the impeachment procedure is exclusively a parliamentary procedure and annulled a provision in the Seimas' parliamentary procedure statute, which allowed the President of the Republic to initiate impeachment proceedings against a Member of Parliament or judge.

considered as a gross violation. The Constitutional Court plays the Grand Jury's role. It has the authority to say "guilty" or "not guilty". Nevertheless, the Parliament has the constitutional discretion to let the "guilty" President remain in office, if it is of the view that the President enjoys sufficient support in society. This fact shows the highly political character of the impeachment procedure in Lithuania.

So here we see that the drafters of the Lithuanian Constitution did not follow the Austro-German example, where the constitutional court is competent to remove the president from office. It could be said that the procedure for impeachment of the Lithuanian President is a compromise between the American "parliamentary model", on the one hand, and the Austro-German "judicial model" on the other.

8.5 Parliamentary majority for removing the President by impeachment procedure

As already noted, the drafters of the Lithuanian Constitution of 1992 established a form of government, which generally speaking can be characterized as a "parliamentary regime with some attributes of semi-presidentialism". While drafting impeachment provisions, it was decided to treat impeachment of the President in the same way as impeachment of other high officials, members of Parliament and judges, so that only a 3/5 majority of votes of members of Parliament is required to remove the President from office. The Lithuanian Constitution does not follow the standard route where a 2/3 parliamentary majority is required. As President Paksas' impeachment has shown, a 3/5 majority is a sign of a parliamentary regime. If this majority were bigger, then President Paksas could not have been removed from office, for he was dismissed only by a margin of 5 votes.

8.6 Legal and political consequences flowing from the impeachment process

First, according to the Lithuanian Constitution, even when impeachment charges against the President are introduced and approved by the Constitutional Court, none of this affects the constitutional powers and immunity of the President. This means that throughout the impeachment process he holds the presidential office in the same way as before impeachment. The impeachment of

President Paksas also shows that during the impeachment process the President can use all possible powers and means (legal, political, etc.) to defend himself, thereby severely limiting the ability of other legal and political actors (primarily the Parliament and the Constitutional Court) to remove him from office. Only substantive support from society and large-scale political concentration made it possible to remove President Paksas from office.

Before the impeachment of President Paksas, the Lithuanian legal and political environment had no idea about future restrictions regarding a removed President's political career. There is nothing about this in the text of the Constitution. The question nevertheless arises whether a dismissed ex-president, who has grossly violated the Constitution and has breached the oath of office, can run in future presidential elections? The political elite made it clear that an affirmative answer to this question contradicts the very idea of the *rule of law*. Therefore, they decided to amend the *Presidential elections law* and the Constitution in such a way that a president removed from office could not run in presidential elections for the next five years[41]. But the Constitutional Court in its May 25, 2004 judgment[42] did not approve this "temporal disqualification" *rationale* and decided that the *spirit* of the Constitution requires not just temporal, but permanent and complete disqualification of such person from the political arena. The *rationale* of the Court was that a person who has breached the oath to the Nation and has been removed from office could never in the future occupy public office, which pursuant to the Constitution is connected with the oath of office. The Court stated that such a person should never "take an oath to the Nation once again, as there would always exist a reasonable doubt, which would never disappear [...], as

[41] The *Presidential elections law* was amended in May 4, 2004. Some politicians and lawyers were of the opinion that the Parliament acted *ultra vires* by this amendment of the law. Therefore, it was decided that amendment of the Constitution was also needed. In order to amend the Lithuanian Constitution, two votes by a 2/3 majority (with an interval of no less than three months between each vote) in the Parliament is needed. The same day, the first vote for the Amendment of the Constitution was taken.

[42] After the said May 4, 2004 amendment of the Presidential elections law, some MPs (mostly from the pro-presidential faction) challenged its constitutionality before the Constitutional Court.

to whether the person who takes the oath will really perform his duties of the President of the Republic, or, in other words, whether an oath repeatedly taken by this person to the Nation would not be fictitious" (25 05 2004 judgment [III.6]).

In its judgment the Court turned to the "complete political disqualification" clause which exists in the USA and said that a Lithuanian President, once removed from office, is completely disqualified from future political life and may not stand either for future presidential elections, or for parliamentary elections[43]. Therefore, we can presume that any future President of the Republic under impeachment procedure would not go *va banque* and would be more sensitive to resigning from office after a negative conclusion of the Constitutional Court, if he saw a sufficient majority opposing him in the Parliament.

