



Supreme Administrative Court of Lithuania requests an advisory opinion on impeachment legislation

The Supreme Administrative Court of Lithuania has asked¹ the European Court of Human Rights to provide an advisory opinion on impeachment legislation, a question which is at issue in a case currently pending in Lithuania.

Lithuania is the fourth country to seek such an opinion under [Protocol No. 16](#) to the European Convention on Human Rights. France made the first request in October 2018 and the Court delivered its [opinion](#), on rights related to surrogacy, in April 2019. Armenia made the second request in August 2019, concerning an Article of the country's Criminal Code which penalises the overthrowing of the Constitutional order, and the Court delivered its [opinion](#) in May 2020. Slovakia recently submitted a request concerning the independence of its police complaints mechanism.

Protocol No. 16 allows the highest courts and tribunals, as specified by member States which have ratified it, to request advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the European Convention or its Protocols.

The Supreme Administrative Court of Lithuania stated that its request was made in the context of a case brought by a former member of the Seimas (the Lithuanian parliament) who had been impeached and was running for election again in 2020. In the case the former member of the Seimas brought a complaint about the Central Electoral Commission's ("the CEC") refusal to register her as a candidate in elections to the Seimas following a Constitutional Court ruling of 2014 finding that she had breached the oath and grossly violated the Constitution by failing to attend many sittings of the Seimas.

In particular according to her the CEC decision failed to take into account the legislation on impeachment as amended following the European Court's judgment in the case of [Paksas v. Lithuania](#) of 2011, the Constitutional Court having subsequently found that the new legislation was in conflict with the Constitution. In the *Paksas* judgment the Court held that the permanent and irreversible disqualification of a former President from taking a seat in the Seimas following impeachment proceedings had been disproportionate, in violation of the European Convention.

In its questions, the Supreme Administrative Court has asked for guidance from the European Court on the criteria to be applied when assessing the compatibility of the legislation on impeachment, as currently applied, with Article 3 of Protocol No. 1 (right to free elections) to the European Convention.

An advisory opinion may only be requested in the context of a case pending before the domestic courts. The acceptance or refusal to examine the request is at the Court's discretion. A panel of five judges decides whether to accept the request, giving reasons for any refusal.

Advisory opinions, given by the Grand Chamber, give reasons and are not binding. Opinions are published and communicated to the requesting court or tribunal and to the relevant High Contracting Party. Judges are entitled to deliver a separate opinion. The panel and the Grand Chamber include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains.

¹ The request, initially submitted on 2 October 2020, was completed on 5 November 2020 and was thus formally considered to have been lodged on the latter date.

The aim of Protocol No. 16 is to enhance interaction between the Court and national authorities and thereby reinforce the implementation of Convention rights and freedoms by requesting courts in their adjudication of pending cases.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.