9. 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. 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* experience. A parliamentary regime was seen as one of the advantages in this sphere. But in order to escape from its 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

[43] The only elections in which he can participate are municipal elections, for the Constitution does not bind members of a municipality board or mayor to take an oath of office.

in their legal systems. Only Estonia's Constitutional Review Chamber is a separate Chamber of the Supreme Court[44].

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. Even from the beginning of its existence, the Lithuanian Constitutional Court was seen as a certain constitutional balance between political powers[45]. But its competence as an *impeachment tribunal* was underestimated by Lithuanian legal science before the impeachment case of President Paksas. His impeachment process has shown that the Lithuanian

[44] 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, Uppsala 2001. pp. 105-108; Liia Hänni. *Constitutional arguments in political decision-making: Estonia*, in The Constitution as an Instrument of Change. Eivind Smith (ed.). 2003 SNS Förlag. P. 61-63. Only Romania has established a "weak" constitutional court with *a priori* constitutional control – *à la* the French Conseil Constitutionnel.

[45] As some examples of its important judgments the following can be given: 10.01.1998 the so-called "form of government" judgment; 9 12 1998 judgment abolishing the death penalty (see e.g. Vaidotas Vaicaitis. *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 No1., 85-106.)

Constitutional Court can stand as a certain neutral arbitrator in case of 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[46].

As we have seen, based on the provisions of the Constitution it was difficult to understand the very role of the Lithuanian Constitutional Court in the impeachment procedure, especially during impeachment of a President of the Republic. According to Article 105(3) of the Constitution, the Constitutional Court delivers a conclusion on *compliance with the Constitution of concrete actions* of officials against whom impeachment proceedings have been initiated. Article 107(3) states that the Seimas makes the "final decision" concerning issues prescribed in Article 105(3) "*on the basis of this conclusion*". But what does "on the basis of this conclusion" mean? And what does "the Seimas makes the *final decision* concerning issues prescribed in article 105(3)" mean? Neither seems clear[47].

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. The

[46] 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.

[47] The prevailing opinion in Lithuanian legal science at that time was that the Seimas during impeachment proceedings has the possibility, but not the duty, to ask for a conclusion of the Constitutional Court and such *conclusion* of the Constitutional Court is only a certain recommendation or advisory opinion for the Seimas, while the latter takes a final decision on the matter. See, e.g., Juozas Žilys in *Lietuvos konstitucinė teisė*. LTU, 2001, pp. 460-465.

Constitutional Court in its conclusion also said that the constitutional provision stating that the "Seimas makes the final decision" means "*final decision*" concerning *removing the official from office*, but not concerning the violation of the Constitution or breach of the oath, as can be seen from the wording of the Constitution. It was clearly stated that the Constitutional Court (and not the Seimas!) makes the "final decision" with respect to breaches of the Constitution and the oath. So, it can be said that the Constitutional Court by its March 31, 2004 conclusion has changed the Lithuanian concept of impeachment and its role therein.

Furthermore, the Constitutional Court in its judgment of May 25, 2004 (according to the American and Austrian pattern) limited the political rights of a removed President. It clarified that, once the President (or other public official) is convicted by the Constitutional Court of violating the Constitution and breaching the oath of office and has been removed from office by the Seimas, he can never occupy any political office which by virtue the Constitution is linked to an oath of office[48].

Some observers take the view that in modern Lithuania during its 15 years after re-independence, a stable political system has not yet emerged and that this is a consequence of a certain *moral crisis* in society after 50 years of occupation and Soviet ideology. One set of "moral values" have been destroyed, but other ones have still not emerged. This unstable social environment is useful for all sorts of populist leaders. It may, therefore, be suggested that the most interesting role of 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

[48] 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 Supreme National Audit Office. It should be noted that because Mr. Paksas' appeal was accepted by the European Court of Human Rights, it is up to this Court to decide whether prohibition for life to stand for presidential and parliamentary elections, proclaimed by Lithuanian Constitutional Court regarding Mr. Paksas, contradicts Article 3 of the First Protocol to European Convention on Human Rights.

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.

BOOK REVIEWS